IN THE SUPREME COURT OF OHIO
CASE NO. 2021-0532

STATE OF OHIO,	)	
	)	
Appellee,	)	
	)	On Appeal from Cuyahoga
vs.	)	County Court of Appeals
	)	Eighth Appellate District
DANAN SIMMONS, JR.	)	
	)	C.A. Case No. 109476
Appellant.	)	

MERIT BRIEF OF APPELLEE

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INTRODUCTION AND SUMMARY OF ARGUMENT

Am.Sub.S.B. No. 201, 2018 Ohio Laws 157, also known as the Reagan Tokes Law, consists of 50 statutory amendments and four new statutory enactments. Defendants across the State of Ohio, like Danan Simmons, Jr., have challenged the constitutionality of the Reagan Tokes Law. Yet this appeal must be placed in the proper context. In this case, the trial court found that Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 violated the Separation of Powers Doctrine and Due Process Clause. The Eighth District Court of Appeals reversed the trial court's decision. Simmons appealed to this Court challenging a narrow provision of the Am.Sub.S.B. No. 201, 2018 Ohio Laws 157. Properly framed, Simmons challenges the constitutionality of the release process under R.C. 2967.271(B)-(D), arguing that it violates: (1) his right to a jury trial; (2) the Separation of Powers Doctrine; and (3) Due Process. Ironically, Simmons challenges the constitutionality of a statutory provision that would have given him a presumption of release upon serving the minimum prison term.

Although Simmons raises three propositions of law, only two propositions of law are properly before this Court. The trial court did not find that Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 violated Simmons's right to a jury trial, and the Eighth District Court of Appeals did not address those arguments in the decision below. Therefore, Proposition of Law I is forfeited. The corresponding proposition of law in *State v. Hacker*, Sup. Ct. Case No. 2020-1496 is also forfeited.

That said, the constitutional challenges hinge on Simmons mischaracterizing the indefinite sentencing provisions under Am.Sub.S.B. No. 201, 2018 Ohio Laws 157. Simmons incorrectly asserts that R.C. 2967.271(B)-(D) allows the Ohio Department of Rehabilitations and Corrections ("ODRC") to extend or add prison time to the prison sentence. See Appellant's Brief, pg. 3. In reality, the ODRC can only maintain a defendant in prison within the indefinite prison term imposed by the trial court. R.C. 2929.14(A)(1)(a) and R.C. 2929.14(A)(2)(a), require a trial court to impose an indefinite sentence that consists of a minimum prison term and a maximum prison term. The maximum term is determined by a statutory formula under R.C. 2929.144. Although R.C. 2967.271(B) provides a presumption of release, the ODRC may rebut the presumption and "maintain" the inmate's term of incarceration as specified by the trial court. The way the ODRC may rebut the presumption of release depends on the defendant's incarceration record. R.C. 2967.271(D) does not allow the ODRC to increase or extend a defendant's prison sentence beyond the indefinite term posed by the trial court. The lead opinion in *Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.) likewise criticized a similar characterization of the ODRC's role under R.C. 2967.271(C). Id., ¶23-29.

Simmons's challenge to the R.C. 2967.271(B)-(D) must fail. First, Simmons's arguments that R.C. 2967.271(B)-(D) violates his jury trial rights are forfeited. Even then, the ODRC does not impose sentences. That function is fulfilled by the trial court when it sets the indefinite sentence. As a result, Simmons's arguments that the United States

Constitution entitles him to a jury determination of whether he should be released from prison is unconvincing. Second, Simmons cannot show that R.C. 2967.271(B)-(D) violates the Separation of Powers Doctrine because any problem is avoided when the trial court exercises its authority and imposes and where the ODRC administers the sentence including making a release determination. Third and finally, a Due Process violation cannot be shown because R.C. 2967.271(C) is more like a parole hearing. Simmons's Due Process arguments fail because Due Process will be met under the rules, policies, and procedures set forth by the ODRC and the statutory limitations set forth under R.C. 2967.271(C).

For these reasons, the trial court erred in finding the "Reagan Tokes Law" to be unconstitutional and the judgment of the Eighth District Court of Appeals should be affirmed.

STATEMENT OF THE CASE AND FACTS

A. A grand jury indicts Simmons for drug offenses involving cocaine and heroin and other weapons offenses.

A grand jury indicted Simmons for offenses he committed on March 27, 2019. Simmons was charged as follows: Count One: Having Weapons While Under Disability in violation of R.C. 2923.13(A)(2), a felony of the third degree with one and eighteen-month firearm specifications in violation of R.C. 2941.141(A), (D); Count Two: Drug Trafficking (cocaine) in violation of R.C. 2925.03(A)(2), a qualifying felony of the first

degree with a one -year firearm specification in violation of R.C. 2941.141(A); Count Three: Drug Possession (cocaine) in violation of R.C. 2925.11(A), a qualifying felony of the first degree; Count Four: Drug Possession (heroin), in violation of R.C. 2925.11(A), a felony of the fifth degree; and Count Five: Possession of Criminal Tools, in violation of R.C. 2923.24(A), a felony of the fifth degree. All counts contained forfeiture specifications. (Trial Court Record, R. 2 Indictment).

B. Simmons, Jr. pleads guilty, and the trial court finds the "Reagan Tokes Law" unconstitutional.

Simmons pleaded guilty to Count One, Having Weapons While Under Disability; Count Two, Drug Trafficking (cocaine); and Count Four, Drug Possession (heroin). (Trial Court Record, R. 27 Plea Hearing).

At the sentencing hearing, the trial court sentenced Simmons to Count One, Having Weapons While Under Disability, a felony of the third degree, Count Two, Drug Trafficking, a qualifying felony of the second degree with a one-year firearm specification, and Count Four, Drug Possession, a felony of the fifth degree. The trial court imposed a prison sentence of 18 months on count one, four years on count two consecutive to the one-year firearm specification, and nine months on count four. (Tr. 18). The trial court noted the State's objection to the trial court's sentence. (Tr. 18).

The trial court conveyed it would find "Reagan Tokes Law" to be unconstitutional as to indefinite sentence only. It adopted the reasoning of a Hamilton County Court of Common Pleas Judge in *State v. Oneal*, Hamilton C.P. No. B-1903562, 2019 WL 7670061

(Nov. 20, 2019). The State's objection was part of the record. On amended count two, Simmons was sentenced to four years plus one year for the firearm specification, eighteen months on count one, and nine months on count four, all to run concurrently. (Tr. 18). In the judgment entry of conviction, the trial court reasoned that its decision that the Reagan Tokes Law was unconstitutional for the reasons outlined in *Oneal*. (Trial Court Record, R. 30 Sentencing Hearing).

C. The Eighth District determines the constitutionality of R.C. 2967.271(C), and an intra-district conflict develops.

The State filed a notice of appeal, asserting an appeal of right under R.C. 2953.08(B)(2). (Trial Court Record, R. 31 Notice of Appeal). On appeal, the Eighth District found the State's appeal ripe for review. It reversed the trial court's decision, holding that the "Regan Tokes Law" did not violate the Due Process Clause or Separation of Powers Doctrine. *State v. Simmons*, 2021-Ohio-939, 169 N.E.3d 728 (8th Dist.). In doing so, the court in *Simmons* relied on the decision in *State v. Wilburn*, 8th Dist. Cuyahoga No. 109507, 2021-Ohio-578.

After Simmons had perfected a notice of appeal to this Court, an intra-district conflict emerged in the Eighth District with the decisions in *State v. Delvallie*, 8th Dist. Cuyahoga No. 109315, 2021-Ohio-1809 and *State v. Gamble*, 8th Dist. Cuyahoga No. 109613, 2021-Ohio-1810. The Eighth District resolved the intra-district conflict and a majority of the Eighth District, sitting en banc, decided that the "Reagan Tokes Law" was constitutional. *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). That said,

whenever the Eighth District analyzed the "Reagan Tokes Law," it was really examining the constitutionality of R.C. 2967.271(B)-(D).

This case was accepted for review. After the Court decided *State v. Maddox, Slip Opinion No.*, 2022-Ohio-764, this Court ordered briefing here and in *State v. Hacker,* Sup. Ct. Case No. 2020-1496. And since then, many cases have been for both *Hacker* and this case.

LAW AND ARGUMENT

A. The standard of review is de novo. Facial challenges are disfavored and Simmons must prove there are no circumstances in which R.C. 2967.271(C) validly applies to find the provision unconstitutional.

A review of whether a statute is constitutional is a question of law. Therefore the standard of review is de novo. *Crutchfield Corp. v. Testa*, 151 Ohio St.3d 278, 2016-Ohio-7760, 88 N.E.3d 900, at ¶ 16. There is a strong presumption of the constitutionality of statutes. *State v. Gill*, 63 Ohio St.3d 53, 55 (1992).

Courts must be highly confident of unconstitutionality before they overturn laws. This is because the General Assembly has broad legislative power and "may pass any law unless it is specifically prohibited by the state or federal *State ex rel. Jackman v. Court of Common Pleas*, 9 Ohio St.2d 159, 162 (1967).

> In determining whether an act of the Legislature is or is not in conflict with the Constitution, it is a settled rule, that the presumption is in favor of the validity of the law. The legislative power of the state is vested in the General Assembly, and whatever limitation is placed upon the exercise of that plenary grant of power must be found in clear prohibition by the

> Constitution. The legislative power will generally be deemed ample to authorize the enactment of a law, unless the legislative discretion has been qualified or restricted by the Constitution in reference to the subject matter in question. If the constitutionality of the law is involved in doubt, that doubt must be resolved in favor of the legislative power. The power to legislate for all the requirements of civil government is the rule, while a restriction upon the exercise of that power in a particular case is the exception.

Id. at 162, quoting *State ex rel., v. Jones*, 51 Ohio St. 492, 503, 504 (1894).

Accordingly, this Court's review of the constitutional challenges to R.C. 2967.271(C) is de novo.

Simmons's challenges are largely facial challenges to R.C. 2967.271(B)-(D). A facial challenge is decided by considering the statute without regard to extrinsic facts. *See Glob. Knowledge Training L.L.C. v. Levin*, 127 Ohio St.3d 34, 2010-Ohio-4411, 936 N.E.2d 463. A plaintiff succeeds in a facial challenge to the statute's constitutionality only by establishing that there are no circumstances that the law would validly apply. See *Pickaway Cty. Skilled Gaming L.L.C. v. DeWine*, 191 Ohio App.3d 682, 2011-Ohio-278, 947 N.E.2d 273 (10th Dist.). Facial challenges to legislation are generally disfavored. "The judicial authority to override the legislative will should be used with extreme caution and restraint, because declaring a statute unconstitutional based on a facial challenge is an 'exceptional remedy.'" *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 96 .

B. Simmons challenges the "Reagan Tokes Act" by arguing the "Reagan Tokes Act" violates his right to a jury trial, the doctrine of separation of powers, and due process.

The trial court found the "Reagan Tokes Law" unconstitutional by adopting the *Oneal* decision. This decision found the R.C. 2967.271(C) unconstitutional on Separation of Powers and Due Process grounds. Simmons raised the same claims and added an additional claim and raises three propositions of law:

> **Proposition of Law I: The Reagan Tokes Act violates the Sixth Amendment as it permits the imposition of additional punishment for conduct not admitted by the defendant or found by a jury.**
>
> **Proposition of Law II: The Reagan Tokes Act violates the doctrine of separation of powers because, as with bad time, it conferred judicial power to the executive branch.**
>
> **Proposition of Law III: The Reagan Tokes Act violates due process by failing to provide adequate notice, by inadequately confining executive branch discretion, by lacking adequate guarantees for a fair hearing.**

The first proposition of law implicates to Amendment VI, U.S. Constitution as incorporated to the states through the Fourteenth Amendment. The text of the Sixth Amendment reads:

> In all criminal proceedings, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The second proposition of law does not rely on any specific text of the Ohio Constitution. It is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three

branches of state government. *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 40, citing City *of S. Euclid v. Jemison*, 28 Ohio St.3d 157, 503 N.E.2d 136 (1986).

Finally, the third proposition of law implicates the Due Process Clause of the Amendment XIV, U.S. Constitution. The relevant text of the Fourteenth Amendment reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

C. Background of Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 also known as the Reagan Tokes Law

To adequately address Simmons's constitutional challenges, it is necessary to understand the provisions of Am.Sub.S.B. No. 201, 2018 Ohio Laws 157. Effective March 22, 2019, the General Assembly provided in Am. Sub. S.B. 201, otherwise known as the Reagan Tokes Law, states that first-degree and second-degree felonies not already carrying a life sentence will be subject to indefinite sentencing. The following relevant statutory terms help calculate the prison term:

- R.C. 2929.01(EE) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

- R.C. 2929.01(FFF) "Non-life felony indefinite prison term" means a prison term imposed under division (A)(1)(a) or (2)(a) of R.C. 2929.14 and R.C. 2929.144 of the Revised Code for a felony of the first or second degree committed on or after [March 22, 2019].
- R.C. 2929.144(A) "qualifying felony of the first or second degree" means a felony of the first or second degree committed on or after [March 22, 2019].

When imposing prison terms, R.C. 2929.14 requires that the sentencing court impose an indefinite sentence with a minimum term selected by the judge and an accompanying maximum term, calculated under a statutory formula under R.C. 2929.144. The trial court also provides sentencing notifications under R.C. 2929.19(B)(2)(c), related to the presumption and the ability of the ODRC to rebut the presumption. There is a presumption that the defendant will be released after serving the minimum term under R.C. 2967.271(B). The law, collectively known as the Reagan Tokes Law, consists of amendments to 50 sections of the Ohio Revised Code and the enactment of four sections of the Ohio Revised Code, according to R.C. 2901.011.

The details below show how sentences are calculated under R.C. 2929.14 and R.C. 2929.144:

Single felony conviction: Under R.C. 2929.144(B)(1), the maximum is then determined by a formula that is 50% of the minimum term selected by the court. R.C. 2929.14(A)(1)(a) sets the minimum term available for felonies for the first degree. R.C.

2929.14(A)(2)(a) sets the minimum term available for felonies of the second degree. The following table shows what the maximum prison terms are:

If the minimum prison term is:	The maximum prison term is:
2 years	3 years
3 years	4.5 years
4 years	6 years
5 years	7.5 years
6 years	9 years
7 years	10.5 years
8 years	12 years
9 years	13.5 years
10 years	15 years
11 years	16.5 years

When the court is sentencing concurrently. R.C. 2929.144(B)(3) provides for the following formula to calculate the maximum term where multiple sentences are imposed, and all sentences are run concurrently:

> If the offender is **being sentenced for more than one felony**, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that **all of the prison terms** imposed are to **run concurrently**, the **maximum term shall be equal to the longest of the minimum terms** imposed on the offender under division (A)(1)(a) or (2)(a) of R.C. 2929.14 of the Revised Code for a qualifying felony of the first or second degree for which the sentence is being imposed **plus fifty per cent of the longest minimum term for the most serious qualifying felony being sentenced.**

If one of the offenses is a qualifying non-life F-1 or F-2 offense, and if the court is imposing all the sentences concurrently, then the maximum term will be determined by adding 50% to the longest of the minimum terms imposed for a qualifying offense, with

the 50% amount being determined in relation to the minimum that was imposed for the most-serious qualifying felony being sentenced. R.C. 2929.144(B)(3).

When the court is sentencing consecutively. R.C. 2929.144(B)(2) provides for the following formula to calculate the maximum term where multiple sentences are imposed and some or all counts are run consecutively:

> **If the offender is being sentenced for more than one felony**, if one or more of the felonies is a **qualifying felony of the first or second degree**, and if the court orders that **some or all of the prison terms imposed are to be served consecutively**, the court shall **add all of the minimum terms imposed** on the offender under division (A)(1)(a) or (2)(a) of R.C. 2929.14 of the Revised Code for a qualifying felony of the first or second degree that are to be served consecutively **and all of the definite terms of the felonies that are not qualifying felonies of the first or second degree** that are to be served consecutively, and the **maximum term shall be equal to the total of those terms so added by the court plus fifty per cent of the longest minimum term or definite term for the most serious felony being sentenced**.

If one or more of the offenses is a qualifying F-1 or F-2 offense, and if the court is imposing some or all the sentences consecutively, then the maximum term will be determined by adding the consecutive sentences together and by then adding an amount equal to 50% of the longest minimum term *or* longest definite term for the most serious felony being sentenced.

When There Is A Mandatory Sentence: R.C. 2929.144(B)(4) describes how a trial court handles a sentence when a portion of it is mandatory. The statutory provision states:

> **Any mandatory prison term**, or portion of a mandatory prison term, that is

> imposed or to be imposed on the offender under division (B), (G), or (H) of R.C. 2929.14 of the Revised Code or under any other provision of the Revised Code, with respect to a conviction of or plea of guilty to a specification, and **that is in addition to the sentence imposed for the underlying offense** is separate from the sentence being imposed for the qualifying first or second degree felony committed on or after the effective date of this section and **shall not be considered or included in determining a maximum prison term** for the offender under divisions (B)(1) to (3) of this section

In other words, these types of mandatory sentences are excluded from the calculation of the maximum indefinite term under R.C. 2929.144 R.C. 2929.14(B) – One-year firearm specification, Automatic firearm/muffler/suppressor specification, Three-year firearm specification; (2) R.C. 2929.14(G) – Criminal gang specification; (3) R.C. 2929.14(H) – Offense in school safety zone; (4) Or any other mandatory sentence that is imposed in addition to that felony. At the same time, where the felony carries a mandatory prison term, that is included in the calculation of the maximum term (i.e., mandatory prison term for human trafficking under R.C. 2505.32).

The ODRC provides notifications to the now inmate regarding SB 201 when the defendant is conveyed to its custody. ODRC Policy 52-RCP-01, available at https://drc.ohio.gov/policies/reception (last visited August 10, 2021). Once the inmate has served the minimum term, the ODRC may rebut the presumption of release under R.C. 2967.271(C). The provision states:

> The department may rebut the presumption only if the department determines, at a hearing, that one or more of the following applies:

> (1) Regardless of the security level in which the offender is classified at the time of the hearing, both of the following apply:
>
> (a) During the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff of a state correctional institution or its inmates, or physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated.
>
> (b) The offender's behavior while incarcerated, including, but not limited to the infractions and violations specified in division (C)(1)(a) of this section, demonstrate that the offender continues to pose a threat to society.
>
> (2) Regardless of the security level in which the offender is classified at the time of the hearing, the offender has been placed by the department in extended restrictive housing at any time within the year preceding the date of the hearing.
>
> (3) At the time of the hearing, the offender is classified by the department as a security level three, four, or five, or at a higher security level.

Suppose the ODRC finds that the presumption is rebutted. In that case, the ODRC can maintain the offender in custody for a reasonable period not to exceed the maximum prison term. R.C. 2967.271(D)(1). The presumption of release will apply at the next continued release date, and the presumption can be rebutted at the following date. R.C. 2967.271(D)(2).

Further, the ODRC has established guidelines and procedures to follow in conducting a hearing to rebut the presumption of release. For example, the ODRC published on March 15, 2021, its policy governing the maximum term hearing. ODRC

Policy 105-PBD-15, available at https://drc.ohio.gov/policies/parole-board (last visited August 10, 2021).

D. This Court must analyze severability if it finds R.C. 2967.271(C) **unconstitutional for any reason.**

Any discussion of whether R.C. 2967.271(C) would be incomplete without consideration of severance if the Court were to determine R.C. 2967.271(C) was unconstitutional on any ground. If the Court finds the Regan Tokes Law unconstitutional, severability must be addressed.

Even if one provision of S.B. 201 is unconstitutional, that does not make the entire bill unconstitutional. It would be difficult to argue that an indefinite sentence, proscribed by the legislature, is unconstitutional. By finding the "Reagan Tokes Law" unconstitutional and refusing to impose an indefinite sentence, the trial court implicitly struck down Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 in its entirety. Again, several statutes make up the "Reagan Tokes Law." *See* R.C. 2901.011. Severance does not require the elimination of every provision of Am. Sub. S.B. 201, including the indefinite sentencing scheme. R.C. 1.50 states:

> If any provisions of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.

Severance played an essential role in *Foster* in determining how to move forward after this Court found that some sentencing provisions violated the defendant's jury trial

rights. The Court held that courts still had discretion to impose a prison term within the range after severance, that judicial fact-finding was no longer required (when) for imposition of consecutive sentences, and that judicial fact-finding was no longer required to impose additional penalties for repeat-violent-offender specifications and major-drug-offender specifications. *State v. Foster*, 109 Ohio St.3d 1, 29 (2006). *Foster* itself applied the remedy in *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005). The Ohio Supreme Court re-affirmed the *Foster* remedy in *State v. Bates*, 118 Ohio St.3d 174, 2008-Ohio-1983, 887 N.E.2d 328, and *State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, 912 N.E.2d 582.

R.C. 2967.271(B)-(D) can be severed while giving other provisions, such as the provisions that authorize an indefinite sentence under R.C. 2929.14 and R.C. 2929.144 full effect.

If this Court finds constitutional infirmities, the remedy is to eliminate the scheme that provides the defendant a presumption of release upon serving the minimum sentence and the provisions that allow the ODRC to rebut the presumptive relief. This, of course, does not leave defendants such as Simmons unable to be released from their indefinite prison sentences. The law currently provides for mechanisms to determine the release of inmates serving indefinite prison terms, including life sentences under the parole procedures. *See generally* Ohio Adm.Code 5120:1-1-07 ("Procedure for release on parole"), Ohio Adm.Code 5120:1-1-10 ("Initial and continued parole board hearing

dates"), Ohio Adm.Code 5120:1-1-03 ("Minimum eligibility for release on parole.") The indefinite sentencing scheme of Regan Tokes Law can survive any severance of R.C. 2967.271(B), (C). Moreover, Simmons, who broadly challenges the Reagan Tokes Law as a whole, cannot show that the entire Regan Tokes Law, again consisting of 50 statutory amendments and four statutory enactments, must fall with R.C. 2967.271(B), (C).

The majority in *Gamble* recognized the need to consider the severance doctrine should the Court find R.C. 2967.271(B)-(D) unconstitutional. The majority in *Gamble* remarked:

> We cannot help but note that offenders should tread lightly in this area. Gamble's claim that R.C. 2967.271 violates the Constitution would necessarily invoke the severability doctrine, for which the constitutionally infirm provision is severed from the statutory scheme as a whole. R.C. 1.50 unambiguously states that if any section of the Revised Code, or a provision therein, is determined to be invalid, "the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable."
>
> Solely for the sake of discussion, if Gamble is correct and R.C. is declared invalid, that conclusion does not impact R.C. 2929.144 that requires the trial court to sentence him to the maximum term. Importantly, Gamble has not directly claimed that R.C. 2929.144 and the imposition of indefinite sentences under that section and R.C. 2929.14(A)(1)(a), (A)(2)(a) are likewise invalid. How could he when indefinite sentencing structures have been part of Ohio sentencing law for decades at the least? The impact on Gamble would be immeasurable. Declaring R.C. 2967.271 constitutionally invalid would subject Gamble to the indefinite sentencing range of two years minimum, up to the maximum of three years under R.C. 2929.144 without the benefit of the presumption of release after serving the minimum term. *See, e.g., Foster* (leaving the sentencing ranges while severing the judicial fact-finding requirement). That cannot be the Pyrrhic victory Gamble is envisioning.

> And even if we declared the whole of the act unconstitutional, nothing stops the legislature from reinstating the minimum and maximum terms without providing for the presumption of release. *Bates*, 118 Ohio St.3d 174, 2008-Ohio-1983, 887 N.E.2d 328, ¶ 13, quoting *Stewart v. Maxwell*, 174 Ohio St. 180, 181, 187 N.E.2d 888 (1963) (it is solely in the province of the legislature to define punishments for crimes). Thus, the judicial intervention being requested here could very well lead to increased sentences for all offenders. It is for this reason that any policy considerations of the length of sentences is best left for the legislature and any judicial intervention should not be taken lightly. *Arbino*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 21, (all statutes are presumed to be constitutional).

Gamble, ¶¶ 46-48.

In doing so, for the sake of discussion, the majority in *Gamble* found that a finding that R.C. 2967.271(B)-(D) are unconstitutional could result in the severance of only the presumptive-minimum release provisions.

Suppose the Court finds R.C. 2967.271(B)-(D) unconstitutional. In that case, the Court should engage in the analysis under R.C. 1.50. In doing so, the Court should strike only those provisions found to be unconstitutional and leave the remainder in place.

PROPOSITION OF LAW I: THE REGAN TOKES ACT VIOLATES THE SIXTH AMENDMENT AS IT PERMITS THE IMPOSITION OF ADDITIONAL PUNISHMENT FOR CONDUCT NOT ADMITTED BY DEFENDANT OR FOUND BY A JURY

A. Simmons forfeited his argument that Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 violates his right to a jury trial because he did not make this argument in the trial court.

Simmons did not argue in the trial court that R.C. 2967.271(B)-(D) violated his jury trial rights. The trial court's ruling shows that it found Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 violated the separation of powers doctrine and due process. Thus, neither the trial court nor the court of appeals considered the jury trial arguments raised here.

As this Court held in *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, the failure to challenge the constitutionality of a statute in the trial court forfeits all but plain error on appeal. Thus the Court held that Quarterman forfeited his constitutional challenge to Ohio's mandatory bindover procedure.

Appellate courts have found challenges to the Reagan Tokes Law to be forfeited in other instances. *State v. Barnes*, 2d Dist. Montgomery No. 28613, 2020-Ohio-4150, *State v. Conant*, 4th Dist. Adams No. 20CA1108, 2020-Ohio-4319, *State v. Dames*, 8th Dist. Cuyahoga No. 109090, 2020-Ohio-4991 , *State v. Stone*, 8th Dist. Cuyahoga No. 109322, 2020-Ohio-5263, *State v. Alexander*, 12th Dist. Butler No. *CA2019-12-204*, 2020-Ohio-3838.

Although the merits of the jury trial question have been addressed in other opinions, the question need not be reached here and may very well be left to be

considered in the appropriate case.[1]

B. Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 does not require any fact-finding in order to increase a defendant's prison sentence above the statutory maximum.

