



Office of the Ohio Public Defender

Timothy Young, State Public Defender

LEGAL PACKET

Si necesita documentos legales en español, por favor envíe un “kite” al Defensor Público con “Spanish Packet” escrito en la parte trasera.

Office of the Ohio Public Defender Prison Legal Services

This legal packet was prepared for you by the Office of the Ohio Public Defender (OPD). This packet is a guide, which summarizes the law. Laws are often complicated and contain exceptions. Therefore, please be aware that your case may be an exception to the summaries provided.

The OPD Prison Legal Services Section has attorneys at each of the prison reception centers. While at the reception center, you can kite to “Public Defender” to ask questions related to your criminal case, to request legal forms, or to request an interview. If you need to talk with an attorney about your case, please tell us briefly, in your kite, what you need to talk about – **be specific**.

The OPD, unfortunately, does not have enough staff to be able to represent everyone in DRC, and usually cannot assist you in preparing pro se documents. However, even if we cannot represent you, we can provide you with legal forms and, in special situations, assist you in filling them out. In some cases, Prison Legal Services will contact the Columbus office if further review is necessary.

After arriving at your parent institution, OPD cannot receive or respond to your kites. You may contact the main Office of the Ohio Public Defender in Columbus:

**Ohio Public Defender
Intake Section
250 E. Broad Street, Suite 1400
Columbus, Ohio 43215
(614)-466-5394
(800)-686-1573**

Because we are a public defender office, we can only help you with matters related to your criminal case. We cannot assist you with institutional or civil matters such as prison medical care, grievances, divorce, or child custody.

CONTENTS

Page No.

I. THE BASICS	3
A. LAW LIBRARY	3
B. LEGAL KITS.....	4
C. COMMUNICATING WITH COURTS AND ATTORNEYS	4
II. YOUR SENTENCE	5
A. REAGAN TOKES vs. S.B.2 vs. “OLD LAW” SENTENCES	5
B. POSTRELEASE CONTROL REPLACES PAROLE	6
C. COMMUNITY CONTROL VIOLATIONS.....	6
D. JAIL TIME CREDIT.....	7
E. MANDATORY TIME.....	10
F. PAROLE	10
III. EARLY RELEASE OPTIONS	11
A. JUDICIAL RELEASE (R.C. 2929.20)	11
B. TREATMENT TRANSFER.....	13
C. TRANSITIONAL CONTROL	14
D. EARNED CREDIT (R.C. 2967.193)	14
E. 80% RELEASE MECHANISM (R.C. 2967.19).....	15
F. RISK REDUCTION SENTENCE (R.C. 2929.143 and R.C. 5120.036)	16
IV. DID YOU FILE AN APPEAL?	16
A. TIMELY APPEAL.....	17
B. DELAYED APPEAL	17
V. POSTCONVICTION RELIEF	18
A. WHAT IS POSTCONVICTION RELIEF?.....	18
B. WHEN MUST I FILE?	18
VI. SPEEDY TRIAL & DETAINERS	19
VII. OTHER MATTERS	20
A. DIVORCE AND OTHER CIVIL MATTERS.....	20
B. MEDICAL CARE, PRISON CONDITIONS, AND RIB.....	20
C. CLASSIFICATIONS	20
D. TRANSFERS	21
E. VIOLENT OFFENDER REGISTRY	21

I. THE BASICS

The attached “time and crime” printout was obtained from the Bureau of Sentence Computation (BOSC or BOSCO), a division of the Department of Rehabilitation and Correction (DRC). BOSC calculates your out date, or parole board date, based on your sentence and the number of days of jail time credit you received.

