



# Office of the Ohio Public Defender

*Timothy Young, State Public Defender*

## **JUDICIAL RELEASE PACKET**

### **I. ELIGIBILITY**

**This packet is designed for an inmate filing his or her own motion for judicial release. You will not need the packet if you already have an attorney. This packet is intended only as an introduction to the judicial release process. More detailed information can be obtained by reading Revised Code 2929.20 in the law library.**

Judicial Release is a form of early release granted by your judge. The 10 year sentence cap under prior law has been eliminated. If otherwise eligible you can file for Judicial Release even if your total sentence, including any mandatory time, exceeds 10 years.

You are not eligible if you are serving only a mandatory sentence. You must be serving at least one non-mandatory sentence. However, you are not eligible during any period you are serving a mandatory sentence.

Once granted, any time you have remaining on your sentence becomes suspended time, and you will be given 1 to 5 years of community control (local supervision). If you complete the entire 1 to 5 years successfully, then your suspended time disappears and you will not have any further postrelease control (state supervision).

If you violate the terms of your community control, the court could re-impose the remaining portion of your sentence. If so, you will be facing further postrelease control (state supervision) once you complete your prison sentence.

If you need assistance in filling out the forms, you can kite the law library to receive assistance from an inmate clerk. Remember, however, inmate clerks are not affiliated with the Office of the Ohio Public Defender. While in the library, review the local rules for your county to find out how many copies you will need and where they should be sent. Mail the original to the clerk and a copy to the prosecutor. These addresses are available on the front of your "times and crimes" sheet.

- If your judicial release is granted, you will meet with the probation department from your county to determine the details of your supervision, such as where you will live, and if you will be required to participate in programs as a condition of probation. You will be required to serve up to 5 years on a community control sanction.
- IF YOU DO NOT WANT TIME ON COMMUNITY CONTROL, DO NOT FILE FOR JUDICIAL RELEASE.

The way to apply for judicial release is by filing a motion. It is always better if you can go through a lawyer to file any motions with the court. The court is not required to appoint a lawyer to file your judicial release motion. You can write to your original attorney to ask if he or she will file the motion. If you need your attorney's address, legal directories are available in the law library. If you don't remember your lawyer's name, you will need to write to the clerk of court in your county of conviction.

If your original attorney will not file your judicial release motion, and you do not have the money to hire an attorney, you may file the motion on your own behalf. The Ohio Public Defender's Prison Legal Services Section does not have the resources to prepare or file judicial release motions. However, this packet contains instructions and forms which can be used to prepare and file your own motion.

## **II. PREPARING THE MOTION**

At the top of the front page of the motion, you will find the caption that identifies your case. If you do not have access to a typewriter, neatly fill in the blanks with the information pertaining to your case **in pen**. Your case number can be found on the second page of your legal packet under the heading "Docket Number."

### **A. MEMORANDUM**

The most important part of the motion is the Memorandum, where you explain to the judge why you believe that early release is appropriate in your case. When you begin to prepare your memorandum, you should write it out first on a separate piece of paper. **Take your time**. Read over what you have written before you actually fill out the form.

Do not begin to fill out the packet until you first spend some time thinking about what past behavior brought you into prison. Tell the judge what you have learned from the experience of coming to prison, as well as any institutional programs you have completed. If there are reasons you have been unable to do programs, explain.

You will need to tell the court specifically what you plan to do to break the cycle of criminal behavior in your life. Your plan can include inpatient or outpatient treatment, a support network, as well as avoiding negative places and people. Tell

the court if you have a place to live, if you have employment or a source of income available, as well as any other resources you have available in the community, such as a supportive family.

The judicial release motion is **not** the place to argue that you are innocent, or that someone else is responsible for your crime. Write in your own words rather than in fancy legal terminology. The judge will be more impressed with your sincerity than with an attempt to sound like a lawyer.

Explain to the court (a) that a sanction other than a prison term would adequately punish you and protect the public from future criminal violations because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism; and (b) that a sanction other than a prison term would not demean the seriousness of the offense. R.C. 2929.20(J)(1)(a)-(b).

The following are examples of the types of information you may wish to include in your Memorandum. Of course, **you should only include information that is truthful and relevant to *your* case.**

- You did not cause or threaten harm to any person or property.
- You did not intend harm to any person or property.
- Your offense was the result of circumstances which are unlikely to recur.
- You have no prior offenses or criminal history.
- You led a law-abiding life for a substantial period of time before committing the offense.
- You are not likely to commit another offense.
- You will make restitution for injury, damage or loss.
- Imprisonment is an undue hardship on you and your family.
- You have demonstrated genuine remorse.

You may also wish to attach copies of any certificates you have earned in the institution.

## **B. CERTIFICATE OF SERVICE**

The Certificate of Service is the last part of the judicial release motion. This is simply your promise to the court that you have mailed a copy of the motion to the prosecutor's office. While the court has the final say, it will probably not rule on your motion until it hears the prosecutor's recommendation.