The United States Supreme Court in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) held that except for a prior conviction, any fact that increases the defendant's punishment above the statutory maximum punishment must be submitted to a jury and proven beyond a reasonable doubt. *Blakely v. Washington*, 542 U.S. 296 (2004), the Supreme Court found the State of Washington's sentencing system unconstitutional because it gave judges authority to increase sentences based on their own determination of facts rather than facts found by the jury. In *United States v. Booker,* the Supreme Court held that all facts that increase a defendant's punishment beyond the federal guidelines applicable to the offense had to be proven to a jury beyond a reasonable doubt. Simmons cites no case that stands for the authority that *Apprendi* applies in a post-sentencing context such as the parole context. More recently, in *United States v. Haymond*, 139 S.Ct. 2369 (2019), the United States Supreme Court found 18 U.S.C. 3583(k)

[1] The argument has been forfeited in *State v. Hacker,* Sup. Ct. Case No. 2020-1496 as well. The Cuyahoga County Public Defender who likewise represents Travon Whetstone has suggested that *State v. Whetstone,* Sup. Ct. Case No. 2022-0328 be the lead case on all the constitutional challenges to Am.Sub.S.B. No. 201, 2018 Ohio Laws 157. Although the State waived response it is worth noting that *Whetstone* suffers from the same procedural posture. *See State v. Whetsone [sic]*, 8th Dist. Cuyahoga No. 109671, 2022-Ohio-800, ¶ 4. Any appeal from the en banc decision in *Delvallie*, 2022-Ohio-470 will likely become moot due to the fact that the defendant will have served the minimum term in October 2022.

unconstitutional as it *required a judge* to sentence a defendant for a minimum of five years when the defendant on supervised release. The issue was that the statute required the judge to impose the additional prison term, not that the judge could impose an additional prison term for a violation of supervised release. In sum, *Apprendi* and its progeny is a prohibition against judges making certain findings. It is not a prohibition against executive branch officials from making decisions such as parole release decisions. Although the trial court did not impose an indefinite sentence, there is no prohibition against a judge imposing an indefinite sentence within the statutory range.

This Court has had an opportunity to apply *Apprendi* in other circumstances. For example, *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470 found statutes that required judicial fact-finding before imposing more than a minimum sentence or the maximum prison term to violate *Blakely*. The critical question in *Foster* was whether *judicial fact-finding* violated the Sixth Amendment right to a jury trial as to statutory provisions that required findings for a judge to impose more than a minimum sentence, the maximum sentence, and consecutive sentences.

The structure of the indefinite sentencing scheme under R.C. 2929.14(A)(1)(a), R.C. 2929.14(A)(2)(a), and R.C. 2929.144 does not defy *Apprendi* and its progeny. The statutory maximum is determined based on the minimum term selected by the trial court. As it relates to Simmons, he pled guilty to a qualifying felony of the second degree. For that count, R.C. 2929.14(A)(2)(a) authorized the trial court to impose an indefinite sentence

consisting of a minimum term of 2, 3, 4, 5, 6, 7, or 8 years and a maximum sentence determined by R.C. 2929.144. The trial court imposed a definite sentence of 4 years. Assuming the trial court would have imposed a minimum sentence of 3 years then under R.C. 2929.144, the indefinite sentence would have been 3 to 4 ½ years. Again, the statutory maximum is determined by the applicable formula under R.C. 2929.144, which does not require judicial fact-finding.

Once a defendant has been sentenced, he is conveyed to prison and placed under the custody of the ODRC. *See* R.C. 5120.01. If the presumption of release is met, the ODRC is not adding "additional time" to the sentence. It is not "extending" the time beyond the statutory maximum. And it is not a "sentencing enhancement." No matter how Simmons would like to characterize the effect of R.C. 2967.271(C), the rebuttal of the presumption of release maintains an inmate's incarceration within the statutory indefinite sentence that was imposed and journalized by the trial court judge. To accept the propositions of law raised by Simmons would result in an unheard-of constitutional requirement – that a jury should be empaneled, years after a conviction has become final, and determine whether an inmate should be released from prison. "*Apprendi* does not apply [***] because the parole board's decision does not increase the maximum authorized penalty." *Weatherspoon v. Mack*, 10th Dist. Franklin No. 07AP-1083, 2008-Ohio-2288, ¶ 17, *Eubanks v. Ohio Adult Parole Auth.*, 10th Dist. Franklin No. 05AP-274, 2005-Ohio-4356, ¶ 12-13.

C. The Eighth District has separately rejected the argument that Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 permits additional punishment for conduct not admitted by defendant or found by a jury.

Although the Eighth District did not do so here, it has rejected Simmons's arguments in other cases. The court held in *Gamble*, 2021-Ohio-1810 that there is no jury trial violation because the trial court has to impose the minimum and maximum term, making R.C. 2967.271(C) distinguishable from those types of statutes that the United States Supreme Court found unconstitutional in *Apprendi* and its progeny or that this Court found unconstitutional in *Foster*. The analysis in *Gamble*, ¶41-43 and a plain and ordinary reading of R.C. 2929.14(A)(1)(a), R.C. 2929.14(A)(2)(a), and R.C. 2929.144 soundly rebuts Simmons's argument that R.C. 2967.271(C) violates the right to a jury trial by enhancing sentences through facts not found by a jury. In *State v. Wolfe*, 5th Dist. Licking No. 2020CA00021, 2020-Ohio-5501, the dissent found that the issue was ripe for review, despite precedent within the Fifth District. Still, it rejected the merits of the jury trial argument, holding that "*Apprendi* and its progeny have no application in a prison disciplinary setting where the ODRC does not have the authority to extend the inmate's sentence beyond the maximum sentence imposed by the trial judge." *Wolfe*, ¶62 (Gwin, J. dissenting). The lead opinion in *Delvallie*, 2022-Ohio-470, agreed that under Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 in imposing sentence, "[t]he only discretion lies with the length of the minimum term, and therefore, the trial court is not imposing a sentence "in excess of the maximum" term as expressly prohibited under *Apprendi*. And

the trial court is also not imposing a sentence beyond the minimum term prescribed by statute based on any findings of fact." *Id.* ¶44. Further, the lead opinion distinguished the scheme in *Haymond* from the sentencing scheme here. In doing so, the lead opinion noted, "[i]t was the resentencing under the aggravating factor that the Supreme Court declared unconstitutional in violation of *Apprendi* principles since a jury did not make the additional finding of fact to authorize the enhanced term. Importantly, the Supreme Court did not declare that retaining the inmate in prison during the […] indefinite term originally imposed implicated constitutional concerns but, instead, relied on the fact that the minimum term of imprisonment was increased based on a finding of fact that occurred in the postconviction process." *Id.* The Sixth District likewise agreed in *State v. Bothuel*, 6th Dist. Lucas No. L-20-1053, 2022-Ohio-2606 because, "there are no circumstances under which ODRC may increase punishment beyond the maximum term permitted by statute or imposed by the sentencing court." *Id.* at ¶ 23.

The reasoning of the appellate courts that have decided the issue is sound. R.C. 2967.271(B)-(D) does not violate the constitutional right to trial by jury.

D. The Court should hold that Simmons forfeited his arguments that R.C. 2967.271(C) **violates his jury trial rights or reject the arguments on the merits.**

Reliance on *Apprendi* is misplaced because *Apprendi* and like cases involved instances where fact-finding by a judge and not by a jury, violated the Constitution. The United States Supreme Court in *Oregon v. Ice*, 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517 (2009), recognized the limited application of *Apprendi* and its progeny was limited to

sentencing decisions historically reserved for the jury. Simmons does not make any argument that juries have historically made the decisions contemplated under R.C. 2967.271(C). That said, the Court should hold that Simmons has forfeited his argument that R.C. 2967.271(C) violates *Apprendi* and its progeny or reject the arguments altogether.

For these reasons, as well as those articulated in the amicus briefs in support of the State of Ohio, the first proposition of law should be dismissed or rejected on its merits.

PROPOSITION OF LAW II: THE REGAN-TOKES ACT VIOLATES THE DOCTRINE OF SEPARATION OF POWERS BECAUSE, AS WITH BAD TIME, IT CONFERRED JUDICIAL POWER TO THE EXECUTIVE BRANCH

A. A separation of powers problem is avoided because R.C. 2929.14 and R.C. 2929.144 authorize a trial court to impose an indefinite sentence for qualifying felonies of the first or second degree, while the process under R.C. 2967.271(C) permits the ODRC to maintain a defendant's incarceration no longer than that imposed by the trial court.

Simmons argues that R.C. 2967.271(C) violates the Separation of Powers Doctrine because the executive branch would usurp judicial authority were it to rebut the presumption of release. Simmons characterizes R.C. 2967.271(C) as allowing the executive branch to "extend" or "enhance" an inmate's prison sentence. See Appellant's Brief, pgs. 6, 9. In support of this argument, Simmons relies on State *ex rel. Bray v. Russell*, 89 Ohio St.3d 132, 2000-Ohio-116, 729 N.E.2d 359 (2000), also cited in *Oneal*. Any reliance on *Bray* is misplaced.

It is understood that "[s]entencing is an area of shared powers; it is the function of

the legislature to prescribe the penalty and the manner of its enforcement, the function of the courts to impose the penalty, and the function of the executive to implement or administer the sentence, as well as to grant paroles." 16 C.J.S. *Constitutional Law* § 463 (2005) (footnotes omitted). As the United States Supreme Court has recognized, with the advent of parole mechanisms, legislatures adopted a "three-way sharing" of sentencing responsibility, with judges deciding the length of sentences within ranges and allowing executive branch parole officials to eventually determine the actual duration of imprisonment. *Mistretta v. United States*, 488 U.S. 361, 364-365 (1989). As this Court recognized in *Commissioners of Putnam County ex rel. Att'y Gen. v. Krauss*, 53 Ohio St. 628, 4 N.E. 81 (1895), "it is among the admitted legislative powers to define crimes, to prescribe the mode of procedure for their punishment, to fix by law the kind and manner of punishment, and to provide such discipline and regulations for prisoners, not in conflict with the fundamental law, as the legislature deems best." *State v. Peters*, 43 Ohio St. 629, 647 (1885). With parole release, "[i]t cannot seriously be contended that this is an interference with the judicial functions of the court, but is rather the exercise of that guardianship and power of discipline which is vested in the state to be exercised through the legislative department for the safe-keeping, proper punishment, and welfare of the prisoner." *Id.* at 650.

Under R.C. 2929.14 and R.C. 2929.144, the court must impose an indefinite sentence, including the minimum term and maximum term, within the range created by

that judicially imposed sentence that the ODRC will be making its decision whether to rebut the presumptive minimum-term release date. How long the ODRC can maintain a defendant's incarceration is restricted by the indefinite term imposed by the trial court. This construction avoids any potential separation-of-powers problem. In contrast, R.C. 2967.11, the bad-time statute found unconstitutional, authorized the parole board to extend the prison's stated prison term for a violation of up to 90 days at a time, with the total of all violations not exceeding one-half of the state prison term. Any concern that the ODRC is "trying, convicting, and sentencing inmates for crimes committed while in prison," is avoided because the ODRC does not add prison time under R.C. 2967.271(C) but decides whether to maintain the inmate during the period of incarceration set forth by the trial court. In short, a Separation of Powers problem is avoided because R.C. 2929.14 and R.C. 2929.144 authorizes a trial court to impose an indefinite sentence for qualifying felonies of the first or second degree, while the process under R.C. 2967.271(C) permits the ODRC to maintain a defendant's incarceration no longer than that imposed by the trial court.

B. Appellate courts that have addressed the merits of Simmons's separation-of-powers arguments have uniformly rejected them finding that a separation-of-powers problem is avoided if the ODRC does not extend the defendant's prison term beyond that imposed by the trial court.

In the opinion below, the Eighth District rejected the argument that there is a violation of the separation of powers doctrine based on the decision in *Wilburn*, 2021-Ohio-578. The court reasoned that the sentencing scheme here is not much different from

a sentencing court imposing an indefinite sentence in which parole is possible and that once the sentencing is complete, the judicial function is done. *Simmons*, 8th Dist. Cuyahoga No. 109476, 2021-Ohio-939, ¶ 12. The court agreed with the State's argument that the separation of powers doctrine is not violated because it does not allow the ODRC to impose greater sanctions than those imposed by the sentencing court. *Id.* at ¶ 10, citing *Wilburn*, 8th Dist. Cuyahoga No. 109507, 2021-Ohio-578, at ¶ 27.

In further support, the lead opinion in *Delvallie*, 2022-Ohio-470 explained, "[i]t has long been understood 'when the power to sanction is delegated to the executive branch, a separation-of-powers problem is avoided if the sanction is originally imposed by a court and included in its sentence." *Id.* at ¶ 35, citing *State v. Ferguson*, 2d Dist. Montgomery No. 28644, 2020-Ohio-4153, at ¶ 23, *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, 844 N.E.2d 301, ¶ 18-20, *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶ 19, *Woods v. Telb*, 89 Ohio St.3d 504, 512-513, 2000-Ohio-171, 733 N.E.2d 1103 (2000). The lead opinion agreed that fatal to the argument that there is a Separation of Powers violation is that the defendants were "unable to identify any statutory section that permits ODRC to 'impose' a sentence beyond that which is imposed by the trial court." *Id.* As the lead opinion concludes, "[t]he Reagan Tokes Law does not violate any separation-of-powers safeguards because the executive branch has always possessed the authority to determine parole, parole revocation, or sentencing-release matters under an indefinite sentencing scheme after the trial court imposes the minimum and maximum

terms." *Id.* ¶37.

The argument that the Regan Tokes Law violates the Separation of Powers Doctrine has also been rejected by the Second, Third, Fifth, Sixth, and Twelfth appellate districts.

The Second District n *Barnes*, 2020-Ohio-4150 rejected arguments similar to the ones Simmons makes now. The Second District distinguished *Bray* noting that,

> R.C. 2967.11 authorized the parole board to sentence a defendant to an additional prison term beyond that which had been imposed by the trial court. [***] In contrast, under Reagan Tokes, the executive branch cannot keep a defendant beyond the maximum sentence imposed by the trial court. In short, Reagan Tokes does not allow the ODRC to lengthen a defendant's sentence beyond the maximum sentence imposed by the trial court.

Id. ¶36. *See also State v. Ferguson*, 2d Dist. Montgomery No. 28644, 2020-Ohio-4153, ¶ 23, *State v. Leet*, 2d Dist. Montgomery No. 28670, 2020-Ohio-4592, ¶ 15, *State v. Wallace*, 2d Dist. Clark No. 2020-CA-3, 2020-Ohio-5109, ¶ 13-14, *State v. Sinkhorn, 2nd Dist. Clark No. 2019, State v. Baker*, 2d Dist. Montgomery No. 28782, 2021-Ohio-140, ¶ 10, *State v. Keith*, 2d Dist. Montgomery No. 28805, 2021-Ohio-518, ¶ 12-13, *State v. Ross*, 2d Dist. Montgomery No. 28875, 2021-Ohio-1337, ¶ 12-14, *State v. Compton*, 2d Dist. Montgomery No. 28912, 2021-Ohio-1513, ¶ 10-12.

The Third District in *State v. Hacker*, 3d Dist. Logan No. 8-20-01, 2020-Ohio-5048, also found the Simmons's arguments

> flawed because there is a significant distinction between the imposition of 'bad time' (as was permitted under R.C. 2967.11) and the structure for extension of a prison term beyond the minimum term under the Reagan

> Tokes Law. Unlike *Bray*, the Reagan Tokes Law does *not* permit ODRC (the executive branch) to maintain Hacker beyond the maximum prison term imposed by the trial court. Therefore, we cannot conclude that *Bray* and *Oneal* lead us to the conclusion that the Reagan Tokes Law violates the doctrine of separation of powers.

Hacker, 2020-Ohio-5048, at ¶ 122. *See also State v. Kepling*, 3d Dist. Hancock No. 5-20-23, 2020-Ohio-6888, ¶ 6-7, *State v. Crawford*, 3rd Dist. Henry No. 7-20-05.

The Fifth District in *State v. Ratliff*, 5th Dist. Guernsey No. 21CA000016, 2022-Ohio-1372 also held that a separation of powers problem is avoided if the sanction is initially imposed by a court and included in its sentence. *Ratliff*, 2022-Ohio-1372, at ¶ 52. The Fifth District rejected the separation of powers argument raised here as the defendant did not point to anything that demonstrated any provision of Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 permitted the ODRC to extend an inmate's sentence beyond the maximum term imposed by the trial court. *Id.*

In *State v. Maddox, Sixth Dist. Lucas No. L-19-1253*, 2022-Ohio-1350, the court adopted the dissenting opinion in *Wolfe*, 2020-Ohio-5501. *Maddox, Sixth Dist. Lucas No. L-19-1253*, 2022-Ohio-1350, at ¶ 7. The dissent in *Wolfe* would have found that the constitutional attacks to Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 were ripe for review at a time when the Sixth District's position was that those challenges were not. That said, the dissent found no separation-of-powers doctrine highlighting that the appellant did not point to anything within "the Reagan Tokes Law that would permit the DRC to extend his sentence beyond the seven and one-half year maximum sentence set by the

trial judge." *Wolfe*, 2020-Ohio-5501, at ¶ 78Gwin, J., dissenting.

Finally, the Twelfth District in *State v. Suder*, 12th Dist. Clermont Nos. *CA2020-06-034 & CA2020-06-035*, 2021-Ohio-465 rejected the separation-of-powers arguments and agreed that the separation of powers problem is avoided if the sanction is originally imposed by a court and included in its sentence. *Id.* at ¶ 25.

The reasoning of the appellate courts that have decided the issue is sound. There can be no separation-of-powers problem, as was the case in *Bray*, where the trial court imposes an indefinite sentence and the ODRC administers the sentence to include making a release decision.

C. Judicial mechanisms still exist to permit sentencing judges to grant release and reinforces that a separation of powers problem does not exist.

Judicial release statutes prove how Simmons's argument is flawed. R.C. 2967.271(C)oes not grant the ODRC with sole authority to release an inmate from a term of incarceration. Before the effective date of Am.Sub.S.B. No. 201, 2018 Ohio Laws 157, trial courts could grant a judicial release. That authority did not disappear with R.C. 2967.271(C). Trial courts can still grant judicial release under R.C. 2929.20. Ohio's judicial release statute was amended under Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 to reflect judicial release eligibility based on the nonmandatory minimum prison term. Had the trial court imposed a sentence that included an indefinite sentence of four years to six years consecutive to the firearm specification, judicial release eligibility would have been based on the nonmadatory minimum prison term of four years – making the inmate

eligible for judicial release after serving one hundred eighty days after the expiration of the mandatory prison term, provided of course that the trial court makes the required findings. *See* R.C. 2929.20(A), R.C. 2929.20(C)(2), R.C. 2929.20(J). Thus, at times an inmate might be granted judicial release despite a decision from the ODRC to maintain the inmate's incarceration under R.C. 2967.271(C).

D. The Court should hold that Simmons fails to demonstrate a violation of the Separation of Powers Doctrine where the ODRC does not add time to the prison sentence.

When read together, it is understood that a trial court imposes an indefinite sentence under R.C. 2929.14 and R.C. 2929.144 and the ODRC merely determines under R.C. 2967.271 whether to release the inmate from the prison sentence imposed by the trial court. For these reasons, as well as those articulated in the amicus briefs in support of the State of Ohio, the second proposition of law should be rejected.

PROPOSITION OF LAW III: THE REGAN-TOKES ACT VIOLATES THE DUE PROCESS BY FAILING TO PROVIDE ADEQUATE NOTICE, BY INADEQUATELY CONFERING EXECUTIVE BRANCH DISCRETION, BY LACKING INADEQUATE GUARANTEES FOR A FAIR HEARING.

Under the third and final proposition of law, Simmons argues that R.C. 2967.271(C) violates the Due Process Clause. Simmons specifically argues that due process guarantees are violated because R.C. 2967.271(C) does not provide adequate notice as to what conduct will rebut the presumption and trigger an "increase" in his sentence; does not provide sufficient parameters on executive discretion, and does not

afford for a fair hearing.

But again, Simmons's Due Process arguments rely on a mischaracterization that the ODRC is increasing Simmons's sentence rather than properly recognizing the plain text of R.C. 2967.271, which confirms that the ODRC is merely determining whether to maintain Simmons's prison sentence within the parameters set forth by the sentence imposed by the trial court. Further, the argument that R.C. 2967.271(C) violates Due Process views R.C. 2967.271(C) in isolation despite the several rules, regulations, or policies that guide the administration of the prison system. Finally, Simmons's Due Process arguments require this Court to find a level of due process that has not existed for parole release decisions.

A. Adequate notice exists.

Simmons argues there is inadequate notice that rule infractions might rebut the presumption of release. R.C. 2967.271(C) allows the ODRC to rebut the presumption of release based on certain rule infractions, the inmate's security classification level, or whether the inmate has been placed in extended restrictive housing. The manners are based on the inmate's prison records. How an inmate is disciplined, classification level determined, or placed in extended restrictive housing has long pre-dated R.C. 2967.271(C). Simmons's arguments ignores that rules, policies, and procedures exist outside of R.C. 2967.271(C), and inmates are not simply left to their own devices once they are in the custody of the ODRC.

The director of rehabilitation and correction is the executive head of the ODRC. All duties conferred on the various divisions and institutions of the department by law or by order of the director shall be performed under the rules and regulations that the director prescribes and shall be under the director's control. R.C. 5120.01. The ODRC is also statutorily authorized to regulate Ohio's prisons, which includes the "admission and discharge" of inmates. *See* R.C. 5120.15.

Furthermore, R.C. 5120.42 allows the ODRC to make rules for properly executing its powers. As a result, the ODRC could issue ODRC Policy 105-PBD-15 and other policies to satisfy due process requirements and its obligations under R.C. 2967.271(C). Simmons does not dispute this authority in his merit brief.

Along with ODRC policies, provisions of the Ohio Administrative Code are essential to the analysis here because there is a process for how inmates, among other things, receive infractions for violating inmate rules of conduct under Ohio Adm.Code 5120-9-06. And the inmate rules of conduct contain 61 different rule violations categorized under the rule.

The Ohio Administrative Code has laid out a procedure to give notice to an inmate regarding the consequences of an infraction. Ohio Adm.Code 5120-9-08 provides a detailed disciplinary procedure for inmate rule violations. Ohio Adm.Code 5120-9-08 provides a hearing before the Rules Infraction Board (RIB) with notice provided to an inmate of the hearing. *See* Ohio Adm.Code 5120-9-08(C). The hearing is recorded, and

witnesses are heard. *See* Ohio Adm.Code 5120-9-08(D)-(F). In addition, inmates have a notification procedure about an infraction's potential use in rebutting the presumption under R.C. 2967.271. *See* Ohio Adm.Code 5120-9-08(M)(3). There is also an administrative review of a decision of the rule infraction board. An inmate may appeal the decision of the rule infraction board to a managing officer and the chief legal counsel. *See* Ohio Adm.Code 5120-9-08(N), (O), and (P). It is clear that, among other things, inmates receive notice that a rule infraction can result in the rebuttal of the presumption of release.

Under its statutory authority, the ODRC has implemented ODRC Policy 105-PBD-15, which now provides a procedure, which tells us that when an inmate is admitted during the reception process, the inmate is provide a copy of the Non-Life Felony Indefinite Prison Term Notification (DRC3088). In addition, the ODRC updated its reception admission procedures to reflect notifications given to an inmate regarding R.C. 2967.271(C) . ODRC Policy 52-RCP-01. All inmates are given a handbook during inmate orientation. See ODRC Policy 52-RCP-10, available at https://drc.ohio.gov/policies/reception (last visited August 10, 2021). The policy explains that:

> Facility orientation handbooks shall be translated into the inmate's native language, where possible. Staff shall explain the information to inmates where obvious barriers to comprehension exists and document this assistance on the Inmate Orientation Checklist (DRC4141). All facility orientation handbooks shall include, but not be limited to, the following issues/items:

[***]

f. Disciplinary procedures to include chargeable offenses and range of penalties;

g. A summary of institution rules, programs and services [***]

[***]

q. Explanation of the availability of ODRC policies and Administrative Rules in the library as directed by ODRC Policy 58-LIB-01, Comprehensive Library Services;

[***]

s. Parole Board overview which includes the different type of release hearings and reviews, shall include information regarding SB 201 additional term hearings;

t. Information regarding SB201 reduction recommendations;

Considering the rules, policies, and procedures of the ODRC, it is impossible for Simmons to argue that inadequate notice exists, let alone prove it. Simmons fails to prove that in every circumstance, inmates fail to receive adequate notice as to the types of rule violations that might lead the ODRC to rebut the presumption that an inmate is released after serving the minimum term of an indefinite sentence for a qualifying felony of the first or second degree. Moreover, Simmons's hypothetical rule infractions that might lead the ODRC to rebut the presumption of release fail to even consider what specific rules of Ohio Adm.Code 5120:1-1-07 are violated.

Simmons suggest the unlikely scenario that an inmate can be denied release for spilling a cup of coffee. Appellant's Brief, pg. 10. But the phrase, "and the infractions or

violations demonstrate that the offender has not been rehabilitated" modifies the types of infractions listed under R.C. 2967.271(C)(1)(a) and it is unlikely there will be a case that spilling a cup of coffee (unless it was a scalding cup of coffee thrown at a person) will demonstrate that the offender poses a threat to society. It should be kept in mind that, R.C. 2967.271(C) is not that different from parole considerations. The Ohio Administrative Code provides that the parole board may deny parole for three reasons:

> (1) There is substantial reason to believe that the inmate will engage in further criminal conduct, or that the inmate will not conform to such conditions of release as may be established under rule 5120:1-1-12 of the Administrative Code;
>
> (2) There is substantial reason to believe that due to the serious nature of the crime, the release of the inmate into society would create undue risk to public safety, or that due to the serious nature of the crime, the release of the inmate would not further the interest of justice nor be consistent with the welfare and security of society;
>
> (3) There is substantial reason to believe that due to serious infractions of rule 5120-9-06 of the Administrative Code, the release of the inmate would not act as a deterrent to the inmate or to other institutionalized inmates from violating institutional rules and regulations;

Ohio Adm.Code 5120:1-1-07.

As to the void-for-vagueness argument, in *Beckles v. United States*, ___U.S.___, *Beckles v. United States*, 137 S.Ct. 886, 197 L.Ed.2d 145 (2017), the United States Supreme Court found that the federal sentencing guidelines did not implicate a vagueness challenge because it did not fix the permissible range of sentences, instead guiding the exercise of a court's discretion in choosing an appropriate sentence within the statutory

range. *Beckles* also refers to the void-for-vagueness doctrine as applying the penal statutes. R.C. 2967.271 neither defines a criminal offense nor does it if the permissible range of sentences. As such the void-for-vagueness does not apply here.

B. There are no inadequate parameters on executive branch discretion.

As with rule infractions, other prison system processes have an administrative process. Ohio Adm.Code 5120-9-52 governs the initial classification of an inmate. After that, inmate classifications are governed by Ohio Adm.Code 5120-9-53. Hearings are held where the inmate is provided notice, and such hearings are held annually. *See* Ohio Adm.Code 5120-9-53(B)-(C). After a decision is made, the inmate is provided a recommendation and the right to appeal the recommendation to the warden and possibly another appeal to the bureau of classification. *See* Ohio Adm.Code 5120-9-53(D). As stated above, there is a process for inmates to challenge rule infractions.