ERRORS IN SENTENCE OR OFFENSE

IF YOU BELIEVE THERE IS AN ERROR IN THE SENTENCE OR OFFENSE LISTED, YOU SHOULD KITE Bureau of Sentence Computation OR WRITE TO BOSC AT:

BUREAU OF SENTENCE COMPUTATION
P.O. BOX 2650
COLUMBUS, OHIO 43216

BOSC WILL REVIEW YOUR SENTENCING ENTRY AND IF APPROPRIATE WILL CORRECT IT. IF THERE IS A DIFFERENCE IN YOUR UNDERSTANDING OF YOUR SENTENCE/OFFENSES AND WHAT THE RECORD OFFICE DETERMINES, CONTACT TRIAL COUNSEL. TRIAL COUNSEL CAN VERIFY THE INFORMATION AND, IF NECESSARY, CONTACT THE TRIAL COURT. IF THERE IS STILL NO RESOLUTION, CONTACT THE PUBLIC DEFENDER.

A. LAW LIBRARY

Every prison in Ohio is required to have a law library with basic legal reference materials. You can kite the “Law Library” for a pass. The Ohio Public Defender (OPD) has no connection with the law library or its clerks. Kites addressed to “Legal Services” may be sent to the Public Defender, but we cannot get you a pass to the law library. Law library inmate clerks are not attorneys, though they may have good intentions.

If you no longer have an attorney, you may be able to get help through the law library with filling out forms and researching the rules for filing motions in your court. Most counties in Ohio require you to send the original plus at least one more copy to the clerk of court, and a copy to the prosecutor. Some counties, however, may require as many as five copies. Check the local rules of the court to be sure. Each motion must include a “Certificate of Service,” which is basically your promise to the judge that you have mailed a copy to the prosecutor.

You will find the address for the clerk of court on the bottom left hand corner of the front page of the attached “time and crime” printout. You will find your case number on the second page at the bottom under the heading “Docket Number.” The law library has addresses for other clerk of courts’ offices around the state.

B. LEGAL KITS

A legal kit containing writing materials and envelopes can be purchased through the commissary. If you are indigent, see your case manager or sergeant to find out how to obtain a free legal kit.

C. COMMUNICATING WITH COURTS AND ATTORNEYS

If your case is currently on appeal, or open for any other reason, keep in contact with your attorney. A timely appeal from your conviction must be filed **no later than 30 days after the sentencing entry is filed**. Do not assume a notice of appeal was filed. If you are unsure as to the status of your appeal, contact the Public Defender at the reception center or the main Columbus office.

If your trial attorney was court-appointed, that attorney is probably no longer being paid by the court to assist you. Appointed trial counsel's obligations do not include filing for judicial release or jail time credit. However, check with your trial counsel first. They may be willing to file such motions on your behalf.

Many attorneys will not accept collect calls. Therefore, the best way for you to communicate with your attorney may be by writing a letter. If you don't have your attorney's address, legal directories are available in the law library. If you don't remember your attorney's name, or if your attorney is not listed in the legal directory, kite the Public Defender (if you are at CRC, ORW, or LORCI) or write to the Columbus Office if you are at another institution.

II. YOUR SENTENCE

A. REAGAN TOKES vs. S.B.2 vs. “OLD LAW” SENTENCES

Reagan Tokes – Inmates sentenced for 1st and 2nd degree felony crimes occurring on or after March 22, 2019 will receive “indefinite” sentences under the Reagan Tokes Act. These inmates will have a range of time, such as a 6-9-year sentence. There is presumption of release when you have served the minimum amount of time in your range, and the DRC can request an early release (5-15% below the minimum) for exceptional conduct. The DRC can rebut the presumption of release at your minimum sentence by finding one of the following:

- (1) You are security level 3-5
- (2) You had extended restrictive housing within the last year, OR
- (3) Both
 - a. You had rule infractions harming institutional/staff/inmate safety, threatening physical harm to staff/inmates, OR other unprosecuted violations of law, AND
 - b. Your behavior shows an ongoing threat to society.

If the DRC finds one of those rebuttal criteria, then they will give you a reconsideration date (ex. 1 year later). At your next hearing you will also have a presumption of release that can be rebutted the same way. That process continues until you are released or serve your maximum sentence. When released you will be on PRC (not parole) supervision just like people with S.B.2 sentences, as explained in the next section.