### **III. FILING THE MOTION**

#### **A. WHEN CAN YOU FILE?**

- If your total non-mandatory sentence is **less than two years**, your motion may be filed at any time after you were delivered to the reception center. If your sentence includes **mandatory time**, your motion may be filed at any time after the expiration of all mandatory terms.
- If your total non-mandatory sentence is **two years or more, but less than five years**, your motion may be filed after you have served 180 days **in prison**. If your sentence includes **mandatory time**, your motion may be filed not earlier than **180 days after** you have served the mandatory portion of your sentence.
- If your total non-mandatory sentence is **exactly five years**, your motion may be filed after you have served **four years of combined jail and prison time**. If your sentence includes **mandatory time**, your motion may be filed **four years after** you have served the mandatory portion of your sentence.
- If your total non-mandatory sentence is **more than five years, but ten years or less**, your motion may be filed after you have served **five years of combined jail and prison time**. If your sentence includes **mandatory time**, your motion may be filed **five years after** you have served the mandatory portion of your sentence.
- If your total non-mandatory sentence is **greater than ten years**, you may file the motion not earlier than the later of (1) the date on which you have served one-half of your “stated prison term” or (2) five years after you have served any **mandatory portion** of your sentence. A “stated prison term” means the combination of all mandatory and non-mandatory prison terms imposed by the sentencing court. See R.C. 2929.01(FF).

File the motion in the trial court. The court does not have to appoint an attorney to file your judicial release motion. Find out if your original attorney is willing to file your motion by writing to him. If you don't have an attorney to file your judicial release motion, you may use the pro-se form attached to this packet or prepare your own.

**Determining eligibility and the appropriate time for filing a motion for judicial release is complex. The above rules do not cover all possible sentences, nor does our explanation include a list of those offenses for which judicial release is precluded. If you are in doubt about your eligibility, read the judicial release statute (R.C. 2929.20), or write to your attorney. You may also review the statute or statutes under which you are convicted, as those statutes may contain language disqualifying you from eligibility for judicial release.**

## **B. HOW TO FILE**

Each county has its own set of rules regarding how many copies of a document are required to be sent to the court. If you are filing the motion yourself, you should go to the law library to read the local rules for your county of conviction. You will need to go through your case manager or your sergeant to have the copies made.

**Do not send the motion directly to your judge.**

**Do not send it to the Office of the Ohio Public Defender.**

You will need to send the original and at least one copy to the **clerk of courts** for your county of conviction, whose address can be found at the bottom left corner on the front page of your legal packet. You should send the clerk a self-addressed stamped envelope and ask that a date-stamped copy of the filed motion be returned to you. You will also need to mail one copy of your motion to the prosecutor's office for your county, whose address you will find in the bottom right-hand corner of the front page of your legal packet.

## **C. THE COURT'S DECISION**

- The court may deny your motion without a hearing.
- “Denied”, “Dismissed” and “Overruled” all mean “No”.

**If the court denies your motion for judicial release without holding a hearing:**

- Denied without prejudice. If the court's entry states that your motion was denied “without prejudice,” or if the entry does not mention “prejudice,” the court may consider a subsequent motion for judicial release.
- Denied with prejudice. If the court's entry states that your motion was denied, “with prejudice,” then the court may not consider a subsequent motion for judicial release. However, the court may still grant a judicial release on its own motion.
- Revised Code §2929.20 does not specify any time limits for filing a subsequent motion for judicial release.

**The court may decide to hold a hearing with respect to your motion:**

- The court cannot grant a motion for judicial release without holding a hearing.
- The hearing must be held within 60 days of the date on which a motion is filed; however, the court may delay the hearing for up to an additional 180 days.
- If a hearing is held, you will attend only if the court orders it.
- If your motion for judicial release is denied following a hearing, the court cannot consider a subsequent judicial release motion.
- The court may hold only one hearing for any eligible offender.

If the court grants judicial release, you will be on probation for 1, 2, 3, 4, or 5 years. None of the time you spend on probation will count toward your sentence. If you violate your probation, you may be returned to prison to serve the remainder of your sentence.

Good Luck!

End

REVISED 04-09-18

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_  
(YOUR COUNTY OF CONVICTION) COUNTY, OHIO

STATE OF OHIO, :  
 :  
 Plaintiff, :  
 :  
 vs. : Case No. \_\_\_\_\_  
 : (DOCKET #)  
 :  
 \_\_\_\_\_, :  
 (YOUR NAME) :  
 :  
 Defendant. :

**MOTION FOR JUDICIAL RELEASE  
(HEARING REQUESTED)**

Defendant is incarcerated at the \_\_\_\_\_. Defendant was delivered to the  
prison system on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and is now eligible for Judicial Release  
pursuant to R.C. §2929.20.  
(CURRENT PRISON)  
(DATE YOU ENTERED PRISON)

For the reasons set forth in the attached memorandum, Defendant respectfully moves  
this Court for an order granting Defendant Judicial Release subject to appropriate community  
control sanctions.

Respectfully submitted,

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

**MEMORANDUM IN SUPPORT**

Defendant respectfully submits that a sanction other than a prison term would adequately punish and protect the public from future criminal violations by Defendant because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism and that a sanction other than a prison term would not demean the seriousness of the offense. R.C. 2929.20(J)(1). In support of the foregoing motion, Defendant offers the following reasons in favor of being granted Judicial Release.

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For the foregoing reasons, Defendant hereby respectfully requests:

- 1. that this Court order a hearing be held on this motion, pursuant to R.C. §2929.20(D); and,
- 2. that this Court issue an order compelling Defendant's attendance at the hearing; pursuant to R.C. §2929.20(H); and,
- 3. that Judicial Release be granted, subject to appropriate community control sanctions.

Respectfully submitted,

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Motion for Judicial Release was forwarded by regular U.S. Mail this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ to the office of \_\_\_\_\_, the \_\_\_\_\_ County Prosecutor, at \_\_\_\_\_.

(DATE YOU ARE PLACING MOTION IN MAIL)

(YOUR COUNTY OF CONVICTION)

(PROSECUTOR'S ADDRESS FOR YOUR COUNTY OF CONVICTION)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

DEFENDANT-PETITIONER, PRO SE