Even though the classification is not reviewed by a court, it does not mean the procedure lacks due process. A judge need not be part of this process. As the Ohio Prosecuting Attorneys Association amicus brief explains:

> The granting and revocation of parole are matters traditionally handled by administrative officers." *Woods*, 89 Ohio St.3d at 514, quoting *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972) . Even when there is a presumption of release, the parole/release decision can be made "largely on the basis of the inmate's files" after a hearing in which the prisoner can appear; such hearing "adequately safeguards against serious risks of error and thus satisfies due process." *Greenholtz*, 442 U.S. at 15. *Greenholtz* recognized that greater process is necessary in the revocation context because it distinguished the initial-release decision from the decision to revoke an already-released inmate, but, even in the more-demanding revocation

> context, the decisionmaker "need not be judicial officers or lawyers." *Morrissey*, 408 U.S. at 489. *Greenholtz* upheld the Nebraska administrative process, holding that "there simply is no constitutional guarantee that all *executive* decision making must comply with standards that assure error-free determinations. This is especially true with respect to the sensitive choices presented by the *administrative* decision to grant parole release." *Greenholtz*, 442 U.S. at 7 (emphasis added; citations omitted).

Ohio Prosecuting Attorneys Association Amicus Brief, pgs. 23-24.

Simply put, R.C. 2967.271(C) cannot be viewed in isolation due to the subprocesses involved – all of which are regulated by either rule or policy. Simmons fails to show that there are inadequate parameters on executive discretion.

C. Simmons has not proved inadequate guarantees for a fair hearing.

It was argued that the R.C. 2967.271(B)(B) provides no structure as to how the hearing will be conducted or what rights the defendant will have at a hearing. This again was addressed through ODRC Policy 105-PBD-15.

Simmons suggests that jury trial rights should apply to the parole release decision. Contrary to Simmons's assertion, the administrative review under R.C. 2967.271(C) need not share the same features as a criminal trial and his reliance on decisions of the United States Supreme Court, which have guaranteed certain trial rights have no bearing here. Finally, Simmons again mischaracterizes the statutory provisions as allowing the executive branch to add "additional prison time." Again, the process described under R.C. 2967.271 merely decides whether to maintain an inmate's incarceration within the prison term imposed by the trial court. This argument is resolved by recognizing that

jury trial rights do not apply to parole release decisions. Thus, the level of due process afforded in a criminal trial are not the same ones that apply to R.C. 2967.271(C).

D. The due process arguments have been rejected by Ohio's appellate courts should likewise be rejected by this Court.

Simmons's arguments do not engage in the two-step analysis in which courts first ask whether the claimant possesses a protected interest and second ask whether the available processes adequately protect that interest.

The Eighth District Court of Appeals rejected the due process claims raised. The Eighth District first rejected the due process arguments in *Wilburn*, 2021-Ohio-578. In its analysis, the court did not decide but assumed that the defendant had a cognizable liberty interest in his presumptive minimum term release date. *Id.* at ¶ 29. The court rejected the argument that the ODRC has unfettered discretion noting the specificity of R.C. 2967.271(C)(1), (2), and (3), which provides "very specific factors for the ODRC to consider in determining whether an inmate may be imprisoned beyond the minimum release date, thereby limiting its discretion." *Id.* ¶35. The court also found that adequate notice exists through provisions of the Ohio Administrative Code. *Id.* ¶36. The court likened R.C. 2967.271(C) to the decision to grant or deny parole. *Id.* ¶30.

The court in *Simmons*, 2021-Ohio-939 followed suit and rejected the due process challenge. Assuming without deciding that Simmons had a liberty interest in his presumptive minimum term release date, the court likewise likened R.C. 2967.271(C) to the decision to grant or deny parole. *Id.* ¶19. That said, the court found that all that was

required was an opportunity to be heard and a statement of why parole was denied. *Id.* ¶20. Like the court in *Wilburn,* the court in *Simmons* found that adequate notice exists through provisions of the Ohio Administrative Code and rejected the argument that a statutory scheme must exist to inform the ODRC on how to weigh each consideration in determining whether to maintain the inmate's prison sentence. *Id.* ¶22.

Next, the majority in *Gamble*, 2021-Ohio-1810 agreed and highlighted the significance of ODRC policies:

> To conclude that offenders lack notice of what is required or that R.C. 2967.271 lacks the establishment of due process safeguards necessarily ignores the unambiguous statutory language. That the legislature omitted an exhaustive list of infractions that constitute grounds for denying the offender's release after serving the minimum term should no more impact the constitutional considerations than the vagaries of that parole determination as it relates to indefinite life sentences under R.C. 2967.12. And regardless, ODRC Policy 105-PBD-15, in fact, details those violations for non-life indefinite sentences and the procedures for addressing those violations on presumptive release. ODRC Policy 105-PBD-15, Section F, available at https://drc.ohio.gov/policies/parole-board (last visited Mar. 26, 2021); *Cleveland Metro. Bar Assn. v. Davie*, 133 Ohio St.3d 202, 2012-Ohio-4328, 977 N.E.2d 606, ¶ 42 (citing ODRC policy). Any challenges with respect to the constitutional validity of the policy established governing the maximum term hearing is well beyond the scope of our current review.

Gamble, 2021-Ohio-1810, at ¶¶ 49-51.

Finally, the lead opinion in *Delvallie*, 2022-Ohio-470 noted that "[i]t has never been concluded that inmates are due preconviction constitutional rights during enforcement of judicially imposed sentences. [***] Importantly, and despite the defendants' claims to the contrary, there is no inherent right to counsel during a parole revocation hearing,

which is analogous to the maximum-term hearing according to the defendants who extensively claimed as much during oral argument on this matter." *Delvallie*, 2022-Ohio-470, ¶50. The lead opinion extensively discussed *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) , ¶52-88. Simmons neither cites *Morrissey* nor addresses the due process arguments addressed in *Delvallie*. Nor does *Simmons* draw any distinction between parole release or parole revocation. Nor does Simmons appear to dispute that the delegation of authority to the executive branch. As the lead opinion in *Delvallie* determined, "the lack of expressly delineated procedures within R.C. 2967.271 is not a basis to declare the statutory section unconstitutional because the legislature delegated authority for ODRC to promulgate a rule and regulation expressly detailing the procedural requirements of the hearing through R.C. 5120.01." *Delvallie*, 2022-Ohio-470, ¶100.

Although, the Sixth District in *State v. Eaton*, 6th Dist. Lucas No. L-21-1121, 2022-Ohio-2432 found that defendants are entitled to some measure of due process under R.C. 2967.271(C), it rejected the notion that the hearing under R.C. 2967.271(C) is like a parole revocation hearing. Thus, the Court rejected the argument that heightened due process was required as it found that R.C. 2967.271(C) was closer to a parole release decision. *Eaton*, 2022-Ohio-2432, at ¶ 126-141. This makes sense because, unlike a person living in society and has their parole revoked, a hearing under R.C. 2967.271(C) determines whether an inmate's incarceration should be maintained – again, within the parameters

of the indefinite sentence imposed by the trial court.

Other appellate courts have rejected the due process arguments holding that the procedures under R.C. 2967.271(C). The Second District in *Ferguson*, 2020-Ohio-4153 rejected the argument that R.C. 2967.271(C) violates due process due to the parameters set forth in the statute. *Id. ¶25.* The Fifth District in *Ratliff*, 2022-Ohio-1372 agreed that the full panoply of criminal rights enjoyed by a defendant in a criminal trial does not apply to R.C. 2967.271. *Id.* ¶55. Likewise, the Twelfth District in *State v. Guyton*, 12th Dist. Butler No. *CA2019-12-203*, 2020-Ohio-3837 agreed that Due Process is not violated.

For the reasons set forth above, as well as those articulated in the amicus briefs in support of the State of Ohio, this Court should reject the third proposition of law and find that Appellant has failed to demonstrate a violation of the Due Process Clause.

CONCLUSION

R.C. 2967.271(B)-(D) does not violate: (1) a defendant's jury trial rights, (2) the Separation of Powers Doctrine, and (3) the Due Process Clause. The judgment of the Eighth District Court of Appeals should be affirmed, and this matter remanded to the trial court for re-sentencing.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of this Merit Brief has been filed through the Court's electronic filing system and sent on this 10th day of August 2022 and served upon Cullen Sweeney, Benjamin Flowers and Steve Taylor via electronic mail.

/s/ Daniel T. Van

ORC Ann. 2929.14, Part 1 of 3

Current through File 102 (HB 30) of the 134th (2021-2022) General Assembly; acts signed as of June 1, 2022.

§ 2929.14 Basic prison terms.

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(9), (B)(10), (B)(11), (E), (G), (H), (J), or (K) of this section or in division (D)(6) of section 2919.25 of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a prison term that shall be one of the following:

(1)

(a) For a felony of the first degree committed on or after the effective date of this amendment, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of three, four, five, six, seven, eight, nine, ten, or eleven years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.

(b) For a felony of the first degree committed prior to the effective date of this amendment, the prison term shall be a definite prison term of three, four, five, six, seven, eight, nine, ten, or eleven years.

(2)

(a) For a felony of the second degree committed on or after the effective date of this amendment, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.

(b) For a felony of the second degree committed prior to the effective date of this amendment, the prison term shall be a definite term of two, three, four, five, six, seven,

or eight years.

(3)

(a) For a felony of the third degree that is a violation of section 2903.06, 2903.08, 2907.03, 2907.04, 2907.05, 2907.321, 2907.322, 2907.323, or 3795.04 of the Revised Code or that is a violation of section 2911.02 or 2911.12 of the Revised Code if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of section 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code, the prison term shall be a definite term of twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.

(b) For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be a definite term of nine, twelve, eighteen, twenty-four, thirty, or thirty-six months.

(4) For a felony of the fourth degree, the prison term shall be a definite term of six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be a definite term of six, seven, eight, nine, ten, eleven, or twelve months.

(B)

(1)

(a) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.141, 2941.144, or 2941.145 of the Revised Code, the court shall impose on the offender one of the following prison terms:

(i) A prison term of six years if the specification is of the type described in division (A) of section 2941.144 of the Revised Code that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or suppressor on or about the offender's person or under the offender's control while committing the offense;

(ii) A prison term of three years if the specification is of the type described in division (A) of section 2941.145 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(iii) A prison term of one year if the specification is of the type described in division (A) of section 2941.141 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense;

(iv) A prison term of nine years if the specification is of the type described in division (D) of section 2941.144 of the Revised Code that charges the offender

with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or suppressor on or about the offender's person or under the offender's control while committing the offense and specifies that the offender previously has been convicted of or pleaded guilty to a specification of the type described in section 2941.141, 2941.144, 2941.145, 2941.146, or 2941.1412 of the Revised Code;

(v) A prison term of fifty-four months if the specification is of the type described in division (D) of section 2941.145 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using the firearm to facilitate the offense and that the offender previously has been convicted of or pleaded guilty to a specification of the type described in section 2941.141, 2941.144, 2941.145, 2941.146, or 2941.1412 of the Revised Code;

(vi) A prison term of eighteen months if the specification is of the type described in division (D) of section 2941.141 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and that the offender previously has been convicted of or pleaded guilty to a specification of the type described in section 2941.141, 2941.144, 2941.145, 2941.146, or 2941.1412 of the Revised Code.

(b) If a court imposes a prison term on an offender under division (B)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2967.19, section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. Except as provided in division (B)(1)(g) of this section, a court shall not impose more than one prison term on an offender under division (B)(1)(a) of this section for felonies committed as part of the same act or transaction.

(c)

(i) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of section 2923.161 of the Revised Code or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in division (A) of section 2941.146 of the Revised Code that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on

the offender for the violation of section 2923.161 of the Revised Code or for the other felony offense under division (A), (B)(2), or (B)(3) of this section, shall impose an additional prison term of five years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code.

(ii) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of section 2923.161 of the Revised Code or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in division (C) of section 2941.146 of the Revised Code that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home and that the offender previously has been convicted of or pleaded guilty to a specification of the type described in section 2941.141, 2941.144, 2941.145, 2941.146, or 2941.1412 of the Revised Code, the court, after imposing a prison term on the offender for the violation of section 2923.161 of the Revised Code or for the other felony offense under division (A), (B)(2), or (3) of this section, shall impose an additional prison term of ninety months upon the offender that shall not be reduced pursuant to section 2929.20, 2967.19, 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code.

(iii) A court shall not impose more than one additional prison term on an offender under division (B)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (B)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (B)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.1411 of the Revised Code that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender an additional prison term of two years. The prison term so imposed, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code.

A court shall not impose more than one prison term on an offender under division (B)(1)(d) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term under division (B)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (B)(1)(d) of this section.

(e) The court shall not impose any of the prison terms described in division (B)(1)(a) of this section or any of the additional prison terms described in division (B)(1)(c) of this section upon an offender for a violation of section 2923.12 or 2923.123 of the Revised Code. The court shall not impose any of the prison terms described in division (B)(1)(a) or (b) of this section upon an offender for a violation of section 2923.122 that involves a deadly weapon that is a firearm other than a dangerous ordnance, section 2923.16, or section 2923.121 of the Revised Code. The court shall not impose any of the prison terms described in division (B)(1)(a) of this section or any of the additional prison terms described in division (B)(1)(c) of this section upon an offender for a violation of section 2923.13 of the Revised Code unless all of the following apply:

(i) The offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree.

(ii) Less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(f)

(i) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in division (A) of section 2941.1412 of the Revised Code that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in section 2935.01 of the Revised Code or a corrections officer, as defined in section 2941.1412 of the Revised Code, the court, after imposing a prison term on the offender for the felony offense under division (A), (B)(2), or (B)(3) of this section, shall impose an additional prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code.

(ii) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in division (B) of section 2941.1412 of the Revised Code that charges the offender with committing the

offense by discharging a firearm at a peace officer, as defined in section 2935.01 of the Revised Code, or a corrections officer, as defined in section 2941.1412 of the Revised Code, and that the offender previously has been convicted of or pleaded guilty to a specification of the type described in section 2941.141, 2941.144, 2941.145, 2941.146, or 2941.1412 of the Revised Code, the court, after imposing a prison term on the offender for the felony offense under division (A), (B)(2), or (3) of this section, shall impose an additional prison term of one hundred twenty-six months upon the offender that shall not be reduced pursuant to section 2929.20, 2967.19, 2967.193, or any other provision of Chapter 2967. or 5120. of the Revised Code.

(iii) If an offender is convicted of or pleads guilty to two or more felonies that include, as an essential element, causing or attempting to cause the death or physical harm to another and also is convicted of or pleads guilty to a specification of the type described under division (B)(1)(f) of this section in connection with two or more of the felonies of which the offender is convicted or to which the offender pleads guilty, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(f) of this section for each of two of the specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications. If a court imposes an additional prison term on an offender under division (B)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (B)(1)(a) or (c) of this section relative to the same offense.

(g) If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

(2)

(a) If division (B)(2)(b) of this section does not apply, the court may impose on an offender, in addition to the longest prison term authorized or required for the offense or, for offenses for which

division (A)(1)(a) or (2)(a) of this section applies, in addition to the longest minimum prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 of the Revised Code that the offender is a repeat violent offender.

(ii) The offense of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(iii) The court imposes the longest prison term for the offense or the longest minimum prison term for the offense, whichever is applicable, that is not life imprisonment without parole.

(iv) The court finds that the prison terms imposed pursuant to division (B)(2)(a)(iii) of this section and, if applicable, division (B)(1) or (3) of this section are inadequate to punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism.

(v) The court finds that the prison terms imposed pursuant to division (B)(2)(a)(iii) of this section and, if applicable, division (B)(1) or (3) of this section are demeaning to the seriousness of the offense, because one or more of the factors under section 2929.12 of the Revised Code indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that section indicating that the offender's conduct is less serious than conduct normally constituting the offense.

(b) The court shall impose on an offender the longest prison term authorized or required for the offense or, for offenses for which division (A)(1)(a) or (2)(a) of this section applies, the longest minimum prison term authorized or required for the offense, and shall impose on the offender an additional definite prison term of one, two, three, four, five, six, seven, eight,

nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 of the Revised Code that the offender is a repeat violent offender.

(ii) The offender within the preceding twenty years has been convicted of or pleaded guilty to three or more offenses described in division (CC)(1) of section 2929.01 of the Revised Code, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.

(iii) The offense or offenses of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(c) For purposes of division (B)(2)(b) of this section, two or more offenses committed at the same time or as part of the same act or event shall be considered one offense, and that one offense shall be the offense with the greatest penalty.

(d) A sentence imposed under division (B)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20, section 2967.19, or section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. The offender shall serve an additional prison term imposed under division (B)(2)(a) or (b) of this section consecutively to and prior to the prison term imposed for the underlying offense.

(e) When imposing a sentence pursuant to division (B)(2)(a) or (b) of this section, the court shall state its findings explaining the imposed sentence.

(3) Except when an offender commits a violation of section 2903.01 or 2907.02 of the Revised Code and the penalty imposed for the violation is life imprisonment or commits a violation of section 2903.02 of the Revised Code, if the offender commits a violation of section 2925.03 or 2925.11 of the Revised Code and that section classifies the offender as a major drug offender, if the offender commits a violation of section 2925.05 of the Revised Code and division (E)(1) of that section

classifies the offender as a major drug offender, if the offender commits a felony violation of section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161, 4729.37, or 4729.61, division (C) or (D) of section 3719.172, division (E) of section 4729.51, or division (J) of section 4729.54 of the Revised Code that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in division (A) of section 2941.1410 of the Revised Code charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of section 2907.02 of the Revised Code and, had the offender completed the violation of section 2907.02 of the Revised Code that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of section 2907.02 of the Revised Code, the court shall impose upon the offender for the felony violation a mandatory prison term determined as described in this division that, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, cannot be reduced pursuant to section 2929.20, section 2967.19, or any other provision of Chapter 2967. or 5120. of the Revised Code. The mandatory prison term shall be the maximum definite prison term prescribed in division (A)(1)(b) of this section for a felony of the first degree, except that for offenses for which division (A)(1)(a) of this section applies, the mandatory prison term shall be the longest minimum prison term prescribed in that division for the offense.

(4) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the sentencing court shall impose upon the offender a mandatory prison term in accordance with that division. In addition to the mandatory prison term, if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced for a third degree felony OVI offense, the sentencing court may sentence the offender to an additional prison term of any duration specified in division (A)(3) of this section. In either case, the additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the mandatory prison term. The total of the additional prison term imposed under division (B)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense. If the court imposes an additional prison term under division (B)(4) of this section, the offender shall

serve the additional prison term after the offender has served the mandatory prison term required for the offense. In addition to the mandatory prison term or mandatory and additional prison term imposed as described in division (B)(4) of this section, the court also may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code and the court imposes a mandatory term of local incarceration, the court may impose a prison term as described in division (A)(1) of that section.

(5) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1414 of the Revised Code that charges that the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, or an investigator of the bureau of criminal identification and investigation, as defined in section 2903.11 of the Revised Code, the court shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (B)(5) of this section, the prison term, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(5) of this section for felonies committed as part of the same act.

(6) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1415 of the Revised Code that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 of the Revised Code, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (B)(6) of this section, the prison term, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(6) of this section for felonies committed as part of the same act.

(7)

(a) If an offender is convicted of or pleads guilty to a felony violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323 involving a minor, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code and also is convicted of or pleads guilty to a specification

of the type described in section 2941.1422 of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court shall impose on the offender a mandatory prison term that is one of the following:

(i) If the offense is a felony of the first degree, a definite prison term of not less than five years and not greater than eleven years, except that if the offense is a felony of the first degree committed on or after the effective date of this amendment, the court shall impose as the minimum prison term a mandatory term of not less than five years and not greater than eleven years;

(ii) If the offense is a felony of the second or third degree, a definite prison term of not less than three years and not greater than the maximum prison term allowed for the offense by division (A)(2)(b) or (3) of this section, except that if the offense is a felony of the second degree committed on or after the effective date of this amendment, the court shall impose as the minimum prison term a mandatory term of not less than three years and not greater than eight years;

(iii) If the offense is a felony of the fourth or fifth degree, a definite prison term that is the maximum prison term allowed for the offense by division (A) of section 2929.14 of the Revised Code.

(b) Subject to divisions (C) to (I) of section 2967.19 of the Revised Code, the prison term imposed under division (B)(7)(a) of this section shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(7)(a) of this section for felonies committed as part of the same act, scheme, or plan.

(8) If an offender is convicted of or pleads guilty to a felony violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1423 of the Revised Code that charges that the victim of the violation was a woman whom the offender knew was pregnant at the time of the violation, notwithstanding the range prescribed in division (A) of this section as the definite prison term or minimum prison term for felonies of the same degree as the violation, the court shall impose on the offender a mandatory prison term that is either a definite prison term of six months or one of the prison terms prescribed in division (A) of this section for felonies of the same degree as the violation, except that if the violation is a felony of the first or second degree committed on or after the effective date of this amendment, the court shall impose as the minimum prison term under division (A)(1)(a) or (2)(a) of this section a mandatory term that is one of the terms prescribed in that division, whichever is applicable, for the offense.

(9)

(a) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.11 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1425 of the Revised Code, the court shall impose on the offender a mandatory prison term of six years if either of the following applies:

(i) The violation is a violation of division (A)(1) of section 2903.11 of the Revised Code and the specification charges that the offender used an accelerant in committing the violation and the serious physical harm to another or to another's unborn caused by the violation resulted in a permanent, serious disfigurement or permanent, substantial incapacity;

(ii) The violation is a violation of division (A)(2) of section 2903.11 of the Revised Code and the specification charges that the offender used an accelerant in committing the violation, that the violation caused physical harm to another or to another's unborn, and that the physical harm resulted in a permanent, serious disfigurement or permanent, substantial incapacity.

(b) If a court imposes a prison term on an offender under division (B)(9)(a) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(9) of this section for felonies committed as part of the same act.

(c) The provisions of divisions (B)(9) and (C)(6) of this section and of division (D)(2) of section 2903.11, division (F)(20) of section 2929.13, and section 2941.1425 of the Revised Code shall be known as "Judy's Law."

(10) If an offender is convicted of or pleads guilty to a violation of division (A) of section 2903.11 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1426 of the Revised Code that charges that the victim of the offense suffered permanent disabling harm as a result of the offense and that the victim was under ten years of age at the time of the offense, regardless of whether the offender knew the age of the victim, the court shall impose upon the offender an additional definite prison term of six years. A prison term imposed on an offender under division (B)(10) of this section shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. If a court imposes an additional prison term on an offender under this division relative to a violation of division (A) of section 2903.11 of the Revised Code, the court shall not impose any other additional prison term on the offender relative to the same offense.

(11) If an offender is convicted of or pleads guilty to a felony violation of section 2925.03 or 2925.05 of the Revised Code or a felony violation of

section 2925.11 of the Revised Code for which division (C)(11) of that section applies in determining the sentence for the violation, if the drug involved in the violation is a fentanyl-related compound or a compound, mixture, preparation, or substance containing a fentanyl-related compound, and if the offender also is convicted of or pleads guilty to a specification of the type described in division (B) of section 2941.1410 of the Revised Code that charges that the offender is a major drug offender, in addition to any other penalty imposed for the violation, the court shall impose on the offender a mandatory prison term of three, four, five, six, seven, or eight years. If a court imposes a prison term on an offender under division (B)(11) of this section, the prison term, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, shall not be reduced pursuant to section 2929.20, 2967.19, or 2967.193, or any other provision of Chapter 2967. or 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(11) of this section for felonies committed as part of the same act.

(C)

(1)

(a) Subject to division (C)(1)(b) of this section, if a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony, if a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(c) of this section for committing a felony specified in that division by discharging a firearm from a motor vehicle, or if both types of mandatory prison terms are imposed, the offender shall serve any mandatory prison term imposed under either division consecutively to any other mandatory prison term imposed under either division or under division (B)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(b) If a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(d) of this section for wearing or carrying body armor while committing an offense of violence that is a felony, the offender shall serve the mandatory term so imposed consecutively to any other mandatory prison term imposed under that division or under division (B)(1)(a) or (c) of this section, consecutively to and prior to any prison term imposed for the underlying felony under division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(c) If a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(f) of this section, the offender shall serve the mandatory prison term so imposed consecutively to and prior to any

prison term imposed for the underlying felony under division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(d) If a mandatory prison term is imposed upon an offender pursuant to division (B)(7) or (8) of this section, the offender shall serve the mandatory prison term so imposed consecutively to any other mandatory prison term imposed under that division or under any other provision of law and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(e) If a mandatory prison term is imposed upon an offender pursuant to division (B)(11) of this section, the offender shall serve the mandatory prison term consecutively to any other mandatory prison term imposed under that division, consecutively to and prior to any prison term imposed for the underlying felony, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(2) If an offender who is an inmate in a jail, prison, or other residential detention facility violates section 2917.02, 2917.03, or 2921.35 of the Revised Code or division (A)(1) or (2) of section 2921.34 of the Revised Code, if an offender who is under detention at a detention facility commits a felony violation of section 2923.131 of the Revised Code, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of division (A)(1) or (2) of section 2921.34 of the Revised Code, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.

(3) If a prison term is imposed for a violation of division (B) of section 2911.01 of the Revised Code, a violation of division (A) of section 2913.02 of the Revised Code in which the stolen property is a firearm or dangerous ordnance, or a felony violation of division (B) of section 2921.331 of the Revised Code, the offender shall serve that prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or

more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

(5) If a mandatory prison term is imposed upon an offender pursuant to division (B)(5) or (6) of this section, the offender shall serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 of the Revised Code. If a mandatory prison term is imposed upon an offender pursuant to division (B)(5) of this section, and if a mandatory prison term also is imposed upon the offender pursuant to division (B)(6) of this section in relation to the same violation, the offender shall serve the mandatory prison term imposed pursuant to division (B)(5) of this section consecutively to and prior to the mandatory prison term imposed pursuant to division (B)(6) of this section and consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 of the Revised Code.

(6) If a mandatory prison term is imposed on an offender pursuant to division (B)(9) of this section, the offender shall serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.11 of the Revised Code and consecutively to and prior to any other prison term or mandatory prison term previously or subsequently imposed on the offender.

(7) If a mandatory prison term is imposed on an offender pursuant to division (B)(10) of this section, the offender shall serve that mandatory prison term consecutively to and prior to any prison term imposed for the underlying felonious assault. Except as otherwise provided in division (C) of this section, any other prison term or mandatory prison term previously or subsequently imposed upon the offender may be served concurrently with, or consecutively to, the prison term imposed pursuant to division (B)(10) of this section.

(8) Any prison term imposed for a violation of section 2903.04 of the Revised Code that is based on a violation of section 2925.03 or 2925.11 of the Revised Code or on a violation of section 2925.05 of the Revised Code that is not funding of marihuana trafficking shall run consecutively to

any prison term imposed for the violation of section 2925.03 or 2925.11 of the Revised Code or for the violation of section 2925.05 of the Revised Code that is not funding of marihuana trafficking.

(9) When consecutive prison terms are imposed pursuant to division (C)(1), (2), (3), (4), (5), (6), (7), or (8) or division (H)(1) or (2) of this section, subject to division (C)(10) of this section, the term to be served is the aggregate of all of the terms so imposed.