S.B.2 -- Inmates entering prison with new prison sentences on or after July 1, 1996 have specific (“definite”) sentences sometimes called “flat time.” These are S.B.2 sentences, and are the vast majority of inmates. These inmates serving nonlife sentences have no parole consideration. You will simply serve you stated prison term and then be released. There are early release options, which can reduce your prison sentence. You may have post release control upon your release, as explained in the next section.

Old Law -- If you are serving a pre-July 1, 1996 sentence or a life sentence, then you will eventually see the parole board regarding release. Additionally, you are not eligible for the early release options listed in this packet. Pre-July 1, 1996 sentences and life sentences are commonly referred to as “indefinite,” since people received a sentence range; such as 10-25 or life with the possibility of parole in 15 years.

B. POSTRELEASE CONTROL REPLACES PAROLE (R.C. 2967.28)

Post release control (PRC) is not a type of early release. It involves having to report to a parole officer for a period of time after you have served your entire sentence. You will **not** see the Parole Board unless you are serving either (1) a life sentence or (2) any sentence that includes a pre-SB 2 range of sentences (such as 3-15 years, instead of 5 years exactly). The Parole Board will, however, screen your case to determine if post release control is appropriate. Post release control is mandatory for (1) a first or second degree felony, (2) a felony sex offense of any degree, and (3) any other third degree felony offense of violence under R.C. 2901.01(A)(9). It is otherwise optional.

If you violate post release control, you will be subject to sanctions depending on the violation:

- **Technical Violation.** If you violate post release control, the Parole Board may impose a more restrictive sanction, including a prison term. The new prison term sanction may be up to nine months, provided that the total sentences imposed during the entire period of post release control do not exceed one-half the length of the original prison term imposed by the sentencing court. R.C. 2967.28(F)(3).
- **Commission of new felony while on release.** In addition to any prison term for the new felony, the trial court may impose a prison term (called a judicial sanction) of either one year or the period of post release control supervision remaining on the earlier felony. R.C. 2929.141(A)(1).

The OPD is not involved in the determination as to whether you are placed on post release control. Should you wish to challenge that decision, please contact:

Quality Assurance
Ohio Parole Board
770 West Broad Street
Columbus, Ohio 43222

C. COMMUNITY CONTROL VIOLATIONS

Recent changes in the law (R.C. 2929.15) have limited how a court may sentence a person to prison for a community control violation on a 4th or 5th degree felony charge(s).

If you were on community control for a 5th degree felony and got violated for a technical reason or new misdemeanor offense, then you receive 90 days (if given a prison term).

If you were on community control for a non-violent, 4th degree felony and get violated for a technical or new misdemeanor offense, then you receive 180 days (if given a prison term).

If you have multiples charges that you were on community control for, then each charge must be considered separately.

Additionally, you are entitled to receive jail time credit toward your 90 or 180-day sentence. *State v. Whited*, 2019-Ohio-18. You should have credit for all the time spent in jail while the original change was pending, the time you spent in jail while the violation hearing was pending, and any CBCF time. See the Jail Time Credit section for more details.

If your judge gave you a longer sentence than 90 or 180 days for a technical violation or new misdemeanor you should strongly consider an appeal (see the appeal section). That will assure that an attorney is appointed to assist you with this potential error in your case. If you are at CRC, ORW or LORCI, you can kite public defender to get an appeal packet. Every institution lets you kite the law library for a pass to prepare appeal documents. Drug use is likely **not** a technical violation.

Finally, your 90 or 180-day prison term ends your community control. If your judge ordered that you return to community control after your prison sentence OR if your judge attempts to put you back on community control after your release, consider appealing to fix this error.

D. JAIL TIME CREDIT

If your jail time credit was incorrectly calculated at sentencing, you may file a motion in the trial court for additional credit. The OPD has limited resources to resolve individual jail time credit issues. This is because this issue involves thousands of potential cases. If you were represented by either the Cuyahoga or Franklin County Public Defender, contact that office regarding your jail time credit issue. To file on your own, kite the Public Defender (if you are at CRC, ORW, or LORCI ONLY) or contact the OPD main office for a pro se jail time credit packet. If the court denies your motion for credit, contact the main office in Columbus. We can then further investigate your claim.