(10) When a court sentences an offender to a non-life felony indefinite prison term, any definite prison term or mandatory definite prison term previously or subsequently imposed on the offender in addition to that indefinite sentence that is required to be served consecutively to that indefinite sentence shall be served prior to the indefinite sentence.

(11) If a court is sentencing an offender for a felony of the first or second degree, if division (A)(1)(a) or (2)(a) of this section applies with respect to the sentencing for the offense, and if the court is required under the Revised Code section that sets forth the offense or any other Revised Code provision to impose a mandatory prison term for the offense, the court shall impose the required mandatory prison term as the minimum term imposed under division (A)(1)(a) or (2)(a) of this section, whichever is applicable.

(D)

(1) If a court imposes a prison term, other than a term of life imprisonment, for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is an offense of violence and that is not a felony sex offense, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with section 2967.28 of the Revised Code. If a court imposes a sentence including a prison term of a type described in this division on or after July 11, 2006, the failure of a court to include a post-release control requirement in the sentence pursuant to this division does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(2) If a court imposes a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (D)(1) of this section, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division, if the parole board determines that a period of post-release control is necessary. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(E) The court shall impose sentence upon the offender in accordance with section 2971.03 of the Revised Code, and Chapter

2971. of the Revised Code applies regarding the prison term or term of life imprisonment without parole imposed upon the offender and the service of that term of imprisonment if any of the following apply:

(1) A person is convicted of or pleads guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense, and, in relation to that offense, the offender is adjudicated a sexually violent predator.

(2) A person is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, and either the court does not impose a sentence of life without parole when authorized pursuant to division (B) of section 2907.02 of the Revised Code, or division (B) of section 2907.02 of the Revised Code provides that the court shall not sentence the offender pursuant to section 2971.03 of the Revised Code.

(3) A person is convicted of or pleads guilty to attempted rape committed on or after January 2, 2007, and a specification of the type described in section 2941.1418, 2941.1419, or 2941.1420 of the Revised Code.

(4) A person is convicted of or pleads guilty to a violation of section 2905.01 of the Revised Code committed on or after January 1, 2008, and that section requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(5) A person is convicted of or pleads guilty to aggravated murder committed on or after January 1, 2008, and division (A)(2)(b)(ii) of section 2929.022, division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(a)(iv) of section 2929.03, or division (A) or (B) of section 2929.06 of the Revised Code requires the court to sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(6) A person is convicted of or pleads guilty to murder committed on or after January 1, 2008, and division (B)(2) of section 2929.02 of the Revised Code requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(F) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a prison term or term of imprisonment under this section, sections 2929.02 to 2929.06 of the Revised Code, section 2929.142 of the Revised Code, section 2971.03 of the Revised Code, or any other provision of law, section 5120.163 of the Revised Code applies regarding the person while the person is confined in a state correctional institution.

(G) If an offender who is convicted of or pleads guilty to a felony that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.142 of the Revised Code that charges the offender with having committed the felony while participating in a criminal gang, the court shall impose upon the offender an additional prison term of one, two, or three years.

(H)

(1) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.143 of the Revised Code that charges the offender with having committed the offense in a

school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years consecutively to and prior to the prison term imposed for the underlying offense.

(2)

(a) If an offender is convicted of or pleads guilty to a felony violation of section 2907.22, 2907.24, 2907.241, or 2907.25 of the Revised Code and to a specification of the type described in section 2941.1421 of the Revised Code and if the court imposes a prison term on the offender for the felony violation, the court may impose upon the offender an additional prison term as follows:

(i) Subject to division (H)(2)(a)(ii) of this section, an additional prison term of one, two, three, four, five, or six months;

(ii) If the offender previously has been convicted of or pleaded guilty to one or more felony or misdemeanor violations of section 2907.22, 2907.23, 2907.24, 2907.241, or 2907.25 of the Revised Code and also was convicted of or pleaded guilty to a specification of the type described in section 2941.1421 of the Revised Code regarding one or more of those violations, an additional prison term of one, two, three, four, five, six, seven, eight, nine, ten, eleven, or twelve months.

(b) In lieu of imposing an additional prison term under division (H)(2)(a) of this section, the court may directly impose on the offender a sanction that requires the offender to wear a real-time processing, continual tracking electronic monitoring device during the period of time specified by the court. The period of time specified by the court shall equal the duration of an additional prison term that the court could have imposed upon the offender under division (H)(2)(a) of this section. A sanction imposed under this division shall commence on the date specified by the court, provided that the sanction shall not commence until after the offender has served the prison term imposed for the felony violation of section 2907.22, 2907.24, 2907.241, or 2907.25 of the Revised Code and any residential sanction imposed for the violation under section 2929.16 of the Revised Code. A sanction imposed under this division shall be considered to be a community control sanction for purposes of section 2929.15 of the Revised Code, and all provisions of the Revised Code that pertain to community control sanctions shall apply to a sanction imposed under this division, except to the extent that they would by their nature be clearly inapplicable. The offender shall pay all costs associated with a sanction imposed under this division, including the cost of the use of the monitoring device.

(I) At the time of sentencing, the court may recommend the offender for placement in a program of shock incarceration under section 5120.031 of the Revised Code or for placement in an intensive program prison under section 5120.032 of the Revised Code, disapprove placement of the offender

in a program of shock incarceration or an intensive program prison of that nature, or make no recommendation on placement of the offender. In no case shall the department of rehabilitation and correction place the offender in a program or prison of that nature unless the department determines as specified in section 5120.031 or 5120.032 of the Revised Code, whichever is applicable, that the offender is eligible for the placement.

If the court disapproves placement of the offender in a program or prison of that nature, the department of rehabilitation and correction shall not place the offender in any program of shock incarceration or intensive program prison.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison, and if the offender is subsequently placed in the recommended program or prison, the department shall notify the court of the placement and shall include with the notice a brief description of the placement.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison and the department does not subsequently place the offender in the recommended program or prison, the department shall send a notice to the court indicating why the offender was not placed in the recommended program or prison.

If the court does not make a recommendation under this division with respect to an offender and if the department determines as specified in section 5120.031 or 5120.032 of the Revised Code, whichever is applicable, that the offender is eligible for placement in a program or prison of that nature, the department shall screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If there is an available program of shock incarceration or an intensive program prison for which the offender is suited, the department shall notify the court of the proposed placement of the offender as specified in section 5120.031 or 5120.032 of the Revised Code and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

(J) If a person is convicted of or pleads guilty to aggravated vehicular homicide in violation of division (A)(1) of section 2903.06 of the Revised Code and division (B)(2)(c) of that section applies, the person shall be sentenced pursuant to section 2929.142 of the Revised Code.

(K)

(1) The court shall impose an additional mandatory prison term of two, three, four, five, six, seven, eight, nine, ten, or eleven years on an offender who is convicted of or pleads guilty to a violent felony offense if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1424 of the Revised Code that charges that the offender is a violent career criminal and had a firearm on or about the offender's person or under the offender's control while committing the presently charged violent felony offense and displayed or brandished the firearm, indicated that the offender possessed a firearm, or used the firearm to facilitate the offense. The offender shall serve the prison term imposed under this division consecutively to and prior to the prison term imposed for the underlying offense. The prison term shall not be reduced pursuant to section 2929.20 or 2967.19 or any other provision of

Chapter 2967. or 5120. of the Revised Code. A court may not impose more than one sentence under division (B)(2)(a) of this section and this division for acts committed as part of the same act or transaction.

(2) As used in division (K)(1) of this section, "violent career criminal" and "violent felony offense" have the same meanings as in section 2923.132 of the Revised Code.

(L) If an offender receives or received a sentence of life imprisonment without parole, a sentence of life imprisonment, a definite sentence, or a sentence to an indefinite prison term under this chapter for a felony offense that was committed when the offender was under eighteen years of age, the offender's parole eligibility shall be determined under section 2967.132 of the Revised Code.

History

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 88 (Eff 9-3-96); 146 v H 445 (Eff 9-3-96); 146 v H 154 (Eff 10-4-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 151 (Eff 9-16-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 2 (Eff 1-1-99); 148 v S 1 (Eff 8-6-99); 148 v H 29 (Eff 10-29-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 130. Eff 4-7-2003; 149 v S 123, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 137, § 1, eff. 7-11-06; 151 v H 137, § 3, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 151 v S 281, § 1, eff. 1-4-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v S 184, § 1, eff. 9-9-08; 152 v S 220, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09; 152 v H 130, § 1, eff. 4-7-09; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 SB 337, § 1, eff. Sept. 28, 2012; 2014 hb234, § 1, effective March 23, 2015; 2016 sb97, § 1, effective September 14, 2016; 2016 hb470, § 1, effective March 21, 2017; 2016 sb319, § 1, effective April 6, 2017; 2017 hb63, § 1, effective October 17, 2017; 2018 sb1, § 1, effective October 31, 2018; 2018 sb20, § 1, effective March 20, 2019; 2018 sb201, § 1, effective March 22, 2019; 2020 hb136, § 1, effective April 12, 2021; 2020 sb256, § 1, effective April 12, 2021.

End of Document

Current through File 102 (HB 30) of the 134th (2021-2022) General Assembly; acts signed as of June 1, 2022.

§ 2929.144 Maximum prison terms.

(A) As used in this section, "qualifying felony of the first or second degree" means a felony of the first or second degree committed on or after the effective date of this section.

(B) The court imposing a prison term on an offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree shall determine the maximum prison term that is part of the sentence in accordance with the following:

(1) If the offender is being sentenced for one felony and the felony is a qualifying felony of the first or second degree, the maximum prison term shall be equal to the minimum term imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code plus fifty per cent of that term.

(2) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that some or all of the prison terms imposed are to be served consecutively, the court shall add all of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree that are to be served consecutively and all of the definite terms of the felonies that are not qualifying felonies of the first or second degree that are to be served consecutively, and the maximum term shall be equal to the total of those terms so added by the court plus fifty per cent of the longest minimum term or definite term for the most serious felony being sentenced.

(3) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that all of the prison terms imposed are to run concurrently, the maximum term shall be equal to the longest of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree for which the sentence is being imposed plus fifty per cent of the longest minimum term for the most serious qualifying felony being sentenced.

(4) Any mandatory prison term, or portion of a mandatory prison term, that is imposed or to be imposed on the offender under division (B), (G), or (H) of section 2929.14 of the Revised Code or under any other provision of the Revised Code, with respect to a conviction of or plea of guilty to a specification, and that is in addition to the sentence imposed for the underlying offense is separate from the sentence being imposed for the qualifying first or second degree felony committed on or

after the effective date of this section and shall not be considered or included in determining a 1 maximum prison term for the offender under divisions (B)(1) to (3) of this section.

(C) The court imposing a prison term on an offender pursuant to division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree shall sentence the offender, as part of the sentence, to the maximum prison term determined under division (B) of this section. The court shall impose this maximum term at sentencing as part of the sentence it imposes under section 2929.14 of the Revised Code, and shall state the minimum term it imposes under division (A)(1)(a) or (2)(a) of that section, and this maximum term, in the sentencing entry.

(D) If a court imposes a prison term on an offender pursuant to division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree, section 2967.271 of the Revised Code applies with respect to the offender's service of the prison term.

History

2018 sb201, § 1, effective March 22, 2019.

End of Document

ORC Ann. 2967.271

Current through File 102 (HB 30) of the 134th (2021-2022) General Assembly; acts signed as of June 1, 2022.

§ 2967.271 Non-life felony indefinite prison terms.

(A) As used in this section:

(1) "Offender's minimum prison term" means the minimum prison term imposed on an offender under a non-life felony indefinite prison term, diminished as provided in section 2967.191 or 2967.193 of the Revised Code or in any other provision of the Revised Code, other than division (F) of this section, that provides for diminution or reduction of an offender's sentence.

(2) "Offender's presumptive earned early release date" means the date that is determined under the procedures described in division (F) of this section by the reduction, if any, of an offender's minimum prison term by the sentencing court and the crediting of that reduction toward the satisfaction of the minimum term.

(3) "Rehabilitative programs and activities" means education programs, vocational training, employment in prison industries, treatment for substance abuse, or other constructive programs developed by the department of rehabilitation and correction with specific standards for performance by prisoners.

(4) "Security level" means the security level in which an offender is classified under the 6 inmate classification level system of the department of rehabilitation and correction that then is in effect.

(5) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(B) When an offender is sentenced to a non-life felony indefinite prison term, there shall be a presumption that the person shall be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier.

(C) The presumption established under division (B) of this section is a rebuttable presumption that the department of rehabilitation and correction may rebut as provided in this division. Unless the department rebuts the presumption, the offender shall be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier. The department may rebut the presumption only if the department determines, at a hearing, that one or more of the following applies:

(1) Regardless of the security level in which the offender is classified at the time of the hearing, both of the following apply:

(a) During the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a state

correctional institution, compromising the safety of the staff of a state correctional institution or its inmates, or physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated.

(b) The offender's behavior while incarcerated, including, but not limited to the infractions and violations specified in division (C)(1)(a) of this section, demonstrate that the offender continues to pose a threat to society.

(2) Regardless of the security level in which the offender is classified at the time of the hearing, the offender has been placed by the department in extended restrictive housing at any time within the year preceding the date of the hearing.

(3) At the time of the hearing, the offender is classified by the department as a security level three, four, or five, or at a higher security level.

(D)

(1) If the department of rehabilitation and correction, pursuant to division (C) of this section, rebuts the presumption established under division (B) of this section, the department may maintain the offender's incarceration in a state correctional institution under the sentence after the expiration of the offender's minimum prison term or, for offenders who have a presumptive earned early release date, after the offender's presumptive earned early release date. The department may maintain the offender's incarceration under this division for an additional period of incarceration determined by the department. The additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender's maximum prison term.

(2) If the department maintains an offender's incarceration for an additional period under division (D)(1) of this section, there shall be a presumption that the offender shall be released on the 7 expiration of the offender's minimum prison term plus the additional period of incarceration specified by the department as provided under that division or, for offenders who have a presumptive earned early release date, on the expiration of the additional period of incarceration to be served after the offender's presumptive earned early release date that is specified by the department as provided under that division. The presumption is a rebuttable presumption that the department may rebut, but only if it conducts a hearing and makes the determinations specified in division (C) of this section, and if the department rebuts the presumption, it may maintain the offender's incarceration in a state correctional institution for an additional period determined as specified in division (D)(1) of this section. Unless the department rebuts the presumption at the hearing, the offender shall be released from service of the sentence on the expiration of the offender's minimum prison term plus the additional period of incarceration specified by the department or, for offenders who have a presumptive earned early release date, on the expiration of the additional period of

incarceration to be served after the offender's presumptive earned early release date as specified by the department.

The provisions of this division regarding the establishment of a rebuttable presumption, the department's rebuttal of the presumption, and the department's maintenance of an offender's incarceration for an additional period of incarceration apply, and may be utilized more than one time, during the remainder of the offender's incarceration. If the offender has not been released under division (C) of this section or this division prior to the expiration of the offender's maximum prison term imposed as part of the offender's non-life felony indefinite prison term, the offender shall be released upon the expiration of that maximum term.

(E) The department shall provide notices of hearings to be conducted under division (C) or (D) of this section in the same manner, and to the same persons, as specified in section 2967.12 and Chapter 2930. of the Revised Code with respect to hearings to be conducted regarding the possible release on parole of an inmate.

(F)

(1) The director of the department of rehabilitation and correction may notify the sentencing court in writing that the director is recommending that the court grant a reduction in the minimum prison term imposed on a specified offender who is serving a non-life felony indefinite prison term and who is eligible under division (F)(8) of this section for such a reduction, due to the offender's exceptional conduct while incarcerated or the offender's adjustment to incarceration. If the director wishes to recommend such a reduction for an offender, the director shall send the notice to the court not earlier than ninety days prior to the date on which the director wishes to credit the reduction toward the satisfaction of the offender's minimum prison term. If the director recommends such a reduction for an offender, there shall be a presumption that the court shall grant the recommended reduction to the offender. The presumption established under this division is a rebuttable presumption that may be rebutted as provided in division (F)(4) of this section.

The director shall include with the notice sent to a court under this division an institutional summary report that covers the offender's participation while confined in a state correctional institution in rehabilitative programs and activities and any disciplinary action taken against the offender while so confined, and any other documentation requested by the court, if available.

The notice the director sends to a court under this division shall do all of the following:

(a) Identify the offender;

(b) Specify the length of the recommended reduction, which shall be for five to fifteen per 8 cent of the offender's minimum term determined in accordance with rules adopted by the department under division (F)(7) of this section;

(c) Specify the reason or reasons that qualify the offender for the recommended reduction;

(d) Inform the court of the rebuttable presumption and that the court must either approve or, if the

court finds that the presumption has been rebutted, disapprove of the recommended reduction, and that if it approves of the recommended reduction, it must grant the reduction;

(e) Inform the court that it must notify the department of its decision as to approval or disapproval not later than sixty days after receipt of the notice from the director.

(2) When the director, under division (F)(1) of this section, submits a notice to a sentencing court that the director is recommending that the court grant a reduction in the minimum prison term imposed on an offender serving a non-life felony indefinite prison term, the department promptly shall provide to the prosecuting attorney of the county in which the offender was indicted a copy of the written notice, a copy of the institutional summary report described in that division, and any other information provided to the court.

(3) Upon receipt of a notice submitted by the director under division (F)(1) of this section, the court shall schedule a hearing to consider whether to grant the reduction in the minimum prison term imposed on the specified offender that was recommended by the director or to find that the presumption has been rebutted and disapprove the recommended reduction. Upon scheduling the hearing, the court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the offender was indicted and to the department. The notice shall inform the prosecuting attorney that the prosecuting attorney may submit to the court, prior to the date of the hearing, written information relevant to the recommendation and may present at the hearing written information and oral information relevant to the recommendation.

Upon receipt of the notice from the court, the prosecuting attorney shall notify the victim of the offender or the victim's representative of the recommendation by the director, the date, time, and place of the hearing, the fact that the victim may submit to the court, prior to the date of the hearing, written information relevant to the recommendation, and the address and procedure for submitting the information.

(4) At the hearing scheduled under division (F)(3) of this section, the court shall afford the prosecuting attorney an opportunity to present written information and oral information relevant to the director's recommendation. In making its determination as to whether to grant or disapprove the reduction in the minimum prison term imposed on the specified offender that was recommended by the director, the court shall consider any report and other documentation submitted by the director, any information submitted by a victim, any information submitted or presented at the hearing by the prosecuting attorney, and all of the factors set forth in divisions (B) to (D) of section 2929.12 of the Revised Code that are relevant to the offender's offense and to the offender.

Unless the court, after considering at the hearing the specified reports, documentation, information, and relevant factors, finds that the presumption that the recommended reduction shall be granted has been

rebutted and disapproves the recommended reduction, the court shall grant the recommended reduction. The court may disapprove the recommended reduction only if, after considering at the hearing the specified reports, documentation, information, and relevant factors, it finds that the presumption that the reduction shall be granted has been rebutted. The court may find 9 that the presumption has been rebutted and disapprove the recommended reduction only if it determines at the hearing that one or more of the following applies:

(a) Regardless of the security level in which the offender is classified at the time of the hearing, during the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff of a state correctional institution or its inmates, or physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated.

(b) The offender's behavior while incarcerated, including, but not limited to, the infractions and violations specified in division (F)(4)(a) of this section, demonstrates that the offender continues to pose a threat to society.

(c) At the time of the hearing, the offender is classified by the department as a security level three, four, or five, or at a higher security level.

(d) During the offender's incarceration, the offender did not productively participate in a majority of the rehabilitative programs and activities recommended by the department for the offender, or the offender participated in a majority of such recommended programs or activities but did not successfully complete a reasonable number of the programs or activities in which the offender participated.

(e) After release, the offender will not be residing in a halfway house, reentry center, or community residential center licensed under division (C) of section 2967.14 of the Revised Code and, after release, does not have any other place to reside at a fixed residence address.

(5) If the court pursuant to division (F)(4) of this section finds that the presumption that the recommended reduction in the offender's minimum prison term has been rebutted and disapproves the recommended reduction, the court shall notify the department of the disapproval not later than sixty days after receipt of the notice from the director. The court shall specify in the notification the reason or reasons for which it found that the presumption was rebutted and disapproved the recommended reduction. The court shall not reduce the offender's minimum prison term, and the department shall not credit the amount of the disapproved reduction toward satisfaction of the offender's minimum prison term.

If the court pursuant to division (F)(4) of this section grants the recommended

reduction of the offender's minimum prison term, the court shall notify the department of the grant of the reduction not later than sixty days after receipt of the notice from the director, the court shall reduce the offender's minimum prison term in accordance with the recommendation submitted by the director, and the department shall credit the amount of the reduction toward satisfaction of the offender's minimum prison term.

Upon deciding whether to disapprove or grant the recommended reduction of the offender's minimum prison term, the court shall notify the prosecuting attorney of the decision and the prosecuting attorney shall notify the victim or victim's representative of the court's decision.

(6) If the court under division (F)(5) of this section grants the reduction in the minimum prison term imposed on an offender that was recommended by the director and reduces the offender's minimum prison term, the date determined by the department's crediting of the reduction toward 0 satisfaction of the offender's minimum prison term is the offender's presumptive earned early release date.

(7) The department of rehabilitation and correction by rule shall specify both of the following for offenders serving a non-life felony indefinite prison term:

(a) The type of exceptional conduct while incarcerated and the type of adjustment to incarceration that will qualify an offender serving such a prison term for a reduction under divisions (F)(1) to (6) of this section of the minimum prison term imposed on the offender under the non-life felony indefinite prison term.

(b) The per cent of reduction that it may recommend for, and that may be granted to, an offender serving such a prison term under divisions (F)(1) to (6) of this section, based on the offense level of the offense for which the prison term was imposed, with the department specifying the offense levels used for purposes of this division and assigning a specific percentage reduction within the range of five to fifteen per cent for each such offense level.

(8) Divisions (F)(1) to (6) of this section do not apply with respect to an offender serving a non-life felony indefinite prison term for a sexually oriented offense, and no offender serving such a prison term for a sexually oriented offense is eligible to be recommended for or granted, or may be recommended for or granted, a reduction under those divisions in the offender's minimum prison term imposed under that non-life felony indefinite prison term.

(G) If an offender is sentenced to a non-life felony indefinite prison term, any reference in a section of the Revised Code to a definite prison term shall be construed as referring to the offender's minimum term under that sentence plus any additional period of time of incarceration specified by the department under division (D)(1) or (2) of this section, except to the extent otherwise specified in the section or to the extent that that construction clearly would be inappropriate.

History

2018 sb201, § 1, effective March 22, 2019.

End of Document

ORC Ann. 5120.01

Current through File 102 (HB 30) of the 134th (2021-2022) General Assembly; acts signed as of June 1, 2022.

Page's Ohio Revised Code Annotated > Title 51: Public Welfare > Chapter 5120: Department of Rehabilitation and Correction

§ 5120.01 Director of rehabilitation and correction.

The director of rehabilitation and correction is the executive head of the department of rehabilitation and correction. All duties conferred on the various divisions and institutions of the department by law or by order of the director shall be performed under the rules and regulations that the director prescribes and shall be under the director's control. Inmates committed to the department of rehabilitation and correction shall be under the legal custody of the director or the director's designee, and the director or the director's designee shall have power to control transfers of inmates between the several state institutions included under section 5120.05 of the Revised Code.

History

134 v H 494 (Eff 7-12-72); 149 v H 510. Eff 3-31-2003.

End of Document

ORC Ann. 5120.15

Current through File 102 (HB 30) of the 134th (2021-2022) General Assembly; acts signed as of June 1, 2022.

Page's Ohio Revised Code Annotated > Title 51: Public Welfare > Chapter 5120: Department of Rehabilitation and Correction > Halfway House Facilities

§ 5120.15 Regulation of admission and discharge of inmates.

The department of rehabilitation and correction shall regulate the admission and discharge of inmates in the institutions described in section 5120.05 of the Revised Code.

History

134 v H 494. Eff 7-12-72.

End of Document

ORC Ann. 5120.42

Current through File 102 (HB 30) of the 134th (2021-2022) General Assembly; acts signed as of June 1, 2022.

Page's Ohio Revised Code Annotated > Title 51: Public Welfare > Chapter 5120: Department of Rehabilitation and Correction > Halfway House Facilities

§ 5120.42 Rules for proper execution of powers.

The department of rehabilitation and correction shall make rules for the proper execution of its powers and may require the performance of additional duties by the officers of the several institutions, so as to fully meet the requirements, intents, and purposes of Chapter 5120. of the Revised Code, and particularly those relating to making estimates and furnishing proper proof of the use made of all articles furnished or produced in such institutions. In case of an apparent conflict between the powers conferred upon any managing officer and those conferred by such sections upon the department, the presumption shall be conclusive in favor of the department.

History

134 v H 494. Eff 7-12-72.

End of Document

This document is current through updates effective July 1, 2022.

5120-9-06. Inmate rules of conduct.

(A) The disciplinary violations defined by this rule shall address acts that constitute an immediate and direct threat to the security or orderly operation of the institution, or to the safety of its staff, visitors and inmates, (including the inmate who has violated the rule,) as well as other violations of institutional or departmental rules and regulations.

(B) Dispositions for rule violations are defined in rules 5120-9-07 and 5120-9-08 of the Administrative Code.

(C) Rule violations: Assault and related acts, rules 1 through 7; threats, rules 8 through 10; sexual misconduct, rules 11 through 14; riot, disturbances and unauthorized group activity, rules 15 through 19; resistance to authority, rules 20 through 23; unauthorized relationships and disrespect, rules 24 through 26; lying and falsification, 27 and 28; escape and related conduct, rules 29 through 35; weapons, rules 36 through 38; drugs and other related matters, rules 39 through 43; gambling, dealing and other related offenses, rules 44 through 47; property and contraband, rules 48 through 51; fire violations, rules 52 through 53; telephone, mail and visiting, rules 54 through 56; tattooing and self-mutilation, rules 57 through 58; general provisions, rules 59 through 61 as follows:

(1) Causing, or attempting to cause, the death of another.

(2) Hostage taking, including any physical restraint of another.

(3) Causing, or attempting to cause, serious physical harm to another.

(4) Causing, or attempting to cause, physical harm to another.

(5) Causing, or attempting to cause, physical harm to another with a weapon.

(6) Throwing, expelling, or otherwise causing a bodily substance to come into contact with another.

(7) Throwing any other liquid or material on or at another.

(8) Threatening bodily harm to another (with or without a weapon.)

(9) Threatening harm to the property of another, including state property.

(10) Extortion by threat of violence or other means.

(11) Non-consensual sexual conduct with another, whether compelled:

(a) By force,

(b) By threat of force,

(c) By intimidation other than threat of force, or,

(d) By any other circumstances evidencing a lack of consent by the victim.

(12) Non-consensual sexual contact with another, whether compelled:

(a) By force;

(b) By threat of force,

(c) By intimidation other than threat of force, or,

(d) By any other circumstances evidencing a lack of consent by the victim.

(13) Consensual physical contact for the purpose of sexually arousing or gratifying either person.

(14) Seductive or obscene acts, including but not limited to:

(a) Non-exhibitionist seductive or obscene acts,

(b) Indecent exposure, exhibitionistic masturbation, or exhibitionist obscene acts, including but not limited to masturbating while watching an individual or any act of intentional aggression towards another person in an attempt to cause threat, harm or humiliation,

(c) Unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by an inmate toward another person.

(15) Rioting or encouraging others to riot.

(16) Engaging in or encouraging a group demonstration or work stoppage.

(17) Engaging in unauthorized group activities as set forth in paragraph (B) of rule 5120-9-37 of the Administrative Code.

(18) Encouraging or creating a disturbance.

(19) Fighting - with or without weapons, including instigation of, or perpetuating fighting.

(20) Physical resistance to a direct order.

(21) Disobedience of a direct order.

(22) Refusal to carry out work or other institutional assignments.

(23) Refusal to accept an assignment or classification action.

(24) Establishing or attempting to establish a personal relationship with an employee, without authorization from the managing officer, including but not limited to:

(a) Sending personal mail to an employee at his or her residence or another address not associated with the department of rehabilitation and correction,

(b) Making a telephone call to or receiving a telephone call from an employee at his or her residence or other location not associated with the department of rehabilitation and correction,

(c) Giving to, or receiving from an employee, any item, favor, or service,

(d) Engaging in any form of business with an employee; including buying, selling, or trading any item or service,

(e) Soliciting sexual conduct, sexual contact or any act of a sexual nature with an employee.

(f) For purposes of this rule “employee” includes any employee of the department and any contractor, employee of a contractor, or volunteer.

(25) Intentionally grabbing, or touching a staff member or other person without the consent of such person in a way likely to harass, annoy or impede the movement of such person.

(26) Disrespect to an officer, staff

member, visitor or other inmate.

(27) Giving false information or lying to departmental employees.

(28) Forging, possessing, or presenting forged or counterfeit documents.

(29) Escape from institution or outside custody (e.g. transport vehicle, department transport officer, other court officer or law enforcement officer, outside work crew, etc.) As used in this rule, escape means that the inmate has exited a building in which he was confined; crossed a secure institutional perimeter; or walked away from or broken away from custody while outside the facility.

(30) Removing or escaping from physical restraints (handcuffs, leg irons, etc.) or any confined area within an institution (cell, recreation area, strip cell, vehicle, etc.)

(31) Attempting or planning an escape.

(32) Tampering with locks, or locking devices, window bars; tampering with walls floors or ceilings in an effort to penetrate them.

(33) Possession of escape materials; including keys or lock picking devices (may include maps, tools, ropes, material for concealing identity or making dummies, etc.)

(34) Forging, possessing, or obtaining forged, or falsified documents which purport to effect release or reduction in sentence.

(35) Being out of place.

(36) Possession or manufacture of a weapon, ammunition, explosive or incendiary device.

(37) Procuring, or attempting to procure, a weapon, ammunition, explosive or incendiary device; aiding, soliciting or collaborating with another person to procure a weapon, ammunition, explosive or incendiary device or to introduce or convey a weapon, ammunition, explosive or incendiary device into a correctional facility.

(38) Possession of plans, instructions, or formula for making weapons or any explosive or incendiary device.

(39) Unauthorized possession, manufacture, or consumption of drugs or any intoxicating substance.

(40) Procuring or attempting to procure, unauthorized drugs; aiding, soliciting, or collaborating with another to procure unauthorized drugs or to introduce unauthorized drugs into a correctional facility.

(41) Unauthorized possession of drug paraphernalia.

(42) Misuse of authorized medication.

(43) Refusal to submit urine sample, or otherwise to cooperate with drug testing, or mandatory substance abuse sanctions.

(44) Gambling or possession of gambling paraphernalia.

(45) Dealing, conducting, facilitating, or participating in any transaction, occurring in whole or in part, within an institution, or involving an inmate, staff member or another for which payment of any kind is made, promised, or expected.

(46) Conducting business operations with any person or entity outside the institution, whether or not for profit, without specific permission in writing from the managing officer.

(47) Possession or use of money in the

institution.

(48) Stealing or embezzlement of property, obtaining property by fraud or receiving stolen, embezzled, or fraudulently obtained property.

(49) Destruction, alteration, or misuse of property.

(50) Possession of property of another.

(51) Possession of contraband, including any article knowingly possessed which has been altered or for which permission has not been given.

(52) Setting a fire; any unauthorized burning.

(53) Tampering with fire alarms, sprinklers, or other fire suppression equipment.

(54) Unauthorized use of telephone or violation of mail and visiting rules.

(55) Use of telephone or mail to threaten, harass, intimidate, or annoy another.

(56) Use of telephone or mail in furtherance of any criminal activity.

(57) Self-mutilation, including tattooing.

(58) Possession of devices or material used for tattooing.

(59) Any act not otherwise set forth herein, knowingly done which constitutes a threat to the security of the institution, its staff, other inmates, or to the acting inmate.

(60) Attempting to commit; aiding another in the commission of; soliciting another to commit; or entering into an agreement with another to commit any of the above acts.

(61) Any violation of any published institutional rules, regulations or procedures.

(D) No inmate shall be found guilty of a violation of a rule of conduct without some evidence of the commission of an act and the intent to commit the act.

(1) The act must be beyond mere preparation and be sufficiently performed to constitute a substantial risk of its being performed.

(2) "Intent" may be express, or inferred from the facts and circumstances of the case.

(E) Definitions: The following definitions shall be used in the application of these rules.

(1) "Physical harm to persons" means any injury, illness or other physiological impairment, regardless of its gravity or duration.

(2) "Serious physical harm to persons" means any of the following:

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

(3) "Sexual conduct" means vaginal

intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(4) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(5) "Possession" means either actual or constructive possession and may be inferred from any facts or circumstances that indicate possession, control or ownership of the item, or of the container or area in which the item was found.

(6) "Unauthorized drugs," for the purposes of this rule, refers to any drug not authorized by institutional or departmental policy including any controlled substance, any prescription drug possessed without a valid prescription, or any medications held in excess of possession limits.

(7) "Extortion," as used in these rules, means acting with purpose to obtain any thing of benefit or value, or to compel, coerce, or induce another to violate a rule or commit any unlawful act.

Statutory Authority

Effective:

4/14/2022.

Five Year Review (FYR) Dates:

1/24/2024.

Promulgated Under:

111.15.

Statutory Authority:

5120.01.

Rule Amplifies:

5120.05.

Prior Effective Dates:

4/5/1976, 10/30/1978, 8/18/1979, 8/29/1983, 6/3/1985, 1/14/1993, 7/18/1997, 7/19/2004, 5/23/2014.

End of Document

This document is current through updates effective July 1, 2022.

5120-9-08. Disciplinary procedures for violations of inmate rules of conduct before the rules infraction board.

(A) Scope. This rule governs the procedures employed before the rules infraction board for determining violations of the inmate rules of conduct, as described in rule 5120-9-06 of the Administrative Code, appealing those determinations, and the documenting of those actions. Nothing in this rule shall preclude department staff from referring such inmate conduct to law enforcement for prosecution as a criminal offense, or the state from prosecuting such conduct as a criminal offense.

(B) RIB panel. The rules infraction board (RIB,) shall consist of two staff members, designated by the managing officer, sitting as a panel. Persons sitting on an RIB panel must have first completed RIB training issued by the department's division of legal services. The RIB panel has the authority to determine guilt and impose penalties for violations of the inmate rules of conduct. Each panel shall consist of a chairperson, who manages the hearing, and a secretary, who prepares a record of the proceedings. No staff member shall be permitted to sit as an RIB panel member who wrote the report, witnessed the alleged rule violation, or participated in the investigation of the alleged rule violation. A staff member assigned to an RIB panel shall disqualify himself or herself from the panel if such a personal interest exists.

(C) Time of hearing, preliminary matters. The hearing of the rule infraction shall be held within seven business days of the issuance of the conduct report unless prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Delays beyond seven calendar days shall be documented in the record along with the reason for the delay. Unless waived, the inmate shall be afforded twenty-four hours' notice prior to the hearing. The RIB chairperson shall determine if the twenty-four hour notice period has elapsed. If the required time has not passed, and the inmate has not waived the time period, the chairperson must postpone the hearing. Prior to the hearing, the RIB chairperson shall:

(1) If the inmate is in restrictive housing, determine whether the hearing officer has provided the relevant information from the inmate's restrictive housing placement mental health assessments,

(2) Determine whether the person who issued the conduct report has indicated a desire to appear at the hearing;

(3) Make preliminary rulings on any witness requests, and arrange for the presence of witnesses;

(4) Ensure staff assistance as appropriate;

(5) Ensure all necessary forms are available and that electronic recording equipment is in working order;

(D) Hearing to be recorded. With the exception of deliberations concerning guilt

or the imposition of penalties, the proceedings shall be recorded using suitable electronic means. The recording of the proceedings shall commence upon the inmate's appearance before the RIB panel. In addition to the electronic record, the record of the proceedings shall also include any document, video, confidential information or other evidence presented to the RIB, as well as any written requests, waivers and statement summaries.

(E) Commencing the hearing. The RIB chairperson shall first identify the panel members and then ask the inmate to identify himself or herself on the record.

(1) The RIB chairperson shall advise the inmate of the rule violation(s) and the nature of the behavior described in the conduct report.

(2) Plea: The RIB chairperson shall then ask the inmate to admit or deny the rule violation(s.)

(a) If the inmate admits the rule violation, the chairperson shall question the inmate regarding the voluntariness of the plea, the factual basis for the plea, and the inmate's understanding of the plea.

(b) The chairperson shall accept the plea of admission unless the chairperson finds that the facts do not support the plea, or that the inmate's version of the facts do not support the plea, or that the inmate does not understand the nature of the plea, the violation, or the proceedings. In this event the chairperson shall enter a plea of denial on behalf of the inmate.

(c) If the chairperson accepts the inmate's plea of admission, the RIB panel may then make a determination of guilt and proceed with disposition of the violation.

(d) If a violation is denied, the RIB panel shall provide the inmate an opportunity to make a statement regarding the alleged violation.

(3) The RIB chairperson shall review the inmate's request for witnesses and advise the inmate of any preliminary determinations made regarding the requested witnesses. The RIB chairperson may deny a witness request based on relevancy, redundancy, unavailability, or security reasons. The RIB chairperson may modify a preliminary ruling after discussion with the inmate. The RIB chairperson may deny a request for a witness if a witness request form has not been completed.

(4) The RIB chairperson shall postpone the hearing if the chairperson believes that the inmate is demonstrating behavior indicative of serious mental illness and shall refer the inmate to the institutional mental health staff for a mental health assessment. The RIB hearing shall only be rescheduled in accordance with the recommendation of mental health staff.

(F) RIB hearing, witnesses. If a violation is denied, the RIB panel may hear testimony from witnesses in addition to any statement the charged inmate may make.

(1) Witnesses (inmates and staff members) shall be advised that they are subject to appropriate discipline for presentation of false testimony.

(2) The inmate charged with the rule violation may not address or examine a witness, but may ask the RIB chairperson to pose questions to the witness.

(3) The inmate, or representative number of inmates who made the

accusation should, if security considerations permit, appear before the RIB and be examined for the record.

(4) The charged inmate may, in the discretion of the RIB, be excluded from the examination when confrontation between the inmates may create a risk of disturbance or risk of harm to the witness.

(5) The charging official shall appear if requested by the inmate, if the RIB has questions for the official, or if the charging official requests to appear and speak at the hearing.

(6) The RIB panel may ask questions of the witnesses or call additional witnesses as necessary. Witnesses may appear in person, by telephone, or other electronic means. The RIB panel may take testimony or receive evidence in any form or manner it deems appropriate.

(G) Confidential information. If the RIB panel uses information from a confidential source in its determination, the panel shall evaluate the credibility of the confidential source prior to reaching a decision on the rule violation. The RIB shall also determine whether the statement is confidential in its entirety or if any of the information can be disclosed to the inmate charged with the violation without disclosing the identity or jeopardizing the safety of the confidential source. The inmate charged with the offense shall not be present when the RIB considers and evaluates the confidential information. The panel shall record its evaluation on the appropriate form.

(H) The RIB members shall evaluate the credibility of witnesses and the probative value of other evidence presented to the RIB, including any available video evidence. The RIB may consider the credibility of a witness, whether confidential or otherwise, on the basis of common sense and a realistic assessment of the circumstances. In making these assessments the RIB may consider variety of factors including, but not limited to:

(1) The appearance and demeanor of the witness;

(2) The witness's disciplinary or criminal history;

(3) Whether it is against the witness's own interests to make the statement;

(4) Whether or not the witness has any ulterior motive in making the statement;

(5) Whether other evidence corroborates the statement;

(6) Whether the witness could have observed what is claimed;

(7) Whether the witness has previously provided reliable evidence;

(8) Whether the witness has a record or reputation for lying or honesty,

(9) Whether the witness's statements are consistent;

(10) The amount of detail provided;

(11) The willingness of the witness to appear and answer the questions of the rules infraction board;

(12) The professional experience and judgment of the staff member evaluating the witness.

(I) Amendment to conform to the evidence. The RIB panel may at any time prior to or during an RIB hearing, change the designation of the rule or rules alleged to have been violated based on the conduct report, or testimony or evidence presented at the RIB hearing. The inmate shall be given timely notice of such a change. Such a change shall be made part of the record of

the hearing and noted in the RIB panel's disposition. If the change is made during the RIB hearing, the inmate may request a reasonable continuance. If the continuance is granted, the RIB hearing may recommence from the point of the continuance.

(J) After taking testimony and receiving evidence, the RIB panel shall vote and determine whether, based on the evidence presented, they believe that a rule violation occurred, that the inmate committed that violation, and if so, what disposition to impose. The RIB panel may consider all information presented in reaching its determination including any relevant mental health information from the inmate's restrictive housing placement assessments and/or the inmate's mental health caseload status.

(1) No inmate shall be found to have violated a rule based solely on his or her past conduct.

(2) Past conduct may be considered when determining issues such as credibility and intent; or in considering suitable penalties.

(K) Both panel members must concur in a finding of guilt in order to find an inmate guilty of a rule violation and to impose a disposition. In the event there are conflicting guilty and not guilty votes, the tie shall be broken by a staff member designated by the managing officer, who shall cast the deciding third vote. The managing officer's designee shall vote only after reviewing the oral and written record of the hearing.

The managing officer's designee who casts a deciding vote in an RIB proceeding shall not be the same designee performing the administrative review and appeal review functions described in paragraphs (N) and (O) of this rule.

(L) Determination and disposition. If a finding of guilt is made for a rule violation by the RIB panel, and subject to the administrative review of the managing officer or designee, the RIB panel may impose the following penalties:

(1) Placement of the inmate in restrictive housing as defined in rule 5120-9-10 of the Administrative Code for one offense with credit for time served in any pre-hearing detention. To place an inmate in restrictive housing, the RIB shall provide a justification as to why placement in a limited privilege housing assignment under paragraph (L)(2) is insufficient to manage the safety and security requirements of the inmate.

(2) Placement of the inmate in a limited privilege housing assignment for up to ninety days for one offense as defined in paragraph (B)(4) of rule 5120-9-09 of the Administrative Code.

(3) Recommend that the inmate receive a security review or serious misconduct panel review, and/or transfer to another general population institution.

(4) Order the disposition of contraband in accordance with rule 5120-9-55 of the Administrative Code.

(5) Recommend to the managing officer that the inmate be required to make reasonable restitution, or that his earnings be reduced pursuant to rule 5120-3-08 of the Administrative Code.

(6) Order that the inmate lose earned credit that otherwise could have been awarded or may have been previously earned as authorized by section 2967.193 of the Revised Code and paragraph (R) of rule 5120-2-06 of the

Administrative Code.

(7) Order restrictions on personal privileges following an inmate's abuse of such privileges or facilities or when such action is deemed necessary by the managing officer for the safety and security of the institution, or the well-being of the inmate. Such restrictions shall continue only as long as it is reasonably necessary.

(8) Order such actions as deemed appropriate, including assignment of extra work, and any dispositions available to the hearing officer.

(9) The RIB may conditionally suspend the imposition of any penalty cited in this rule, on the condition that the inmate have no further rule violations for a period of six months from the date of the RIB disposition. If the inmate has no further violations during the six-month period, the penalty shall be treated as a reprimand. If the inmate violates the condition and is found guilty of a rule violation, the suspended penalty shall be imposed in addition to any penalty for the new violation.

(M) Documentation of disposition. Upon completing its deliberations, the RIB shall orally inform the inmate of its decision and disposition, as part of the electronic record. The RIB secretary shall complete a disposition form, which shall contain the determination made by the panel regarding each rule violation, the factual basis of the determination, names of witnesses, and any disposition imposed.

(1) The form shall also include whether the panel relied on confidential information in reaching its determination and the panel's evaluation of the informant's credibility. The form shall not contain the name of any confidential informant or the nature of the confidential information.

(2) The form shall also include notice that the inmate may appeal the RIB panel's decision to the managing officer and the procedure for such an appeal.

(3) The form shall notify the inmate that, if they are serving a sentence pursuant to section 2967.271 of the Revised Code, a finding of guilt may be used by the department to rebut the presumption that the inmate will be released from service of their sentence on the expiration of the minimum prison term or presumptive earned early release date.

(4) The completed disposition form shall be furnished to the inmate no later than three business days after the RIB panel reaches its decision.

(5) The imposition of any penalty imposed by the RIB panel shall not be stayed pending an appeal.

(6) The person issuing the conduct report shall be permitted to review the completed RIB disposition but shall not be involved in the deliberations of the RIB.

(7) For informational purposes a summary or log of the RIB dispositions and activity for the week shall be available for review by staff members and maintained in a location convenient for that purpose.

(N) Administrative review. The managing officer or designee shall review RIB panel decisions to assure compliance with the procedures, rights and obligations set forth in this rule. The managing officer or designee may approve, modify or reject a panel's determination of guilt. The managing officer or designee may not reject a determination of not guilty, but may refer

such a case back to the RIB panel for reconsideration if relevant information was overlooked or new information becomes available. The managing officer or designee may approve the penalty, or modify the penalty imposed from among the penalties available to the RIB panel. The managing officer or designee may also refer a case back to the RIB panel for reconsideration when procedural errors have occurred within the case. The managing officer or designee shall provide the inmate with written notification of the review findings.

(O) Appeal of RIB decision to the managing officer. An inmate may appeal the decision of the RIB panel by submitting the form designated for that purpose to the managing officer or designee within seven calendar days from the inmate’s receipt of the RIB panel’s disposition. The managing officer or designee shall review the RIB determination within fourteen calendar days to determine whether it was supported by sufficient evidence, whether there was substantial compliance with applicable procedures, and whether the disposition and any sanction imposed was proportionate to the rule violation.

The managing officer or designee may affirm or reverse the RIB panel’s determination of guilt; and, may approve, or modify the penalty imposed from among the penalties available to the RIB panel. The managing officer or designee may also return the matter to the RIB panel for reconsideration or rehearing to address procedural errors that may have occurred within the case or to consider additional evidence.

(P) Appeal of RIB decision to chief legal counsel. An inmate may appeal the decision of the managing officer or designee by submitting the form designated for that purpose to the chief legal counsel within fourteen calendar days from the inmate's receipt of the managing officer or designee's appeal decision. Chief legal counsel or designee shall review the RIB determination within fourteen calendar days of receipt of the appeal to determine whether it was supported by sufficient evidence, whether there was substantial compliance with applicable procedures, and whether the disposition and any sanction imposed were proportionate to the rule violation.

(1) The chief legal counsel or designee may affirm or reverse the RIB panel's determination of guilt; and, may approve, or modify the penalty imposed from among the penalties available to the RIB panel. The chief legal counsel or designee may also return the matter to the RIB panel for reconsideration or rehearing to address procedural errors that may have occurred within the case or to consider additional evidence.

(Q) Discretionary review. Appeal of RIB decision to chief legal counsel.The director or the director’s designee may review any RIB decision that, in the view of the director or designee, presents issues that may have significant impact on the operation of the department. This paragraph does not provide an additional appeal for the inmate above the appeal to the chief legal counsel.

Statutory Authority

Effective:

1/9/2020.

Five Year Review (FYR) Dates:

10/3/2019 and 01/10/2024.

Promulgated Under:

111.15.

Statutory Authority:

5120.01.

Rule Amplifies:

5120.05

Prior Effective Dates:

04/05/1976, 10/30/1978, 03/24/1980, 01/16/1984, 07/18/1997, 07/19/2004, 04/26/2009, 11/11/2013, 02/11/2017.

End of Document

OAC Ann. 5120:1-1-03

This document is current through updates effective July 1, 2022.

OH - Ohio Administrative Code > 5120:1 Division of Parole and Community Services > Chapter 5120:1-1 Release

5120:1-1-03. Minimum eligibility for release on parole.

(A) Except as provided in rule 5120:1-1-06 of the Administrative Code for shock parole, rule 5120:1-1-40 of the Administrative Code for parole of dying prisoners and section 2967.18 of the Revised Code for emergency paroles, no inmate serving an indefinite sentence shall be released on parole until he has served the minimum term reduced pursuant to rule 5120-2-04 of the Administrative Code for jail-time credit, diminished pursuant to rule 5120-2-05 of the Administrative Code for good behavior, and diminished pursuant to rule 5120-2-06 of the Administrative Code for productive program participation, and rule 5120-2-07 of the Administrative Code for maintaining minimum security. Provided, Chapter 5120-2 of the Administrative Code shall not be applied in such a manner as to unconstitutionally extend the minimum period for eligibility for parole of any prisoner in contravention of any statutory provision which may have been in effect at the time the crime was committed.

(B) Except as provided in rule 5120:1-1-40 of the Administrative Code for parole of a dying prisoner, no inmate serving any sentence of life imprisonment shall be released on parole until he has served the number of years specified in rule 5120-2-10 of the Administrative Code reduced as provided in rule 5120-2-04 of the Administrative Code.

(C) Except as provided in rule 5120:1-1-06 of the Administrative Code for shock parole, rule 5120:1-1-40 of the Administrative Code for parole of dying prisoners, section 2967.18 of the Revised Code for emergency paroles, and section 2967.132 of the Revised Code for offenses committed by a minor, no inmate serving a definite sentence shall be released on parole.

Statutory Authority

Effective:

1/15/2022.

Five Year Review (FYR) Dates:

1/10/2025.

Promulgated Under:

111.15.

Statutory Authority:

5120.01.

Rule Amplifies:

2967.13.

Prior Effective Dates:

11/12/1975, 1/20/1980, 6/30/1980, 10/11/1982, 7/18/1983 (Temp.), 1/16/1984, 11/30/1987 (Emer.), 2/29/1988, 4/1/2005.

End of Document

OAC Ann. 5120:1-1-10

This document is current through updates effective July 1, 2022.

OH - Ohio Administrative Code > 5120:1 Division of Parole and Community Services > Chapter 5120:1-1 Release

5120:1-1-10. Initial and continued parole board hearing dates; projected release dates.

(A) The initial hearing for each inmate who is parole eligible shall be held on or about the date when the prisoner first becomes eligible for parole pursuant to rule 5120:1-1-03 of the Administrative Code.

(B) In any case in which parole is denied at a inmate's regularly constituted parole hearing, the parole board shall:

(1) Set a projected release date in accordance with paragraph (D) of this rule, or

(2) Set the time for a subsequent hearing, which shall not be more than ten years after the date of the hearing, or for an individual who is parole eligible under section 2967.132 of the Revised Code, not more than five years.

(C) In any case where parole is denied the reasons for such denial shall be communicated to the inmate and the warden in writing.

(D) The parole board at any parole release consideration hearing may, in its discretion, establish a projected release date ten years or less in the future which, unless rescinded pursuant to this rule, would permit the inmate to be released without a further appearance before the parole board or a hearing panel. This date shall be subject to rescission within the discretion of the parole board and shall not create any expectation of release or entitlement to be released thereon.

(E) A projected release date greater than one year from the parole hearing date shall not be established for any prisoner serving a life sentence, sentence of fifteen years to life, or a sentence imposed for any offense pursuant to Chapter 2907. of the Revised Code.

(F) A projected release date shall be recorded and published in the official minutes of the parole board.

(G) The institution in which a inmate with a projected release date is confined shall, upon request, submit to the parole board an institutional summary report. This report shall summarize the inmate's conduct, adjustment and program participation subsequent to the granting of a projected release date.

(H) A parole board member designated by the chair of the parole board shall review the report as soon as practicable and shall determine if the release on the projected release date is still warranted, that the projected release date should be accelerated, that placement into the transitional control program should be approved, or that the projected release date should be rescinded.

(I) If the projected release date is not rescinded the inmate shall be released on or after the projected release date in the usual manner and following the standard procedures for releasing inmates.

Statutory Authority

Effective:

1/15/2022.

Five Year Review (FYR) Dates:

1/8/2023.

Promulgated Under:

111.15.

Statutory Authority:

5120.01, 5149.02, 5149.10.

Rule Amplifies:

2967.13.

Prior Effective Dates:

7/1/1976, 1/2/1979, 11/1/1988, 11/21/1994, 3/16/1998 (Emer.), 6/1/1998, 4/1/2005, 4/15/2010, 6/28/2013.

End of Document

This document is current through updates effective July 1, 2022.

5120-9-52. Initial classification of inmates.

(A) The director shall designate one or more institutions as centers for the reception and classification of inmates received by the department.

(B) Classification shall include assigning the inmate to appropriate security and supervision levels, as well as determining programming needs to assist in the reentry of the inmate into the community. The director or designee shall establish standard admission procedures.

(C) The reception centers shall forward copies of all recommendations, reports, evaluations and other relevant information on an inmate to the bureau of classification. After a review of the available records the bureau of classification shall designate a security level of 1, 2, 3, 4 or E and assign the inmate to an appropriate institution. Factors to be considered in designating an inmate's initial security level and institution assignment shall include but not be limited to the following:

(1) Nature or seriousness of the offense for which the inmate was committed;

(2) Length of sentence for which the inmate was committed;

(3) Medical and mental health status;

(4) Previous experience while on parole, furlough, probation, post release control, administrative release or while under any other form of correctional supervision.

(5) Nature of prior criminal conduct as shown by the official record;

(6) Age of inmate;

(7) Potential for escape;

(8) Potential of danger to the inmate, other inmates, staff, or the community through the inmate's actions or actions of others;

(9) Availability of housing, work, and programming at the various institutions;

(10) The physical facilities of an institution;

(11) Any other relevant information contained in the reports.

(D) The bureau of classification will, within the limits of the available resources, attempt to assign the inmate to an institution most compatible with his security and programming needs. The bureau shall forward a copy of the inmate's designated security level and institution assignment to the reception center. The reception center shall notify the inmate and advise the inmate that they may request in writing to the chief of the bureau of classification reconsideration of their security level and/or institution assignment. Such request shall be on a form designated for that purpose and state in detail the reasons supporting the request.