Legally, you have the right to receive credit against your sentence for every day you spent in jail on that case. A court does not have to give you jail time credit for time in a rehabilitation program, unless it was a “Community Based Correctional Facility” (CBCF). Whether time served in a CBCF constitutes “confinement” depends on the level of restriction placed on you during your stay, and may have to be proven in court. Factors include whether you were subjected to lockdown or curfew.

At the bottom of the second page of your legal packet, under “Jail Time Credit,” it shows the number of jail time credit days that you received. **The number may be incorrect.** Some judges give the job of calculating your jail time to someone else, such as the sheriff or probation department. That office may be in the process of sending your jail time credit to BOSC. Once BOSC receives updated jail time credit paperwork from your county, BOSC should send you an “Update/Correction.” It is a computer printout that will tell you how much credit you received, and your new out date. It will also be shown on your JPay. If

you do not receive an “Update/Correction” from BOSC and your JPay still has the wrong date(s), kite your case manager for your current jail time credit.

If your jail time credit has not arrived within three weeks after you arrived at the reception center, then it may be necessary for a jail time credit motion to be filed in your case. You can kite the “Public Defender” (if you are at CRC, ORW, or LORCI ONLY) to request a jail time credit packet. If you are already at your parent institution when you realize the mistake, write the main office in Columbus.

Once you have filled out the motion and attached the records proving your confinement, you should file it with the court that sentenced you. Do not send the motion to the OPD. Do not send the motion to BOSC. You will need to go to the law library to research the rules for your county, both to determine how many copies you need and to where they need to be sent. You will know that the credit has been awarded when you receive an “Update/Correction.” The timing will depend of the speed of your court, which varies widely.

Jail Time Credit and Concurrent Sentences: State v. Fugate

In 2008 the Ohio Supreme Court held that when a defendant is sentenced to concurrent prison terms for multiple charges, jail-time credit under R.C. 2967.191 must be applied on each concurrent prison term. State v. Fugate, 2008 Ohio 856, 117 Ohio St.3d 261, syllabus. So long as a person is held on a charge while awaiting trial or sentencing, he is entitled to jail-time credit for that sentence; a court cannot choose one of several concurrent terms against which to apply the credit. If your court imposed concurrent sentences but different amounts of jail time credit, you may be entitled additional credit.

Example: An inmate arrives at the Reception Center on 1/1/08. He has the following jail time credit and charges:

OFFENSE	JAIL CREDIT	SENTENCE	C/C OR C/S	SENTENCE COMPLETION DATE	CASE
Aggravated Trafficking	90 days	1 year	Concurrent	10/1/08	Stark case A
Intimidation	60 days	1 year	Concurrent	11/1/08	Stark Case A
Assault	30 days	1 year	Concurrent	12/1/08	Stark Case B

In the example above, under Fugate, the inmate is entitled to a total 90 days credit, resulting in an outdate of 10/1/08. Prior to Fugate, DRC likely would have awarded just 30 days credit with an outdate of 12/1/08. Below is a visual depiction of the difference.

Before Fugate:

Case	Offense	Sentence	
Stark Case A	Aggravated Trafficking	Complete - 10/1/08	90 days Jail Credit
Stark Case A	Intimidation	Complete - 11/1/08	60 days Jail Credit
Stark Case B	Assault	Complete - 12/1/08	30 days Jail Credit

Outdate: 12/1/08

Under Fugate:

Case	Offense	Sentence	
Stark Case A	Aggravated Trafficking	Complete - 10/1/08	90 days Jail Credit
Stark Case A	Intimidation	Complete - 10/1/08	90 days Jail Credit applies
Stark Case B	Assault	Complete - 10/1/08	90 days Jail Credit applies

Outdate: 10/1/08

It is important to note that while Mr. Fugate was sentenced under 2 different case numbers, the crimes were committed in the same county and the sentences were imposed by the same judge. How trial judges will interpret Fugate under different circumstances is still unclear, which means your judge may not see your case as needing correction under Fugate.