(E) During the period an inmate is incarcerated at a reception center, the inmate shall be given a temporary security level of level 3R, which will remain in

effect until the bureau of classification makes the security level and institution assignment and the appropriate transfer has been completed.

(F) The inmate's initial security level and institution assignment are subject to change either while the inmate is at the reception center or at the assigned institution, whenever additional documentation or information becomes available that would impact such assignments. Absent the receipt of any new information that would impact the inmate's initial assignment, security level and institution assignment shall not be modified except pursuant to rules 5120-9-21 and 5120-9-53 of the Administrative Code.

(G) Inmates may be assigned to an institution of a higher security level than the security level of the inmate due to program or institutional requirements. However, the security status of the institution to which the inmate is assigned shall not, alone, determine the security level of the inmate.

(H) All reports, documents, and materials completed during the reception and initial classification process shall become a permanent part of the inmate's files.

Statutory Authority

Effective:

1/9/2020.

Five Year Review (FYR) Dates:

1/7/2020.

Promulgated Under:

111.15.

Statutory Authority:

5120.01.

Rule Amplifies:

5120.11, 5120.16

Prior Effective Dates:

11/10/1975, 01/01/1983, 07/18/1983, 09/04/1984, 05/08/2006.

End of Document

OAC Ann. 5120-9-53

This document is current through updates effective July 1, 2022.

OH - Ohio Administrative Code > 5120 Department of Rehabilitation and Corrections - Administration and Director > Chapter 5120-9 Use of Force; Institutional Rules

5120-9-53. Classification committees.

(A) Each institution shall establish and maintain a classification committee(s). The committee shall include a unit manager or designee, and other members as appointed by the unit manager. The classification committee shall have jurisdiction over annual and special security level reviews, work assignments, community release screening, transfer requests, and program placement.

(B) Prior to a hearing of the classification committee the inmate shall be provided with notice no less than forty-eight hours prior, unless waived by the inmate. This notice shall inform the inmate of the purpose of the hearing, that the inmate may make or submit a written statement if the inmate chooses, and that the inmate has the right to meet with at least one member of the committee. This notice shall be on a form designated for that purpose.

(C) During a classification hearing the committee shall review and consider the inmate's needs, including programming needs reflected in the inmate's reentry accountability plan, evaluate placement and progress, security and any other relevant matters. Each inmate shall have a classification hearing no less than annually.

(D) After the classification committee hearing, the committee shall make a written summary of the hearing, including their recommendation and reasons for such recommendation and forward this to the warden or designee. The inmate shall be promptly notified of the recommendation of the committee and of the right to appeal the recommendation to the warden or designee. The notice to the inmate shall be on a form designated for that purpose. The warden or designee shall approve or disapprove the recommendation or make an alternative recommendation or decision. The warden's decision shall be communicated in writing to the inmate. Security level reviews and transfer request decisions may further be appealed to the bureau of classification.

Statutory Authority

Five Year Review (FYR) Dates:

1/16/2020 and 01/10/2025.

Promulgated Under:

111.15.

Statutory Authority:

5120.01.

Rule Amplifies:

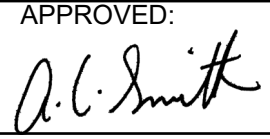
5120.11, 5120.16

Prior Effective Dates:

11/10/1975, 01/01/1983, 07/18/1983, 09/04/1984, 01/08/1991, 05/08/2006.

End of Document

Ohio | Department of Rehabilitation & Correction

SUBJECT: **Reception Admission Procedures**	PAGE 1 OF 18 . NUMBER: **52-RCP-01**
RULE/CODE REFERENCE: ORC 5120.01, 2929.14 thru 2929.18, ORC 2967.271, 4723.43, 4730	SUPERSEDES: 52-RCP-01 dated 07/24/2017 52-RCP-07 dated 02/05/2017
RELATED ACA STANDARDS: 5-ACI-5A-01 (4285) thru 5A-04 (4288); 2-CO-4A-01	EFFECTIVE DATE: **September 14, 2020**
	APPROVED: 

I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

II. PURPOSE

The purpose of this policy is to establish standard procedures that regulate admissions to the reception centers of the Ohio Department of Rehabilitation and Correction (ODRC).

III. APPLICABILITY

This policy applies to all employees of the Ohio Department of Rehabilitation and Correction (ODRC), specifically to the staff of the reception centers, Bureau of Classification and Reception (BOCR) employees involved in screening, assignment of living, and security level of incarcerated individuals and to the individuals housed in the reception phase of their incarceration. The policy also applies to law enforcement agencies conveying prisoners to a reception center and to staff of the Adult Parole Authority (APA) returning parole violators to a reception center.

IV. DEFINITIONS

Advanced Level Provider (ALP) - A medical professional who is approved to practice as an Advanced Practice Nurse under Ohio Revised Code Section 4723.43 or a Physician's Assistant under Ohio Revised Code Section 4730.

Cell-Only - Housing status assigned to certain incarcerated individuals while in reception status to reduce risk of harm to staff and other incarcerated individuals.

Detainer - A request filed by a criminal justice agency with the institution in which a prisoner is incarcerated asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent.

Departmental Offender Tracking System (DOTS Portal) - The web-based information platform which serves as the primary information system for information on all offenders under Ohio Department of Rehabilitation and Correction supervision. The system contains information regarding the offender from reception to final release under supervision. This system is updated throughout each day. Access to DOTS Portal is restricted to essential users only.

Extended Restrictive Housing (ERH) - A security classification level represented as "E" in the Departmental Offender Tracking System (DOTS). ERH is the most restrictive security level in the ODRC reserved for incarcerated individuals who constitute the greatest threat to the safety and security of the community, staff, others, and/or the secure operations of a correctional facility.

Hold Order - The order or act of a parole officer, unit supervisor, or other Adult Parole Authority (APA) official that causes an offender under the jurisdiction of the APA to be detained or held in custody for alleged violations. The order or act may be placed into effect by use of an APA Hold Order, an APA Arrest Order, a teletype, fax, or a verbal order.

Level 4 - Level 4 security is considered maximum security, but it is not restrictive housing and incarcerated individuals must be allowed more than 2 hours out of cell time daily as well as access to general population services. The physical security requirements for Level 4 may vary based on the overall physical structure of the facility. Double perimeter fences, or architectural equivalents where at least two independent barriers exist between an incarcerated individual and the outside, are required. The perimeter patrol is armed, with an alarmed perimeter intrusion detection system. The security at Level 4 is enhanced with controlled/supervised movement at all times as well as limited, and highly supervised, access to outside recreation/activities. Cells must be securable, and individuals must be single celled while at a parent institution unless there is approval from the deputy director of Prisons. Typically, individuals at Level 4 have established histories of violent and/or disruptive prison behavior or their prison and community history indicate there is a very high risk of escape. It is also a classification for those who are involved in, but not leading others to commit, violent, disruptive, predatory, or riotous actions, and/or pose a threat to the security of the institution. Individuals who have been assigned Level 4 security but are awaiting transfer do not automatically require single celling except at the discretion of the managing officer. Level 3 and level 4 individuals can be housed together at the discretion of the managing officer. Level 4 individuals who have received a reduction in security to Level 3, may be housed with Level 4 individuals while they are awaiting transfer.

Limited Privilege Housing (LPH) - Assignment of an incarcerated individual to a designated area for the purpose of reducing their privileges, controlling movement, and reducing their access to others incarcerated individuals. LPH is considered general population and individuals shall have access to prison services, although that access can be reasonably limited as part of their privilege reduction. Designated out-of-cell time shall be more than two hours daily.

Parent Institution - The institution the incarcerated individual is assigned to after completing the reception process.

Reception Processing - Processing activities that occur within the first 72 hours of incarceration after a court commitment in which all admission procedures are completed.

Restrictive Housing (RH) - Housing that separates an incarcerated individual from the general population and restricts the individual to their cell 22 hours or more per day.

Sanction - Any penalty imposed upon an offender who is found guilty of an offense or violation of the conditions of supervision, including any sanction imposed pursuant to any provision of ORC sections 2929.14 to 2929.18.

Senate Bill 201 - Authorized by ORC section 2967.271 and establishes indefinite prison terms for "qualifying felony offense" (non-life F1's and F2's, with presumptive release of offenders sentenced to such a term at the end of the minimum term. Generally, allows the Department of Rehabilitation and Correction, with approval of the sentencing court, to reduce the minimum term for exceptional conduct or adjustment to incarceration. Allows the Department to rebut the release presumption and keep the offender in prison up to the maximum term if it makes specific findings.

Transitional Program Unit (TPU) - A specialized housing unit requiring close supervision of incarcerated individuals that are placed in Restrictive Housing, Extended Restrictive Housing, or may be placed in Limited Privilege Housing.

Temporary Reception Housing - The initial housing assignment of an incarcerated individual during the first 72 hours of their incarceration.

Violence Indicators - Any of the factors listed in paragraph VI. B below.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (ODRC) to provide a standardized admissions procedure to foster consistency in processing all new commitments at the reception centers**.**

VI. PROCEDURES

A. The admission procedures program is designed to include the following activities:

1. Reduce the anxiety level for newly committed incarcerated individuals;
2. Ensure all incarcerated individuals are properly identified;
3. Ensure court papers are complete and accurate;
4. Complete a thorough search of the incarcerated individual and their personal property;
5. Record properly authorized personal property and complete the Reception Intake Property Record - Receipt and Disposition (DRC2258). Send unauthorized property back with the sending county transport officers.
6. Photograph and fingerprint of the incarcerated individual, notating identifying marks or other unusual physical characteristics;
7. Complete medical, dental and mental health screenings;
8. Record basic personal data;
9. Explain basic rules and regulations, to include mail and visiting procedures;
10. Assign an institutional number;
11. Assign housing per section VI.K of this policy;
12. Issue clean and laundered clothing and personal toiletry items as directed by ODRC Policy 61-PRP-02, Inmate Clothing Issue;
13. Assist incarcerated individuals in notifying their next of kin and families of admission;

14. Provide showers and hair care if necessary;
15. Provide handbook for incarcerated individuals;
16. All information as it pertains to orientation for the incarcerated individual shall be recorded on the Orientation Acknowledgement Checklist (DRC4141).

The above admission procedures shall be completed within three days of an incarcerated individual's arrival, including weekends and holidays, at all reception centers.

B. Arrival of Incarcerated Individuals

1. The transporting officer must have the required supporting documentation for the incarcerated individual to be admitted to ODRC:

   a. For admissions based on a new conviction, required documents in accordance with the Record Office Manual committing the incarcerated individual to ODRC.
   b. For parole violators, a recommitment order from an appropriate APA official.
   c. For Post Release Control (PRC) violators and TRC offenders that committed the instant offense prior to July 1, 1996, a completed sanction order.
   d. For TRC and TT offenders that committed the instant offense on or after July 1, 1996, the Administrative Return letter.

2. When the incarcerated individual is being transferred from another facility, the escorting officer shall deliver the individual's institutional files. The escorting officer shall also communicate to the reception center receiving and discharge staff any known significant information (e.g., special management status, disciplinary status, suicide watch, medical concerns, etc.) that pertains to the incarcerated individual being received at the reception center. Prior to the individual's departure from the transferring facility, the escorting officer shall be provided with a receipt for the files and a receipt for the transfer of the incarcerated individual.

3. The record officer shall complete the following actions prior to the departure of the transporting officer:

   a. Review the commitment papers to ensure they are valid and accurate. If inaccuracies exist, the individual shall not be accepted, and the committing court shall be contacted immediately.

   b. Sign any detainer and return a copy to the transporting officer. The original shall be scanned to the "DRC Records Detainer" mailbox at Central Records.

   c. Complete the physical identification of the incarcerated individual. This shall usually be accomplished by asking questions related to confidential information contained in the accompanying records and comparing photographs, and other identifying characteristics.

   d. Sign transfer receipts for the transporting officer.

C. Records Officer Processing Duties

The following procedures shall be followed by the Record Office to process all new admissions. This information shall be compiled by the record officer and shall include, but not be limited to:

1. Information from court documents;

2. Information from incarcerated individuals:

   a. Race/ethnic origin;
   b. Nationality;
   c. Date of birth; and
   d. Age;

3. Prior criminal history to be done by Central Records at OSC;

4. Record the admission by entering the incarcerated individual's name and assigned number in DOTS Portal (RECEP 1 Screen);

5. Scan a copy of the commitment papers into OnBase. A complete set of admission forms shall be taken to the Record Office for inclusion into OnBase within one hour;

6. Enter into DOTS Portal all required information in accordance with the Record Office Manual and ODRC Policy 07-ORD-03, Record Office File;

7. Record the receipt of a social security card, **S**tate of Ohio identification card, birth certificate, driver's license and/or other identification documents on the Offender Transitional Release Plan (DRC4443). This documentation shall be maintained at the designated location in the Records Office or Cashier's Office and be returned to the incarcerated individual upon release.

D. Notification to SB201 Incarcerated Individuals

Designated staff at the reception centers shall provide the incarcerated individual with a copy of the SB201 Notification (DRC3088) during the reception process regarding the possibility of reduction of the minimum term for exceptional conduct and adjustment to incarceration, and information concerning the maximum term hearing.

E. Search Procedures

1. All incarcerated individuals entering or leaving the institution shall be strip-searched.

2. Clothing worn into the institution shall be carefully inspected for contraband.

   a. Trousers should be given particular attention, including areas around seams or cuffs at the bottom of trouser legs, waistbands, small (watch) pockets, seams along the side of trouser legs, zipper area, and all regular pockets.

b. Shirts shall be carefully and thoroughly checked along seams, down the front, across shoulders, collars and pockets.

c. Shoes and socks are to be removed and searched. Shoes are to be visually checked inside and heels and soles are to be checked.

d. Coats and jackets are to be inspected as outlined in section VI.E.2.b above.

e. A thorough search of the incarcerated individual's person should be conducted.

3. Property shall be carefully and thoroughly searched. All items shall be removed from containers in which they are carried, and each item examined to ensure that it does not conceal contraband or other unauthorized items. Care must be taken to neither damage nor destroy personal property. If this should happen, an Incident Report (DRC1000) shall be completed by the staff involved and turned into the shift supervisor, along with the damaged or destroyed property.

4. Medications shall be properly marked with the incarcerated individual's name and transported to reception medical services for evaluation. Prohibited medications shall be properly destroyed by medical services personnel. When medical devices are inspected for contraband by **s**ecurity, every effort shall be made not to separate the individual from their medical device. If security has a concern regarding the medical device, the incarcerated individual and the device shall be sent to medical services for evaluation. If security staff believes the medical device should not be permitted in general population, an advanced level provider (ALP) must determine if the medical device is medically necessary prior to it being taken away. If the ALP determines the medical device should not be allowed, it shall be disposed of as minor contraband consistent with ODRC Policy 310-SEC-43, Handling and Disposition of Contraband, and/or Administrative Rule 5120-9-55, Contraband, or sent home at the incarcerated individual's expense. In addition, the ALP must discontinue the order if it is deemed unnecessary.

5. Social security cards, State of Ohio identification cards, birth certificates, driver's licenses' and/or other identification documents shall be delivered to the designated location in the Records Office or Cashier's Office and be returned to the incarcerated individual upon release.

F. Allowable Personal Property Items and Possession Limits

1. Allowable items for incarcerated individuals to possess shall be itemized on the Reception Intake Property Record and Disposition (DRC2258). Incarcerated individuals may possess the following items of personal property not to exceed the quantities listed:

a. Legal documents and papers (reasonable amount);
b. Family pictures (not to exceed 10) (no albums or polaroids);
c. Prescription glasses (two pair of glasses or one pair of glasses and/or contact lens and case);
d. Dentures/Denture Cream (1 each);

e. Address book or list of addresses of relatives, friends, and other correspondents (1);
f. Wedding band, no stones or gems ($100 value limit) (1);
g. Watch (date and time only) ($75 value limit) (1);
h. Pens (transparent pens, no pull-apart, no felt tips) (5);
i. Writing paper (reasonable amount);
j. Religious material (e.g., bible), other religious items, as permitted by ODRC Policy 72-REG-01, Institution Religious Services, and approved by the chaplain. Possession limits of permitted religious materials will be limited to:

   i. Religious headgear (1)
   ii. Dashiki (1)
   iii. Prayer robe (1)
   iv. Prayer rug (1)
   v. Chain with religious medallion (1)
   vi. Religious beads (1);

k. Tennis shoes (no air pockets – predominately black or white) ($75 value limit) (1);
l. Dress shoes (black or dark brown only, 1" heel, no platforms, no suede or patent leather, no steel/metal shank) ($75 value limit) (1);
m. T-shirts (clean or new, solid color only, blue/green/white, may be long sleeved) (6);
n. Undershirts (male only – white/blue/green) (7);
o. Undershorts (male only – white/blue/green (7);
p. Socks (clean or new, white, black, brown or green) (7);
q. Comb or pick (plastic only, not to exceed 4 inches) (1);
r. Towels (solid colors, blue or green only) (5);
s. Washcloths (solid colors, blue or green only) (5);
t. Handkerchiefs (white 15" x 15") (12);
u. Shower shoes (any color rubber only) (1);
v. Bras (female only - white or black only) (7);
w. Panties (female only - solid or print, white/black/blue/green, no bikinis or thongs) (14);
x. Bracelet (medical only);
y. Contact lens solution (unopened);
z. Earrings (AR 5120-9-25.1) (2 pr);
aa. Pencils (5).

2. Inventory of allowable items shall be thorough and complete. The Reception Intake Property Record and Disposition (DRC2258) shall be signed by and copied to the incarcerated individual, listing all items allowable. A copy of the Reception Intake Property Record and Disposition (DRC2258) shall also be forwarded to the quartermaster or scanned to the electronic property file and/or filed in the incarcerated individual property file.

G. Clothing Issue for New Arrivals

Incoming reception incarcerated individuals shall be permitted to possess the number of personal property items specified by section VI.F of this policy and those listed on the Reception Intake Property Record and Disposition (DRC2258). However, reception centers/institutions shall not

follow these specified limits when initially issuing or re-issuing property items. All institutions, including reception centers, must follow the clothing issue procedures and limits outlined in ODRC Policy 61-PRP-02, Inmate Clothing Issue.

H. Establishing Identification Records

The admitting officer shall follow the following procedures for photographing, fingerprinting, and recording identifying marks or unusual physical characteristics of the incarcerated individual:

1. Photographs

   A digital photograph image is captured and retained in the mainframe database in Operation Support Center. The image consists of a front, right, and left side view from the chest up. This system is linked with DOTS Portal, thereby producing the Escape Flyer with all pertinent information. Copies of the Escape Flyer, including the images, are distributed to the deputy office escape packet. One ID badge with bar code is produced for each incarcerated individual. Images are retained for replacement badges when necessary.

2. Fingerprints

   a. Fingerprints shall be taken in accordance with FBI and ODRC instruction manuals.
   b. Fingerprints are digitally scanned and transmitted directly to BCI and FBI by way of the LiveScan system. If LiveScan is unavailable, a manual fingerprint card shall be completed. If LiveScan is available but the offender is not listed, manually add the offender and complete the electronic fingerprints.
   c. Fingerprint cards are produced as needed for various reasons (e.g., HB180, release procedures).
   d. If no BCI number is assigned after 14 calendar days from admission, the Central Records Unit shall contact the appropriate reception center who shall enter and re-print the offender on LiveScan.

3. Notification of identifying marks and/or unusual physical characteristics shall initially be made by designated reception staff which shall include, but not be limited to:

   a. Visual examination of scars;
   b. Notation of physical deformities;
   c. India ink marks, including tattoos;
   d. Height;
   e. Weight; and
   f. Gang-related identification marks.

4. The Escape Flyer, consisting of inmate name, inmate number, social security number, alias (AKA), race, date of birth, height, weight, hair, eyes, tattoos, scars, charges, length of sentence, committing county, last known address and next of kin is produced.

I. Handbook Procedures

1. Handbook Receipt

New Admission/Reception Incarcerated Individuals - Each reception center shall be responsible for developing an orientation handbook for incarcerated individuals. Upon arrival, each new incarcerated individual (including intra-system transfers) shall receive an orientation handbook and sign an acknowledgement of receipt on the Inmate Orientation Checklist (DRC4141).

2. Handbook Development/Contents

All orientation handbooks for incarcerated individuals shall contain the information required by ODRC Policy 52-RCP-10, Inmate Orientation. All written orientation materials, including the orientation handbook, shall be translated into the incarcerated individual's native language, where possible. Staff shall explain the information to those where obvious barriers to comprehension exist and document this assistance on the Inmate Orientation Checklist (DRC4141) accordingly.

3. Handbook Distribution Methods

a. All new incarcerated individuals shall receive an orientation handbook upon their arrival and retain a personal copy for a minimum of 14 days, including holidays and weekends. Upon possessing the handbooks for the minimum 14-day period, each incarcerated individual shall be responsible for returning their personal orientation handbooks to unit staff.

b. At all times, enough orientation handbooks for incarcerated individuals shall be available in all housing units at the officer's desk and in the Library. This provision includes all Transitional Program Units (TPUs). Each institution shall establish procedures to ensure an appropriate number of orientation handbooks are maintained to ensure all incarcerated individuals have equitable access.

4. Annual Review Process

The managing officer shall designate a staff member to be responsible for coordinating and/or conducting an annual review of the orientation handbook to make certain all information is accurate and properly updated with any policy changes. At a minimum, the person responsible for this process shall ensure written documentation of the annual review process is maintained for five years. This documentation should include all original and revised information so that it can be determined what handbook information has been revised.

5. Handbook Printing

a. All institutions are required to have their orientation handbooks printed by the Ohio Penal Industries (OPI) printing shop.

b. If information contained in the orientation handbook changes between printing new handbooks, each institution shall make sure that addendums to existing handbooks are promptly distributed to incarcerated individuals to ensure the updated information is provided. The method of printing and distributing addendums is to be determined by each institution.

J. Reception Institution Orientation Procedures - Initial Intake Processing Guidelines

1. Upon arrival at the reception center, each incarcerated individual shall be informed verbally and in writing of the following topics: How to access medical and behavioral health services, informed of the medical co-payment guidelines, and explanation of the grievance system for incarcerated individuals.

   a. Receipt of the health care orientation information and grievance information shall be documented on the Health History (DRC5031,5033- Male, DRC5032,5033-Female or electronic equivalent) for reception incarcerated individuals or on the Intra-System Transfer and Receiving Health Screening (DRC5255 or electronic equivalent) for intra-system transfers.

   b. Refer to ODRC Policy 52-RCP-06, Reception Intake Medical Screening, Medical Protocol B-12, Intrasystem Transfer and Receiving Process and Medical Protocol B-16, Reception Diagnostic Screening, for further direction on health care intake procedures.

2. Each incarcerated individual shall also be provided with a verbal explanation and written information regarding sexual abuse consistent with ODRC Policy 79-ISA-01, Prison Rape Elimination.

3. On the same date of the incarcerated individual's arrival, staff shall reaffirm all the above information has been received by all new incarcerated individuals and document this receipt on the designated area of the Inmate Orientation Checklist (DRC4141).

4. Upon arrival at the reception center, designated reception staff shall document and attempt to verify any incarcerated individual stated fear of transfer and requests for separation directed by ODRC Policy 53-CLS-05, Inmate Separations. This shall include completion of the Reception Intake Questionnaire (DRC2720). This information shall be disseminated to the Bureau of Classification and Reception (BOCR), the Record Office, and appropriate institution officials. Similar information from sources other than incarcerated individuals shall be handled in a like manner.

5. If an incarcerated individual is being referred to the high-profile inmate committee, members of a multidisciplinary team shall be notified to meet to discuss the treatment of this incarcerated individual. These individuals shall be placed in appropriate housing until the multidisciplinary team determines the incarcerated individual's placement status.

6. Seven Calendar Day Institution Orientation Program

   a. New Admission/Reception Incarcerated Individuals - Each new reception incarcerated individual shall receive orientation within seven calendar days of arrival, including weekends and holidays. Completion of the orientation process shall be documented on the Inmate Orientation Checklist (DRC4141), signed and dated by the incarcerated individual and scanned into OnBase. This orientation, at a minimum, shall address all information related to the required topics listed on the Inmate Orientation Checklist (DRC4141). When a literacy or language problem prevents an incarcerated individual from understanding any of the information provided during this period, a staff member or translator will assist the individual. This assistance shall also be documented on the Inmate Orientation Checklist (DRC4141).

   b. New Incarcerated Individuals Received from Parent Institutions (Intra-System Transfers) - Each new incarcerated individual received from another parent institution (e.g., cadres) shall receive orientation as directed by ODRC Policy 52-RCP-10, Inmate Orientation. Acknowledgement of this orientation shall be documented on the Inmate Orientation Checklist (DRC4141).

7. Reception Centers Only – Incarcerated individuals remaining at reception centers as their parent institution assignment - Upon completing the initial intake processing procedures at a reception center, there may be incarcerated individuals that remain at that reception center as their parent institution assignment (e.g., Short Term Offenders, ORW). In these cases, incarcerated individuals must receive a unit orientation program within five calendar days of being permanently assigned to the reception center as being their permanent (parent) institution assignment. This orientation program shall inform incarcerated individuals of all items listed on the Inmate Orientation Checklist (DRC4141) that are different now that they are permanently assigned to the reception center as their parent institution. For example, reception status incarcerated individuals may have different levels of program access, stricter movement guidelines to follow, or different recreation schedules. The only exception to the five-calendar day unit orientation timeframe is for those topics required to be addressed immediately upon arrival as specified under the "To Be Completed Upon Arrival" section of the Inmate Orientation Checklist (DRC4141). In such cases, the incarcerated individual must be orientated verbally and in writing immediately upon being assigned to the reception center unit as a parent institution assignment. This orientation shall be documented in the notes section of the RAP6 screen in DOTS Portal. This unit orientation shall also be considered as a unit staff contact with the incarcerated individual.

8. Exceptions to Orientation Completion Timeframes - The only exception to completing incarcerated individual orientation within the required seven calendar day timeframe is when an individual is placed into a TPU within 72 hours of their arrival at the reception center. All incarcerated individuals, regardless of status in the TPU, must still be orientated on those items required upon arrival as directed by VI.J of this policy. This shall be documented in the designated section of the Inmate Orientation Checklist (DRC4141) accordingly.