Contact the Public Defender if you believe jail time credit is being withheld in violation of Fugate.

E. MANDATORY TIME

“Mandatory Prison Term” means your sentence must be served in prison. It is defined under R.C. 2929.01(X). If you are serving a mandatory sentence it should be indicated on the first page of your “time and crime” under either paragraph 1 (firearm specifications) or paragraph 2 (other types of mandatory or actual incarceration sentences). There are a number of circumstances requiring mandatory time. For example, mandatory time is required if you were convicted of Aggravated Murder, Murder, Rape, certain drug offenses, and repeat violent offender or firearm specifications. See R.C. 2929.13(F) and 2929.14(D) for the complete list.

Mandatory time limits early release options:

- You cannot obtain earned credit while serving mandatory time. R.C. 2929.13(F); 2967.193(C). See page 13 below.
- You cannot file for judicial release until *after* the expiration of any mandatory time and the additional waiting period. R.C. 2929.20(C). See page 11 below.
- Certain mandatory prison terms disqualify you for the 80% early release mechanism. See R.C. 2967.19(C)(1) for a list of disqualifying. See page 14 below.

F. PAROLE

The only people sentenced under SB 2 or HB 86 who will see the parole board are people with certain life sentences and those who were previously on parole and have been convicted of a new felony. If a sentence is listed on the number 4 line of your sentence printout, then you will see the Parole Board. The date listed is a review date, not an outdate.

III. EARLY RELEASE OPTIONS

ALL EARLY RELEASE OPTIONS HAVE ELIGIBILITY REQUIREMENTS. THIS PACKET ONLY SUMMARIZES THOSE REQUIREMENTS. YOU MAY OR MAY NOT BE ELIGIBLE DEPENDING UPON YOUR PARTICULAR CRIME, TYPE OF SENTENCE, OR OTHER FACTORS. CONTACT YOUR CASE MANAGER WITH SPECIFIC PROGRAM QUESTIONS.

A. JUDICIAL RELEASE (R.C. 2929.20)

Judicial Release is a form of early release granted by your judge. You are not eligible while serving a mandatory sentence. If you are serving only a mandatory sentence, you are not eligible. If you are serving at least one non-mandatory sentence, then you will eventually be eligible. It does not matter when the crime occurred or when you were sentenced, as long as you were sentenced to definite time. (Ex. 8 years instead of 8-15 years)

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 post release 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 may be facing further post release control (state supervision) once you complete your prison sentence.

WHEN CAN YOU FILE?

You can file after serving a specified period of time, depending on your sentence length and any mandatory time.

<u>Non-Mandatory Sentence Length</u>	<u>Mandatory Time Also?</u>	<u>Can File After</u> <i>(jail time credit applies unless stated otherwise)</i>
Under 2 Years	No	Reaching prison
	Yes	Mandatory sentence complete
2 years or more, but under 5 years	No	180 days (<i>not including jail time credit</i>)
	Yes	Mandatory sentence complete + 180 days (<i>not including jail time credit</i>)
Exactly 5 years	No	4 years
	Yes	Mandatory sentence complete + 4 years
Over 5 years, but 10 years or less	No	5 years
	Yes	Mandatory sentence complete + 5 years
Over 10 years	The later of: (1) 1/2 of your total prison term (mandatory + non-mandatory) or (2) Mandatory sentence complete + 5 years	

FILING THE MOTION:

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, kite the Public Defender to request a judicial release packet (if you are at CRC, ORW, or LORCI ONLY) or write the Columbus Office. The packet contains instructions and forms you can use to prepare your own motion.

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 attorney and are not affiliated with the OPD. 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 "time and crime" sheet.

WHAT HAPPENS AFTER FILING?

You will wait 30-240 days for a hearing. Your motion can only be granted after a hearing.