9. Mental Health Reception Orientation Procedures

   a. During the reception initial mental health and medical screening process, the medical nurse shall provide each incarcerated individual with a verbal and written description of available mental health services and information about accessing them. There is a statement documenting this on the Health History (DRC5031 or electronic equivalent). This shall be completed upon arrival.

   b. Within seven calendar days, the incarcerated individual shall receive information on suicide awareness and shall review the mental health services information in the orientation handbook.

   c. During the detailed mental health screening per ODRC Policy 67-MNH-02, Mental Health Screening and Mental Health Classification, the Mental Health staff person conducting the screening shall review the orientation materials previously made available with the incarcerated individual. Such review shall include:

      i. Physical location of Mental Health services;
      ii. Voluntary nature of services offered;
      iii. How to access services;
      iv. Manner of being assessed for services;
      v. Limits and extent of the confidential nature of such services; and
      vi. Parameters of professional supervision.

   d. Incarcerated individuals must receive written orientation materials and/or translations in their own language or by the most effective alternative means available. When a literacy problem is known to exist, a Mental Health staff person shall assist the individual in understanding the material. Special issues of communication relating to any relevant disabilities possessed by the individual must be considered and addressed during the orientation. Any special efforts to assist must be documented in the progress notes of the Mental Health file.

K. Incarcerated Individual Housing and Cell Assignments

The managing officer/designee of each reception center shall designate, in writing, the staff member(s) authorized to determine the housing assignment of incarcerated individuals received within the institution.

1. Reception staff shall screen newly arrived incarcerated individuals for violence indicators upon their arrival in a reception center. These screenings shall consider information from the available sources to include, but not limited to:

   a. Entry and Order from the committing court;
   b. Rap Sheet;
   c. Pre-Sentence Investigation;
   d. An interview with the incarcerated individual;
   e. Records of previous convictions;

f. Records from previous commitments; and
g. Any information, which can be verbal or written, received from the county transport officers.

2. The screening shall be documented on the Reception Center Housing Assessment (DRC2673).

The staff shall avoid placing an incarcerated individual with violence indicators in a cell with an individual who has no violence indicators. The staff shall avoid placing two individuals with greatly dissimilar sentences in the same cell. Upon the first day of the incarcerated individual's arrival, at a minimum, staff shall review the violence indicators listed below:

a. The offenses of conviction and commitment, to determine whether they are offenses of violence pursuant to Appendix A;
b. The length of the individual's sentence;
c. Indicators of violence through casual observation, including but not limited to, tattoos, security threat group (STG) indicators, self-admissions, signs of conflict, threats and other relevant factors; and
d. Requests for protective control.

3. The staff shall consider any additional violence indicators which include, but are not limited to:

a. Historical violent felony convictions;
b. Prior institutional rules violations for assault of staff or incarcerated individuals, extortion, sexually predatory acts or any act that would constitute a criminal act under state or federal law;
c. Historical PREA screening information;
d. STG affiliations; and
e. History of mental illness associated with violence/aggression.

4. Upon completion of the screening, those individuals who have one or more of the above violence indicators, or other equivalent violence indicators, as documented in their record, shall be categorized as "cell-only." Incarcerated individuals given the "cell-only" designation must be housed in a cell, as opposed to a dormitory setting, until a full classification review and a security status is assigned by the BOCR.

5. "Cell-only" incarcerated individuals may be double-celled but may only be housed with other individuals designated as "cell-only." Such assignment shall consider any known separations, STG concerns and other relevant considerations.

6. When additional information is received pertaining to reception incarcerated individuals not designated as "cell-only," this information shall be screened as referenced in section VI.A-C of this policy. Should the information justify a change in status to "cell-only," the individual shall be housed accordingly.

7. Incarcerated individuals designated as ERH shall be assessed by the managing officer/designee and may be celled in single or double occupancy cells based on that assessment. ERH individuals who are double celled shall be housed with other ERH individuals.

   a. The reception classification department shall notify the responsible deputy warden and the regional BOCR representative when an incarcerated individual qualifies for initial placement in ERH as outlined in ODRC Policy 53-CLS-04, Level E Placement (ERH).

   b. The responsible deputy warden shall determine the area of the institution in which the incarcerated individual will be celled.

8. Incarcerated individuals classified as Level 4 during reception may be double celled at the discretion of the managing officer. However, they must be in a celled environment and housed with other Level 3 or 4 incarcerated individuals who have completed the classification process. Individuals in this status shall not be housed in conditions of confinement which would equal Restrictive Housing (RH) but may be housed in a Transitional Program Unit (TPU) in Limited Privilege Housing (LPH) status.

9. If upon review of the security instrument, the BOCR designates the "cell only" incarcerated individual as a lower security level than Level 4 or ERH, the "cell only" individual shall be double-celled with other "cell only" individuals of a similar security classification, unless the managing officer/designee chooses to single-cell the individual.

10. The managing officer of the applicable reception center may override single-cell status for ERH individuals and may override "cell-only" status for any incarcerated individual, within their discretion. The managing officer/designee may consider an individual's cell request, medical conditions, the length of time since last violence, or any other valid penological concern. Only the managing officer/designee may authorize such an override and this responsibility may not be designated. The reason(s) for the override must be documented on the Reception Center Housing Assessment (DRC2673) and maintained in the electronic file.

11. The "cell-only" screenings shall be maintained in the electronic file, under the same screen as the security instrument.

12. Once the incarcerated individual is transferred from the reception center, the "cell-only" designation shall not be binding on the parent institution.

L. Intake Procedures for Youthful Incarcerated Individuals

All incarcerated individuals under 18 years of age shall not be placed in housing units in which they will have sight, sound, or physical contact with any adult incarcerated individual using a shared day room or other common space, shower area, or sleeping quarters. In areas outside of housing units, the prison shall either maintain sight and sound separation between the youthful

incarcerated individuals and adult incarcerated individuals or provide direct staff supervision when they have sight, sound, or physical contact.

1. All incarcerated individuals under 18 years of age are to be separated from the population of the institution and only housed with each other.

2. An incarcerated individual under 18 years of age is top priority with initiating the classification process and should be transferred to the youthful inmate unit at CRC or ORW (females) within three business days of their arrival. To accomplish this, the classification paperwork must be completed by the reception coordinator.

3. The reception coordinator shall assign the incarcerated individual a security level and arrange transportation of male youthful incarcerated individuals to CRC. Female youthful incarcerated individuals shall remain at ORW.

M. General Issues

1. Written rules of incarcerated individual conduct shall specify acts prohibited within the institution and penalties that may be imposed for various degrees of violation.

2. Reception incarcerated individuals shall not be assigned to a job and any work performed by a reception incarcerated individual shall be on a no-compensation basis.

3. Reception incarcerated individuals shall not be permitted to receive food or sundry packages.

4. Reception center managing officers shall establish procedures regulating visitation, religious services attendance, access to reading material, and access to mail facilities, commissary and recreational activities for reception incarcerated individuals. Local rules must follow applicable ODRC regulations and policies.

5. An incarcerated individual may select one person, not the victim of current or past crimes, to immediately be marked as "tentatively approved" on their visiting list at the reception center for the sole purpose of placing money on the incarcerated individual's account. The reception center shall place $$$$ in the address field in DOTS Portal – VSL screen to signify financial support. However, in order to be approved for visitation, the visitor must submit an application and be approved in accordance with ODRC Policy 76-VIS-01, Inmate Visitation. Once the visitor has completed the application process, the visiting officer/case manager shall replace the $$$$ with the visitor's current address.

6. DNA shall be collected in accordance with ODRC Policy 52-RCP-05, DNA Sample.

N. Reception Coordinator Procedures

1. All individuals in the reception phase of their incarceration shall be given a temporary security level status of Level 3, which shall remain in effect until the individual is classified and transferred to their parent institution.

2. All incarcerated individuals who were under APA supervision without a revocation proceeding when returned to the institution will be entered as "county jail parolee" inmates. If the individual arrives with an "Order to Hold", hold the individual at reception as "county jail parolee" (8B) in DOTS Portal until they have their violation hearing. These individuals must also be orientated as directed by this policy. These are the only individuals who need to be held at reception for hearings.

3. If the incarcerated individual arrives with a revocation or sanction order, immediately begin the classification process so they can be transferred to a parent institution.

4. Incarcerated individuals that arrive in reception with a last release from Level 4 shall be housed and treated as Level 4 until they can be assessed.

5. No incarcerated individuals shall be classified or transferred to a parent institution without a medical level or mental health level.

O. Adult Parole Authority (APA) Admissions to Warren Correctional Institution (WCI) HUB

1. Intake Procedure

   a. The APA coordinator shall forward the following information the day prior to transport to the CRC Record Office and the WCI transportation coordinator:

      i. Order to hold (DRC3064);
      ii. A recommitment order from an appropriate APA official;
      iii. A judgment entry legally committing the individual to ODRC;
      iv. Blue commitment card;
      v. Documentation of any special circumstances related to the incarcerated individual (e.g., medical concerns, significant injuries, separations, special diet, etc.).

   b. All APA transports through WCI must enter the WCI sally port by 12:00 PM unless previous arrangements have been made. No transport shall be received between 10:30 AM and 11:00 AM.

   c. APA return offenders shall not have braids in their hair when transported.

2. WCI Receiving

   a. WCI sally port officer shall verify returning offenders.

   b. The sally port officer shall notify all concerned that APA is on grounds with returning offenders.

   c. A correctional counselor or shift supervisor shall compete the initial processing to include:
      i. Verify documentation;
      ii. Conduct strip search of offender(s) and place in orange jumpsuit;

iii. Inventory all personal items and document on an Inmate Property Record (DRC2055);
iv. All personal items shall be placed in a bag and labeled with the offender's name and number;
v. Contact Mental Health nurses to complete mental health and medical assessment;
vi. Contact Food Service for noon meal arrangements;
vii. Note any significant injuries, to include photograph, on an Incident Report (DRC1000) and forward to CRC transportation coordinator;
viii. Place the offender in secure holding cell.

3. Mental Health nurses shall complete the following:

   a. Suicide Questionnaire and Medical Notification (DRC5404 or electronic equivalent);
   b. Medical Exam Report (DRC5251 or electronic equivalent);
   c. Initial Medical/Mental Health/Substance Abuse Screening (DRC5170 or electronic equivalent).

4. The officer assigned to Mental Health/Vault shall conduct 15-minute rounds and document in logbook.

5. All return offenders from APA shall be separated from all incarcerated individuals while in holding at WCI. A no contact status shall be strictly enforced by officers assigned to the area.

6. The WCI transportation coordinator shall complete a Transport Authorization/Pass (DRC5055) listing all the return offenders' names and numbers. The completed Transport Authorization/Pass (DRC5055) shall be forwarded to the Sally Port, Control Center, Front Entry Receiving, and Count Office.

7. Copies of all completed forms shall be sent with the CRC transportation officers upon departure from WCI.

8. In the event CRC transportation is unable to pick up returning offenders from WCI on the same day they are received, WCI shall assume the role and transport return offenders to CRC.

Attachments:

Appendix A **Violence Offenses**

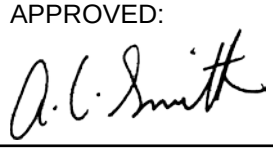
Referenced ODRC Policies:

07-ORD-03 Record Office File
52-RCP-05 DNA Sample
52-RCP-06 Reception Intake Medical Screening
52-RCP-10 Inmate Orientation
53-CLS-04 Level E Placement (ERH)
53-CLS-05 Inmate Separations
61-PRP-02 Inmate Clothing Issue
67-MNH-02 Mental Health Screening and Mental Health Classification
72-REG-01 Institution Religious Services
76-VIS-01 Inmate Visitation
79-ISA-01 Prison Rape Elimination.

Related Department Forms:

Incident Report	DRC1000
Inmate Property Record	DRC2055
Reception Intake Property Record– Receipt and Disposition	DRC2258
Reception Center Housing Assessment	DRC2673
Reception Intake Questionnaire	DRC2720
Order to Hold	DRC3064
SB 201 Notification	DRC3088
Orientation Acknowledgement Checklist	DRC4141
Offender Transitional Release Plan	DRC4443
Health History Form	DRC5031
Transport Authorization/Pass	DRC5055
Initial Medical/Mental Health/Substance Abuse Screening	DRC5170
Medical Exam Report	DRC5251
Intrasystem Transfer and Receiving Health Screening	DRC5255
Suicide Questionnaire and Medical Notification	DRC5404

Ohio | Department of Rehabilitation & Correction

SUBJECT: **Inmate Orientation**	PAGE 1 OF 7 . NUMBER: **52-RCP-10**
RULE/CODE REFERENCE:	SUPERSEDES: 52-RCP-10 dated 02/04/2019
RELATED ACA STANDARDS: 4228, 4281-1, 4284, 4290, 4499; 5-ACI-3C-03, 3D-09, 3D-19, 5A-05, 7D-15; 2-CO-3C-01, 4A-01; 2-CI-1A-1, 2B-1, 3A-1, 4A-9	EFFECTIVE DATE: **January 6, 2020**
	APPROVED: 

I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

II. PURPOSE

The purpose of this policy is to establish standard procedural guidelines for the orientation of inmates to the Ohio Department of Rehabilitation and Correction (ODRC).

III. APPLICABILITY

This policy applies to staff and inmates assigned to parent institutions within the ODRC. Specifically, these policy requirements apply during the inmate's orientation phase immediately following an intra-system transfer from one facility to another within the agency or assignment to a reception center as a parent institution immediately following reception.

IV. DEFINITIONS

Business Day - The days of the week, excluding Saturday, Sunday and any legal holiday.

Institution Orientation - Orientation to be given to any of the aforementioned for the purpose of orientating them to their current institution and its available services and programs.

Limited Privilege Housing (LPH) - Assignment of an inmate to a designated area for the purpose of reducing their privileges, controlling movement, and reducing their access to other inmates. An LPH inmate is considered General Population and shall have access to prison services, although that access can be reasonably limited as part of their privilege reduction. Designated out-of-cell time shall be more than two (2) hours daily.

Restrictive Housing (RH) - Housing that separates an inmate from the general population and restricts them to their cell twenty-two (22) hours or more per day.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (ODRC) to provide that, except in unusual circumstances, orientation for inmates assigned to their parent institution within the ODRC is completed within seven (7) calendar days after admission.

VI. PROCEDURES

A. Initial Intake at Parent Institutions

1. Immediately upon arrival at the facility, each inmate shall be issued a facility orientation handbook and shall sign for receipt of the handbook on an Inmate Orientation Checklist (DRC4141).

2. Institutions that have electronic versions of their handbook available for JPAY devices may direct the inmate to the Kiosk/Tablet to view the handbook instead of issuing a paper copy. However, a paper copy must be available upon demand. Once the inmate has reviewed the electronic version of the handbook, it shall be documented on an Inmate Orientation Checklist (DRC4141)

3. Facility orientation handbooks shall be translated into the inmate's native language, where possible. Staff shall explain the information to inmates where obvious barriers to comprehension exist and document this assistance on the Inmate Orientation Checklist (DRC4141). All facility orientation handbooks shall include, but not be limited to, the following issues/items:

    a. Procedures to access health services;
    b. Guidelines of the medical co-payment program and information explaining the ODRC's use of generic medications;
    c. Procedures to access Mental Health services, to include program availability;
    d. Procedures to access Dental services;
    e. The grievance process and information regarding appropriate supervision according to Administrative Rule 5120-9-04, Appropriate Supervision, Discrimination, and Racial Issues;
    f. Disciplinary procedures to include chargeable offenses and ranges of penalties;
    g. A summary of institution rules, programs and services. Program availability information must be included for at least the following areas: release planning, offender job linkage, recovery services, education (e.g., career-tech, vocational, college opportunities), religious services, library services and commissary;
    h. ADA accommodation process;
    i. Reentry – RMT/RAP process or Ohio Risk Assessment System (ORAS);
    j. Procedures governing visitation to include, but not be limited to, the following:

        i. Facility address/phone numbers, directions to the facility and information about local transportation;
        ii. Days and hours of visitation;
        iii. Approved dress code and identification requirements for visitors;
        iv. Items authorized in the visitation room;

v. Special rules for children;
vi. Authorized items that visitors may send to the inmate;
vii. Special visits.

k. Prison Rape Elimination Act Information (see Appendix A)
l. Mail procedures to include, but not be limited to, information in accordance with Administrative Rules 5120-9-17, Incoming Mail; 5120-9-18, Outgoing Mail; 5120-9-19, Printed Material; and ODRC Policy 75-MAL-01, Inmate Mail;
m. Explanation of the kite communication system and advisement that response time to kites is seven (7) calendar days;
n. Information regarding ODRC Policy to conduct searches of inmate, their property, the physical plant of the institution, vehicles, visitors, employees and other persons, other areas and items as needed to detect, control, and remove contraband from the institution to prevent its entrance into the institution and to provide for its disposition per Administrative Rule 5120-9-55, Contraband;
o. Personal grooming information in accordance with Administrative Rules 5120-9-25, Appearance and Grooming of Male Inmates, and 5120-9-25.1, Appearance and Grooming of Female Inmates;
p. Property limits and guidelines governing the control of personal property and funds belonging to inmates per ODRC Policy 61-PRP-01, Inmate Personal Property;
q. Explanation of the availability of ODRC policies and Administrative Rules in the library as directed by ODRC Policy 58-LIB-01, Comprehensive Library Services;
r. The application process for obtaining a social security card, State of Ohio identification card, birth certificate, and valid driver's license;
s. Parole Board overview which includes the different type of release hearings and reviews, shall include information regarding SB 201 additional term hearings;
t. Information regarding SB 201 reduction recommendations;
u. Information regarding ODRC Policy on the electrical appliance co-pay program per ODRC Policy 61-PRP-03, Electricity Usage Co-payment Program;
v. Information regarding unauthorized group activities (see section VI.C.3.j of this policy);
w. Information on how an inmate may restore their voting rights and how to access Voter's Rights Information through the Reentry Resource Library;
x. If an inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, the inmate shall be offered a follow-up meeting with a medical or mental health practitioner within fourteen (14) days of the intake screening. This may be accomplished by the inmate forwarding a kite to the Medical or Mental Health departments;
y. If an inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, the inmate shall be offered a follow-up meeting with a mental health practitioner within fourteen (14) days of the intake screening. This may be accomplished by the inmate forwarding a kite to the mental health departments.
z. Instructions regarding the designation of next of kin per ODRC Policy 66-ILL-03, Notification of and Communication with Next of Kin – Inmate Illness/Injury.

4. Handbook Distribution Method

All new inmates shall have access to a facility orientation handbook either paper or electronic version upon arrival to their parent institution. Institutions shall establish procedures to ensure an appropriate number of handbooks are maintained to facilitate all inmates having equitable access to them. At all times, enough handbooks shall be available in all housing units (e.g., officer's station) and in the library. This directive includes all areas housing inmates in Restrictive Housing (RH) or Limited Privilege Housing (LPH).

5. Handbook Annual Review Process

The managing officer shall designate a staff member to be responsible for coordinating and/or conducting an annual review of the handbook to ensure all information contained is accurate and properly updated with affected policy revisions/development. At a minimum, the person responsible for this process shall ensure written documentation of the annual review process is maintained for five (5) years. This documentation shall include all original and revised information**,** so it can be determined what handbook information has been revised.

6. Handbook Printing

All institutions are required to have their handbooks printed by the Ohio Penal Industries (OPI) printing shop.

B. Additional Initial Intake Processing Guidelines

1. Upon arrival at the institution, each inmate shall also be informed verbally and in writing about how to access medical and mental health services, informed of the medical co-payment guidelines, and informed verbally and in writing about the grievance process in accordance with ODRC Policy 68-MED-01, Medical Services. Receipt of health care orientation information given to inmates shall be documented in the patient's electronic health record. On the same date of the inmate's arrival, the receipt of all the above listed information shall also be documented on the designated section of the Inmate Orientation Checklist (DRC4141).

2. Each inmate shall also be provided with a verbal explanation and written information regarding sexual misconduct consistent with ODRC Policy 79-ISA-01, Prison Rape Elimination, upon arrival at any facility. Inmates shall also be informed, verbally and in writing, that a sexual abuse or sexual harassment complaint may be submitted at any time; however, a timely complaint is essential to providing services and proper investigation. The grievance procedure is not the administrative process to report allegations of sexual abuse or sexual harassment. However, if an inmate does utilize any grievance process (i.e., informal complaint resolution, notification of grievance, or appeal to the chief inspector) to file a complaint of sexual abuse or sexual harassment, staff shall immediately report it to the institutional investigator for proper handling in accordance with ODRC Policy 79-ISA-02, Prison Sexual Misconduct Reporting, Response,

Investigation and Prevention of Retaliation. On the same date of the inmate's arrival, the receipt of the above listed information shall also be documented on the designated section of the Inmate Orientation Checklist (DRC4141).

3. If an inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, they shall be offered a follow-up meeting with a medical or mental health practitioner within fourteen (14) days of the intake screening. This may be accomplished by the inmate forwarding a kite to the Medical or Mental Health departments.

4. If an inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, they shall be offered a follow-up meeting with a mental health practitioner within fourteen (14) days of the intake screening. This may be accomplished by the inmate forwarding a kite to the Mental Health department.

C. Seven (7) Calendar Day Institution Orientation Program

1. There shall be a formal orientation program in place at all institutions for newly arriving inmates to be orientated to their new surroundings. When a literacy or language problem prevents them from understanding any of the information provided during this period, a staff member or translator shall assist the inmate.

2. The only exception to this directive is short-term, transitional inmates at the Franklin Medical Center (FMC) Zone A, those who are overnight staging for next HUB operations at Lorain Correctional Institution (LorCI), and those that are placed in RH or LPH within five (5) business days of their arrival at an institution. Short-term FMC Zone A shall be orientated on those items required upon arrival as directed by section VI.B.1-2 of this policy and documented in the designated section of the Inmate Orientation Checklist (DRC4141). Those in RH or LPH shall be orientated according to section VI.F of this policy. Inmates who are in overnight staging at LorCI for next HUB movement do not require orientation.

3. This program shall occur within seven (7) calendar days after their arrival at the institution. At a minimum, the inmate shall receive information in the following areas:

   a. A review of the handbook to include all major programs and services within the facility;
   b. Information on suicide awareness and they shall review the Mental Health services information in the handbook;
   c. A suicide awareness video shall be offered to all inmates during orientation at reception and parent institutions within seven (7) calendar days of arrival. For those removed from the routine reception process and transferred into alternative housing (e.g., death row, residential treatment, protective custody, etc.), the suicide awareness video shall be shown on the day of transfer into the alternative housing. This shall be documented on the Inmate Orientation Checklist (DRC4141) in accordance with ODRC Policy 52-RCP-01, Reception Admission Procedures;
   d. Any procedures, rules and regulations unique to the institution (e.g., fire safety and sanitation issues);

e. An overview of programs and services unique to the institution (e.g., correctional industries opportunities);
f. An overview of the Ohio Risk Assessment System (ORAS) and how it shall be utilized to prioritize programming resources;
g. Information on Ohio Revised Code (ORC) section 2921.36, which prohibits drug traffic by offender, visitors, and penalties for all parties;
h. Information on ORC section 2907.03 which prohibits engaging in any sexual act with any individual under the supervision of ODRC and any employee of the ODRC;
i. Information on ODRC Policy 31-SEM-07, Unauthorized Relationships. This policy prohibits any personal or business relationship with any individual under the supervision of ODRC which has not been approved by the appointing authority;
j. Information on the proper handling and safe usage (including personal protective equipment availability) of the chemicals used for cleaning their cells/bed areas;
k. Information regarding unauthorized group activities as prohibited by Rule (17) of Administrative Rule 5120-9-06, Inmate Rules of Conduct. All inmates shall not engage, whether individually or in concert with others, in:
    i. Forming, organizing, promoting, encouraging, recruiting for, or participation in, etc., an unauthorized group;
    ii. Possessing, creating, reproducing, using or circulation, etc., any material related to an unauthorized group;
    iii. Communicating support of association with or involvement in any unauthorized group. The form of communication may be verbal (written or spoken) as through codes, jargon, etc., or non-verbal communication as through hand signs, symbols, displays, drawings, graffiti distinctive clothing, hair styles, colors, ornaments, etc.;
    iv. Participation in criminal activities or disruptive activities such as disturbances, riots, fostering racial or religious hatred, or union activities;
    v. ODRC has zero tolerance for violence and unauthorized group activities;
    vi. Violating institutional rules or directives or state or federal laws;

l. Information to include eligibility requirements on SB 201 Reduction Criteria, Transitional Control, Risk Reduction Sentencing and 80% Judicial Release;
m. Information on the dangers of tattooing and review of Rules 57 and 58 of the Inmate Rules of Conduct.
n. The inmate shall view the PREA education video;
o. All information listed on the designated seven-calendar day section of the Inmate Orientation Checklist (DRC4141).

D. Completion of the institution orientation shall be documented on the Inmate Orientation Checklist (DRC4141), signed and dated by the inmate, and shall be scanned into OnBase.

E. Inmate Housing and Cell Assignments

Unit staff/Count Office shall honor all Mental Health and/or Medical accommodations, or other relevant information when determining the inmate's housing assignment. Such determination shall be made taking into consideration any information relayed as a result of the Mental Health screening conducted per ODRC Policy 67-MNH-02, Mental Health Screening and Mental Health Classification.

F. Orientation for Inmates Placed Directly into Restrictive Housing (RH)

Inmates placed in RH, for any purpose, immediately after arriving at a facility or before they could receive the formal orientation shall receive the same orientation services outlined in this policy. These services must be documented on the Inmate Orientation Checklist (DRC4141) and shall occur within the same timelines as outlined in this policy.

Attachments:

Appendix A Prison Rape Elimination Act Information for Facility Orientation Handbook

Related Department Forms:

Inmate Orientation Checklist DRC4141

APPENDIX A
(52-RCP-10)

Prison Rape Elimination Act Information for Inmate Handbook

PRISON RAPE ELIMINATION ACT (PREA)

It is the policy of the Ohio Department of Rehabilitation and Correction (ODRC) to provide a safe, humane and appropriately secure environment, free from the threat of sexual misconduct for all inmates by maintaining a program of prevention, detection, response, investigation and tracking. ODRC shall maintain a zero tolerance for sexual misconduct in its institutions and in any facilities with which it contracts for the confinement of inmates. Sexual misconduct among inmates and by staff towards inmates is strictly prohibited. All allegations of sexual misconduct and/or sexual harassment shall be administratively and/or criminally investigated.

YOU HAVE THE RIGHT NOT TO BE SEXUALLY ABUSED OR HARASSED.

Incidents or suspicions of sexual abuse, sexual harassment and retaliation may be reported to ANY STAFF member:

- Verbally to ANY STAFF MEMBER
- In writing to ANY STAFF MEMBER
- Operation Support Center (614) 995-3584 (No cost to call from inmate phone)
- Outside Agency Hot Line *89 (No cost to call from inmate phone)
- Inmates in Restrictive Housing may also anonymously report sexual misconduct or retaliation by writing to:

  Division of Quality – Chief Inspector's Office
  Ohio Department of Youth Services
  4545 Fisher Rd., Suite D
  Columbus, Ohio 43228

Inmates shall be given the opportunity to remain anonymous upon request to the outside agency.

A sexual abuse or sexual harassment complaint may be submitted any time; however, a timely complaint is essential to providing services and proper investigation. The inmate grievance procedure is not the administrative process to report allegations of sexual abuse or sexual harassment. However, any inmate grievance (including informal complaint resolution, notification of grievance, and related appeal forms) filed regarding a complaint of sexual abuse or sexual harassment shall immediately be reported to the institution investigator for proper handling in accordance with ODRC Policy 79-ISA-02, Prison Sexual Misconduct Reporting, Response, Investigation, and Prevention of Retaliation.