If motion is denied :		
After hearing	⇒	Cannot refile
Without hearing	⇒	“with prejudice” ⇒ Cannot refile, but court may reconsider on its own
		without prejudice ⇒ Can refile whenever you choose
If motion is granted :		
<p>Up to 5 years of community control are required.</p> <p>This involves meeting with the county probation department to determine the supervision details, such as where you will live and if program participation will be required.</p> <p>IF YOU DO NOT WANT TIME ON COMMUNITY CONTROL, DO NOT FILE FOR JUDICIAL RELEASE.</p>		

B. TREATMENT TRANSFER (O.A.C. 5120-17)

This is a type of early release program that allows certain individuals to be released to community treatment programs. You will be automatically screen for this program. This program does not reduce you sentence, but it does allow you to serve the last portion of your sentence in a less restrictive community setting. Upon completion of this program and your sentence you will be evaluated for further treatment/support needs. That evaluation will be considered by the parole board when determining the amount of post release control supervision imposed upon your release. **The OPD has no involvement with this program.** Contact your case manager for details.

WARNING: If you leave the treatment program without permission, or fail to return, there is a strong possibility you will face felony escape charges which carry additional prison time.

C. TRANSITIONAL CONTROL

This is another type of early release. You will automatically be screened by the Parole Board, if you have at least six more months to serve when you arrive at prison. There are several eligibility requirements. See R.C. 2967.26. Even if you qualify, your judge can refuse to allow you to be released on transitional control.

Transitional control involves serving the last three to six months of your sentence in a halfway house. While in the transitional control program you will remain an inmate. Nonetheless, while in the halfway house, you can work and earn privileges such as home visits. If you fail to follow the halfway house rules, you may be returned to prison to serve the remainder of your sentence. **The OPD has no involvement with this program.** Contact your case manager for details.

WARNING: If you leave the halfway house without permission, or fail to return, there is a strong possibility you will face felony escape charges which carry additional prison time.

ADDITIONAL EARLY RELEASE POSSIBILITIES UNDER HOUSE BILL 86

D. EARNED CREDIT (R.C. 2967.193)

HOUSE BILL 86 DOES NOT AUTOMATICALLY REDUCE PRISON SENTENCES. IT DOES NOT BRING BACK "GOOD TIME." IT PROVIDES FOR INCREASED **EARNED CREDIT** FOR ELIGIBLE OFFENDERS. DO NOT LISTEN TO PRISON RUMORS THAT SAY OTHERWISE.

Before House Bill 86, eligible offenders could earn one day of credit for each full month of program participation. House Bill 86 increases available "earned credit" for eligible offenders. It is not "good time," which was received simply for not getting in trouble. "Earned credit" must be earned. An offender can earn 1 or 5 days prison-term credit for each month that they productively participates in an eligible program. **The increased earned credit applies only to offenses committed on or after September 30, 2011.** For crimes committed before that day, the law retains the opportunity for eligible offenders to earn one day of credit.

House Bill 86 prohibits inmates convicted of certain offenses from obtaining earned credit. The list is lengthy. You are not eligible for earned credit if you are serving:

- A prison term for an offense specified under R.C. 2929.13(F) and R.C. 2929.14 that the code states cannot be reduced (there are too many to list);

- A mandatory prison term (R.C. 2967.193(C)(1)) (see page 9);
- A life or death sentence for Aggravated Murder, Murder, or related conspiracy, attempt, or complicity (R.C. 2967.193(C)(2));
- A term of life without parole (R.C. 2967.193 (C)(3));
- A sentence for a sexually oriented offense committed on or after September 30, 2011 (R.C. 2967.193(C)(3));
- A “Risk Reduction Sentence” under R.C. 2929.143(B) (see page 15).
-

The number of days earned, under the 1 or 5 day monthly credit, may not exceed 8% of your total sentence. The credit is “provisionally earned,” meaning it can be taken away for rules violations.