There will be NO retaliation for reporting incidents of sexual abuse or harassment.

Family and friends may report allegations of sexual abuse, sexual harassment and retaliation on your behalf:

- By calling (614) 995-3584
- By emailing DRC.ReportSexualMisconduct@odrc.state.oh.us

Within seven (7) days of your arrival or transfer to an institution, you will watch an ODRC Prison Rape Elimination Act (PREA) education video. The video will inform you of ODRC's zero tolerance policy against sexual misconduct. The video is in English with a deaf interpreter. It also is closed caption with a Spanish outline at the end of the video. If you need additional assistance understanding anything in the PREA inmate education video or institution inmate handbook, see your unit staff.

PREVENTION/DETECTION

All inmates shall be screened and assessed upon admission to the ODRC and for all subsequent intra-system transfers. All inmates shall be assessed for risk of sexual victimization or abusiveness within seventy-two (72) hours of intake and upon transfer to another institution. These screenings shall be initiated in the PREA Risk Assessment by medical personnel during intake medical assessments and shall be completed by unit management with the seventy-two (72) hour period. No sooner than fifteen (15) days, but no longer than thirty (30) days from the inmate's arrival at any institution, the inmate shall be reassessed regarding their risk of victimization or abusiveness based upon any additional, relevant information received since that last institution's intake screening of the inmate. Unit management shall complete the assessments. As a result of these screenings, inmates shall be assigned a PREA Classification.

The unit management chief/designee shall make appropriate housing assignments based upon PREA Classifications. The information shall be used to assist in housing, bed, work, education and programming assignments. If it is learned an inmate is subject to substantial risk of imminent sexual abuse, staff shall take immediate action to protect the inmate at risk of victimization.

Mental Health Services shall attempt to conduct an evaluation on all known inmate-on-inmate abusers within sixty (60) calendar days of learning of such history and offer treatment when deemed appropriate.

Unless otherwise precluded by Federal, State or local law, medical and mental health practitioners shall be required to report sexual abuse and to inform inmates of the practitioner's duty to report and the limitations of confidentiality at the initiation of services.

OPPOSITE GENDER ANNOUNCEMENTS

All staff members of the opposite gender, whether assigned to the unit or not, shall make the following announcement upon their arrival in a housing unit: "Male/Female in housing unit." If at any time the staff member leaves and returns to the housing unit, the proceeding announcement shall be repeated. The announcement is only required when an opposite gender staff enters a housing unit where there is not already another opposite gender staff member present. If opposite gender staff remain in the unit during shift change, the announcement shall always be made at the beginning of each shift.

All inmate health service departments, Frazier Health Center and Franklin Medical Center Zone A shall only announce once at the beginning of each shift. Opposite gender medical staff are in these units at all times.

Once the facility installs the PREA buzzer at the entrance of each housing unit, it shall replace the verbal announcement with a unique, audible sound which shall be heard at the farthest point within the housing unit. The only exceptions will be from 10:00 pm to 8:00 am, at which time the verbal announcement shall be made instead of the use of the PREA buzzer.

SELF-PROTECTION

Be aware of situations that make you feel uncomfortable. Trust your instincts. If it feels wrong, LEAVE!

Don't let your manners get in the way of keeping yourself safe. Don't be afraid to say "NO" or "STOP IT NOW".

Many sexual abusers choose victims who look like they won't fight back or are emotionally weak. WALK AND STAND WITH CONFIDENCE.

Avoid talking about sex and casual nudity. These things may be considered a come on or make another inmate believe you have an interest in a sexual relationship.

Placing yourself in debt to another inmate may lead to the expectation of repaying the debt with sexual favors. Do not accept commissary items or other gifts from other inmates.

Avoid secluded areas. Position yourself in plain view of staff members. If you are being pressured for sex, report it to a staff member IMMEDIATELY.

RESPONSE

Upon report of an allegation of inmate sexual abuse, staff shall:

1. Separate the alleged victim and abuser.
2. Request the alleged victim not take any actions that could destroy physical evidence.
3. Take appropriate steps to preserve, protect and collect any evidence.

The institution shall make available for the victim a rape crisis center victim advocate if available or a qualified institution victim support person.

TREATMENT

Medical Services Responsibilities

Follow appropriate protocol, assuring appropriate examination, documentation, transport to the local emergency department, testing for sexually transmitted diseases, counseling, prophylactic treatment, follow-up and referral for mental health evaluation.

Mental Health Responsibilities

Offenders referred to mental health by medical services following an allegation of sexual abuse shall be seen by an independently licensed mental health professional who shall complete further screenings or assessments consistent with ODRC policy.

The victim shall be offered medical and mental health evaluations and treatment as appropriate. Treatment shall be provided to the victim at no charge.

The victim shall be given access to victim advocates for emotional support, if needed, by providing them with mailing addresses and telephone numbers, including toll-free hotline numbers of Local, State or National victim advocacy or rape crisis organizations. This information shall be provided to the unit staff for communication to the inmates. The telephone calls to outside support services are not confidential.

The institution shall protect all inmates and staff who report sexual misconduct or cooperate with sexual misconduct investigations from retaliation by other inmates or staff. Emotional support services shall be offered to inmates or staff who fear retaliation for reporting sexual misconduct or for cooperating with investigations.

MEDICAL AND MENTAL HEALTH FOLLOW-UP

If the assessment indicates the inmate is at risk or has experienced prior sexual victimization, whether it occurred in an institution setting or in the community, staff shall offer a follow-up meeting with a medical or mental health practitioner with fourteen (14) calendar days of the intake screening. This may be accomplished by the inmate requesting the service at the time of the assessment or by forwarding a kite to the medical or mental health departments.

If the assessment indicates the inmate is at risk or had previously perpetrated sexual abuse, whether it occurred in an institution setting or in the community, staff shall offer a follow-up meeting with a mental health practitioner within fourteen (14) calendar days of the intake screening. This can be accomplished by the inmate requesting the service at the time of the assessment or by forwarding a kite to the mental health departments.

INVESTIGATIONS

All reports of sexual misconduct and retaliation shall be investigated and the findings documented in writing.

No institution shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

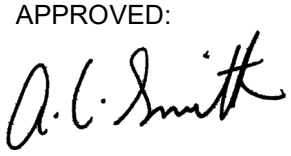
The institution investigator shall monitor all cases of retaliation.

A final decision on all allegations of sexual misconduct shall be issued by the institution investigator within ninety (90) calendar days of the initial filing.

If ninety (90) calendar days is not sufficient to make an appropriate decision, the institution investigator may extend the decision up to seventy (70) calendar days. The inmate shall be notified in writing of such extension and provide a date by which a decision shall be made.

Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an institution, the institution investigator shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated or unfounded.

Ohio | Department of Rehabilitation & Correction

SUBJECT: **Additional Term Hearing**	PAGE 1 OF 7 . NUMBER: **105-PBD-15**
RULE/CODE REFERENCE: ORC 2967.271, 5120.01; OAC 5120-9-06	SUPERSEDES: **New**
RELATED ACA STANDARDS:	EFFECTIVE DATE: **March 15, 2021**
	APPROVED: 

I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

II. PURPOSE

The purpose of this policy is to establish a standard procedure for the Ohio Department of Rehabilitation and Correction (ODRC) to carry out its statutory duties efficiently and consistently concerning the Additional Term Hearing Process for persons sentenced under Senate Bill 201 (132nd Ohio General Assembly).

III. APPLICABILITY

This policy applies to all employees of the ODRC. This policy also applies to incarcerated adults sentenced pursuant to the provisions of SB201.

IV. DEFINITIONS

The definitions for the below listed terms can be found at the top of the ODRC policies page on the ODRC Intranet at the following:

Definitions Link

- **Additional Term Hearing**
- **Auto Referral Offenses**
- **Senate Bill 201 (SB201)**
- **Tier 1 Rule Violations**
- **Tier 2 Rule Violations**
- **Tier 3 Rule Violations**

V. POLICY

Pursuant to the authority granted to ODRC under ORC 2967.271, it is the policy of ODRC to establish an Additional Term Hearing process for conducting hearings to determine whether the presumption of release at the expiration of an incarcerated adult's minimum term is rebutted, and if so, to maintain incarceration of an incarcerated adult for an additional period of time, up to the maximum term. Incarcerated adults sentenced under ORC 2967.271 may be subject to an Additional Term Hearing following a finding of guilt of certain Inmate Rules of Conduct by the Rules Infraction Board (RIB) and affirmance of that finding after completion of any RIB appeals or following a recommendation from the Annual Security Review Team.

VI. PROCEDURES

The following procedures may be used more than once during an incarcerated adult's incarceration until the expiration of the maximum term.

A. Notification to Non-Life Felony Indefinite Prison Term Incarcerated Adults

During the reception process, the institution will make available a copy of the Non-Life Felony Indefinite Prison Term Notification (DRC3088) which shall include information regarding the possibility of reduction of the minimum term of incarceration for exceptional conduct or adjustment to incarceration, and information concerning the possibility of Additional Term Hearings to determine rebuttal of presumptive release at the minimum term.

B. Identification and Verification of SB201 Incarcerated Adults and Reporting Conduct

1. Upon a finding of guilt for violations of the Inmate Rules of Conduct by the RIB, the RIB chair will verify that the individual is serving a non-life felony indefinite sentence.

2. If the offense of which the individual is found guilty is a Tier 1 or Tier 2 Rule Violation, the RIB chair shall make an electronic referral of the disposition to the Parole Board on the SB201 Referral for Additional Term Hearing Review (DRC3196).

3. If an incarcerated adult serving a non-life felony indefinite sentence violates any of the Inmate Rules of Conduct less than sixty (60) days prior to the expiration of the individual's current sentence, then the referral of the disposition to the Parole Board will be expedited by the managing officer's administrative assistance (correction warden assistant 2). Referrals shall be made by routing the SB201 Referral for Additional Term Hearing Review (DRC3196) to the ODRC SB201 Additional Term Hearing (DRC.SB201AdditionalTermHearing@odrc.state.oh.us).

C. Annual Security Review Team

1. The Annual Security Review Team may use discretion to refer a case to the Parole Board for a possible Additional Term Hearing based upon concerns regarding any of the following:

   a. The individual's overall behavior demonstrates a poor adjustment to incarceration,

b. The individual has been involved in the conveyance of contraband and was not prosecuted,
c. The individual is an active or disruptive member of a security threat group (STG),
d. The individual has been found guilty of any STG-related offense,
e. The individual is currently classified at Security Level 3 or higher,
f. The individual has more than one (1) conduct report for refusal to attend mandatory programming (i.e., mandatory education or mandatory sex offender programming),
g. The individual's assessment from the Ohio Risk Assessment System (ORAS), if available, indicates they are moderate or high risk, or
h. The individual has been found guilty of a Tier 3 Rule Violation.

2. If the Annual Security Review Team refers an individual to the Parole Board, the Parole Board chair/designee shall review the request and determine if a hearing is warranted. If the Parole Board chair/designee determines that a hearing is warranted, then an Additional Term hearing shall be scheduled by the Parole Board chair/designee. The Parole Board chair's/designee's decision shall be documented on the SB201 Referral for Additional Term Hearing Review (DRC3196). Referrals shall be made by routing the SB201 Referral for Additional Term Hearing Review (DRC3196) to the ODRC SB201 Additional Term Hearing (DRC.SB201AdditionalTermHearing@odrc.state.oh.us).

D. Determination of Available Additional Time

For each non-life felony indefinite sentence that the individual is serving, the Bureau of Sentence Computation (BOSC) shall determine whether the maximum term has been exhausted, and if not, the additional time available for each case. Additional time shall be determined pursuant to ORC 2967.271, Presumptions related to sentence to non-life felony indefinite prison term.

E. Parole Board

1. The Parole Board chair/designee shall review all referrals, confirm that the individual is serving a non-life felony indefinite sentence, and determine whether an Additional Term Hearing is warranted based upon the information presented in the SB201 Referral for Additional Term Hearing Review (DRC3196). The review decision shall be documented, and if warranted, a hearing will be scheduled. The Parole Board chair/designee shall determine the amount of available additional time that may potentially be imposed. If there is no available additional time, then no further action is required.

2. After verifying that additional time is available to be imposed, a hearing shall be scheduled as follows:

a. Tier 1 Rule Violation Referral – If the individual has been found guilty of a Tier 1 Rule Violation, then a hearing will be scheduled approximately ninety (90) calendar days after the determination that a hearing is warranted.

b. Other Referrals – If the individual has been referred for an Additional Term Hearing for any reason other than a Tier 1 Rule Violation, the hearing schedule will depend on the time remaining to be served on the current sentence.

i. If more than 270 calendar days remain on the current sentence, the hearing will be scheduled no earlier than the mid-point of the current sentence and no later than 270 calendar days prior to the expiration of the current sentence.

ii. If less than 270 calendar days remain on the current sentence, the hearing will be scheduled within approximately ninety (90) calendar days if sufficient time remains.

c. Before any hearing, notices must be provided as mandated by Ohio law and outlined in ODRC Policy 105-PBD-13, Statutory Notice.

d. Designated Parole Board staff shall provide written notice to the individual of the scheduled hearing (DRC3210) at least thirty (30) calendar days prior to the month in which the hearing is scheduled unless the Parole Board chair/designee gives prior approval for notice to be provided less than thirty (30) calendar days prior to that month.

e. A hearing may be delayed for good cause, including without limitation a determination that the conduct forming the basis of the rule violation has been referred to law enforcement for prosecution as a criminal offense or is the basis for pending criminal charges.

3. Written input received from victims shall be uploaded to OnBase by designated Office of Victim Services staff and/or Parole Board staff.

4. Written input received from any other stakeholders (e.g., from a judge or prosecutor) shall be uploaded to OnBase by designated Parole Board staff.

F. Conducting an Additional Term Hearing

1. Parole Board staff shall not participate in any stage of the hearing process for a particular case when a conflict of interest exists. When there is a potential conflict of interest, the Parole Board chair/designee shall be informed, and the Parole Board chair/designee will decide as to the validity of the conflict of interest and how to proceed.

2. All Additional Term Hearings shall be conducted at the individual's institution in a setting which shall be private, secure, comfortable, and dignified.

3. Before the individual is brought into the hearing room, or prior to the initiation of the video conference hearing, the Parole Board hearing officer/designee conducting the Additional Term Hearing shall review all relevant RIB documents to which they have access and any other information including but not limited to the Annual Security Review Team referral, written input received pursuant to statutory notification, and the result of any specified risk instrument when available, along with the result of any supplemental risk tool specific to the particular type of offense or incarcerated adult. The Parole Board hearing officer cannot consider any conduct that was a violation of law that was prosecuted.

4. The hearing shall be conducted in person or via video conference on the scheduled hearing date. If the hearing cannot be held on the scheduled hearing date, then after the decision to reschedule has been finalized and processed to the Parole Board minutes, the individual will be notified in writing of the new scheduled hearing date using the Additional Term Hearing and Minutes (DRC3272)

5. Attendance at the Additional Term Hearing is limited to Parole Board staff, the incarcerated adult, and if required, special needs facilitators (i.e., an interpreter, translator, or other persons authorized by the Parole Board chair/designee to observe the hearing process). When deemed appropriate or necessary by the Parole Board staff, mental health staff or security personnel may also be present in the hearing room. The sole purpose of the presence of mental health staff shall be to assist an incarcerated adult with understanding the hearing process when the incarcerated adult has such diminished capacity that it renders the individual incapable or substantially unable to understand the process without assistance.

6. Each institutional hearing or interview shall be conducted with the incarcerated adult present in person or via video conference unless the Parole Board chair/designee determines, for good cause shown, that attendance by the incarcerated adult is inappropriate or unwarranted. The reasons for conducting a hearing without the incarcerated adult's attendance shall be documented in the Additional Term Hearing Decision and Minutes (DRC3272). The first instance of an incarcerated adult's refusal to appear does not by itself constitute good cause to conduct a hearing without the incarcerated adult's attendance. Incarcerated adults refusing to appear at an institutional hearing cannot receive an additional term based solely on that refusal. For the first such refusal to appear, the hearing shall be rescheduled to approximately ninety (90) calendar days later. Unit staff shall interview the individual to determine the reasons for the refusal and attempt to resolve the problem. A subsequent refusal to appear may be considered good cause to hold the re-scheduled hearing without the individual present.

   a. If there is not enough time remaining prior to the incarcerated adult's scheduled release date to allow for a ninety (90) day continuance, the hearing will be set for an appropriate date to allow a decision to be made prior to the existing scheduled release date.

7. The Parole Board hearing officer/designee is responsible for completing all required paper or electronic forms. The Parole Board hearing officer should use the Additional Term Hearing Decision and Minutes (DRC3272) as a guide to conducting the hearing and ensuring that all relevant information is reviewed during the Additional Term Hearing. The Parole Board hearing officer should inform the incarcerated adult of the reason(s) for holding the Additional Term Hearing and the potential consequence of a finding that the presumption of release has been rebutted.

8. During the hearing, using the Additional Term Hearing Decision and Minutes (DRC3272), the Parole Board hearing officer should inform the incarcerated adult that they may provide mitigating information, and should briefly explain what information may be mitigating. The individual shall be given an opportunity to provide any mitigating information.

9. After the hearing has concluded, the Parole Board hearing officer shall determine whether the presumption of release has been rebutted, and whether to maintain incarceration for an additional period of time.

10. The Parole Board hearing officer may determine that the presumption has been rebutted only if the Parole Board hearing officer determines that one or more of the following applies:

    a. Regardless of the security level in which the incarcerated adult is classified at the time of the hearing, both of the following apply:

        i. During the individual's incarceration, the individual committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff or member of the incarcerated population of a state correctional institution, or physical harm or the threat of physical harm to the staff or member of the incarcerated population of a state correctional institution, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the individual has not been rehabilitated; and

        ii. The individual's behavior while incarcerated, including but not limited to the infractions and violations described in the paragraph above, demonstrate that the individual continues to pose a threat to society.

    b. Regardless of the security level in which the incarcerated adult is classified at the time of the hearing, the individual has been placed in extended restrictive housing at any time within the year preceding the date of the hearing.

    c. At the time of the hearing, the individual is classified by the department at security level 3 or higher.

11. If the Parole Board hearing officer determines that an additional term is warranted, they will verify the amount of remaining time available as identified in the SENTN screen of DOTS Portal and issue a reasonable additional term of specific days, in day-long increments, of up to 365 days. If the Parole Board hearing officer determines that a term of more than 365 additional days is warranted, the Parole Board hearing officer shall staff the matter with a Chief Hearing Officer for review and approval. The Parole Board hearing officer shall utilize the Additional Term Hearing Grid (DRC3106) when determining the amount of additional time to impose.

12. The Parole Board hearing officer will review the Additional Term Hearing Decision and Minutes (DRC3272) with the incarcerated adult and inform the individual whether the presumption of release at the minimum has been rebutted, and if so, the additional period of incarceration that will be imposed.

13. The decision to impose an additional period of incarceration shall be noted on the Additional Term Hearing Decision and Minutes (DRC3272). Decisions rendered by the Parole Board hearing officer/designee shall be processed and noted in the Parole Board

Minutes within five (5) business days. Parole Board Minutes are considered public record after they are certified by the Parole Board chair.

14. A completed copy of the Additional Term Hearing Decision and Minutes (DRC3272) shall be provided to the incarcerated adult after the decision has been finalized and processed to the Parole Board Minutes.

15. The decision is final and non-appealable. The incarcerated adult shall be notified that the decision is final and non-appealable and shall be notified that future Additional Term Hearings may be held as long as they remain incarcerated and until the expiration of their maximum term.

G. Application of Additional Time by the Bureau of Sentence Computation

1. Once a decision is rendered, the hearing officer shall provide a copy of the Additional Term Hearing Decision and Minutes (DRC3272) to the BOSC Parole Board Section.

2. BOSC shall verify that the individual's non-life felony indefinite maximum prison term allows for application of an additional period of incarceration. If there is sufficient time remaining, BOSC shall apply the additional period noted on the Additional Term Hearing Decision and Minutes (DRC3272) and determine the new expiration date of the incarcerated adult's minimum term. If there is not sufficient time remaining to be served, BOSC shall immediately notify the Parole Board hearing officer/designee.

3. BOSC shall notify the unit management chief at the incarcerated adult's institution, the ODRC Notifications (drc.notifications@odrc.state.oh.us), and the Office of Victim Services of the additional period imposed and the new expected release date.

4. BOSC shall notify the incarcerated adult of the new expected release date.

Referenced ODRC Policies

105-PBD-13 Statutory Notice

Referenced Forms:

Non-Life Felony Indefinite Prison Term Notification Form	DRC3088
Additional Term Hearing Grid	DRC3106
SB201 Referral for Additional Term Hearing Review	DRC3196
Notice to Incarcerated Adult of Additional Term Hearing	DRC3210
Additional Term Hearing Decision and Minutes	DRC3272

OAC Ann. 5120:1-1-07

This document is current through updates effective July 1, 2022.

5120:1-1-07. Procedure for release on parole and shock parole; factors that shall be considered in a release hearing.

(A) An inmate may be released on or about the date of his eligibility for release, unless the parole board, acting pursuant to rule 5120:1-1-10 of the Administrative Code, determines that he should not be released on such date for one or more of the following reasons:

(1) There is substantial reason to believe that the inmate will engage in further criminal conduct, or that the inmate will not conform to such conditions of release as may be established under rule 5120:1-1-12 of the Administrative Code;

(2) There is substantial reason to believe that as the unique factors of the offense of conviction significantly outweigh the inmate's rehabilitative efforts, the release of the inmate into society would create undue risk to public safety and/or would not further the interest of justice nor be consistent with the welfare and security of society;

(3) There is substantial reason to believe that due to serious infractions of rule 5120-9-06 of the Administrative Code, the release of the inmate would not act as a deterrent to the inmate or to other institutionalized inmates from violating institutional rules and regulations;

(4) There is need for additional information upon which to make a release decision.

(B) Excluding documents related to the filing of a grievance under rule 5120-9-31 of the Administrative Code, in considering the release of the inmate, the parole board shall consider any relevant information concerning the inmate as may reasonably be available, including the following:

(1) The inmate's risk to reoffend as measured by the applicable risk assessment tool as set forth in division (A) of section 5120.114 of the Revised Code.

(2) The inmate's criminal history and community supervision history, including but not limited to, the unique factors of offenses of conviction, whether the inmate's criminal history demonstrates a pattern of increasing severity or frequency, and the inmate's success or failure while on any form of community supervision. In evaluating an inmate's criminal history and supervision history, the board shall consider:

(a) Any official report of the inmate's prior criminal record, including a report or record of earlier probation or parole;

(b) Any presentence or postsentence report;

(c) The presence of outstanding detainers against the inmate;

(3) The inmate's ability to control the inmate's behavior, and the degree to which the inmate demonstrates impulsivity in the prison or in the community. In evaluating an inmate's ability to control the inmate's behavior, the board will consider:

(a) Any reports of physical, mental or psychiatric examination or the inmate;

(b) Any reports prepared by any department of rehabilitation and correction staff member relating to the inmate's personality and social history.

(c) Any reports or information related to the inmate's substance abuse history.

(4) The inmate's institutional programming, including but not limited to, whether the inmate has successfully completed programming consistent with the inmate's assessed needs and risk to reoffend.

(5) The inmate's institutional behavior, particularly any demonstrated inability to conform to institutional rules and regulations, which is predictive of an inmate's risk to reoffend in the community. In evaluating an inmate's institutional behavior, the board will consider the inmate's security level and any reports generated by institutional staff, including conduct reports, that reflect upon the inmate's institutional adjustment.

(6) Any recommendations regarding the inmate's release made at the time of sentencing or any time thereafter by the sentencing judge, presiding judge, prosecuting attorney, and any information received in response to statutory notice provided prior to the hearing, including comments made on current sentencing ranges.

(7) Any communications from a victim or victim's representative;

(8) The degree and substance of community support or opposition to release;

(9) The recommendation of the inmate's defense counsel, including comments made on current sentencing ranges;

(10) Written or oral statements by the inmate, other than grievances filed under rule 5120-9-31 of the Administrative Code.

(11) The inmate's ability, readiness, and motivation to assume obligations and undertake responsibilities, as well as the inmate's own goals and needs and the adequacy of the inmate's reentry plan or prospects on release, to include:

(a) The inmate's employment history and his occupational skills;

(b) The inmate's education, vocational training, and other training

(c) The physical and mental health of the inmate as they reflect upon the inmate's ability to perform his plan of release and comply with the conditions of release;

(d) The inmate's family situation and other support system, including:

(i) The inmate's family status, including whether his relatives intend to support his or her plan for release;

(ii) Whether he or she has other pro-social associations in the community to which the inmate plans to be released;

(iii) The availability of adequate housing;

(iv) The availability of community resources to assist the inmate;

(12) The age of the inmate at the time of the offense and the diminished culpability of youth, to include: immaturity and failure to appreciate risks and consequences, where applicable.

(13) The family and home environment of the inmate at the time of the offense.

(14) The degree to which the inmate demonstrates that the inmate has changed during the term of incarceration, which includes, but is not limited to, consideration of the inmate's level of motivation to successfully reenter society and whether the inmate demonstrates an understanding of the inmate's risk factors and crime cycle, and any subsequent growth or increase in maturity during imprisonment.

(15) The following mitigating factors will be considered by the board for inmates whose parole eligibility is determined under section 2967.132 of the Revised Code:

(a) The chronological age of the inmate at the time of the offense and that age's hallmark features, including intellectual capacity, immaturity, impetuosity, and a failure to appreciate risks and consequences.

(b) The family and home environment of the inmate at the time of the offense, the inmate's inability to control the inmate's surroundings, a history of trauma regarding the inmate, and the inmate's school and special education history.

(c) The circumstances of the offense, including the extent of the inmate's participation in the conduct and the way familial and peer pressures may have impacted the inmate's conduct.

(d) Whether the inmate might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth such as the inmate's inability to deal with police officers and prosecutors during the inmate's interrogation or possible plea agreement, or the inmate's inability to assist the inmate's own attorney.

(16) Any other factors which the board determines to be relevant.

(C) The consideration of any single factor, or any group of factors, shall not create a presumption of release on parole, or the presumption of continued incarceration. The parole decision need not expressly address any of the foregoing factors.

Statutory Authority

Effective:

7/29/2021.

Five Year Review (FYR) Dates:

1/15/2025.

Promulgated Under:

111.15.

Statutory Authority:

5120.01, 5149.02.

Rule Amplifies:

5120.01, 5149.02, 2967.03, 2967.13, 2967.132:

Prior Effective Dates:

10/15/1975, 7/18/1997, 9/5/2003, 12/17/2006, 8/6/2007, 4/15/2010, 10/23/2020.

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