New legislation has expanded your opportunity for earned credit. (R.C. 2967.193(A)(2)) On top of the previously mentioned earned credit, you can now earn the lesser of 90 days or 10% of your sentence for successful completion of ONE of the following:

- An Ohio high School diploma or Certificate of high school equivalence certified by the Ohio Central School System, OR
- A therapeutic drug community program, OR
- All three phases of DRC’s intensive outpatient drug treatment program, OR
- A career-technical vocational school program. OR
- A college certification program, OR
- The criteria for a certificate of achievement and employability.

Between these two types, you can earn up to the following amount off your sentence, either (1) 8% + 10% or (2) 8% + 90 days. This extra earned credit is available unless you are serving only a mandatory prison term, a term for an offense of violence, or a sexually-oriented offense. **The OPD has no involvement with earned credit.** Contact your case manager for details.

E. 80% RELEASE MECHANISM (R.C. 2967.19)

You cannot petition the court on your own for this type of release.

This release option applies to eligible offenders who have served 80% of their stated prison term of **one year or more**. The date of offense does not matter, if otherwise eligible. DRC starts the process by petitioning the trial court, and asking that the court “strongly consider” release. See R.C. 2967.19(B). It is DRC’s decision whether to do so. **The OPD has no involvement with this program.**

QUALIFYING:

Not all prison terms are eligible. R.C. 2967.19. You may qualify even if you are serving a mandatory term. The DRC will automatically review your term to determine if you qualify.

RECEIVING RELEASE:

The court will not grant release without a hearing, but may deny release without a hearing. If the court denies release without a hearing, it may later consider reconsider if the DRC files another petition.

If the court grants release, you will be placed on community control for up to 5 years. You will meet with county probation to determine your supervision details, such as where you will live and if program participation will be required. If you violate the terms of your supervision, the court may re-impose your original prison sentence. Contact your case manager for details.

F. RISK REDUCTION SENTENCE (R.C. 2929.143 and R.C. 5120.036)

Under House Bill 86, the court, at sentencing, may recommend a risk reduction sentence. If the court did not make the recommendation at your sentencing, it cannot do so now.

If DRC determines the offender has successfully completed the required assessment, treatment, and/or programming required, the offender is granted supervised release after serving a minimum 80% of the **non-mandatory** prison term. R.C. 5120.036(C).

All of the following must apply: (1) the offense in question is not aggravated murder, murder, or complicity in committing aggravated murder or murder; a first or second degree violent felony; a sexually oriented offense; or any attempt, conspiracy, or complicity that is a first or second degree felony; (2) the sentence must consist solely of one or more non-mandatory terms; (3) the offender agrees to an assessment of his or her needs and risk of reoffending; and (4) the offender agrees to any programming or treatment that the DRC orders to address assessment issues. R.C. 2929.143(A)(1)-(4). **An offender who is serving a risk reduction sentence gets no earned credit under R.C. 2967.193.**

IV. DID YOU FILE AN APPEAL?

If you went to trial and wish to discuss your case, kite Public Defender immediately.

You have the right to appeal your conviction; whether you pleaded guilty or went to trial. Appeals can take a year or more. An unsuccessful appeal can leave you with additional court costs; usually a few hundred dollars. A guilty plea waives most appeal issues. If your guilty plea is vacated on appeal you will face **all** the original charges and the **full range** of sentences, including any charges that were dismissed under a plea agreement. **This means you can end up with more prison time.**

Sometimes trial counsel files the notice of appeal, but this may have been overlooked or entirely neglected. Exhaust every effort to ensure that your notice of appeal has been filed. Contact trial counsel. If possible, have a friend or family member call the county clerk of courts to see if the appeal was filed. If you are still unsure whether an appeal was filed, kite Public Defender (if you are at CRC, ORW, or LORCI ONLY) or write the OPD in Columbus.

IF YOU NEED THE NECESSARY FORMS TO FILE EITHER A TIMELY OR DELAYED APPEAL, CONTACT THE PUBLIC DEFENDER AT YOUR RECEPTION CENTER. IF YOU ARE NO LONGER AT THE RECEPTION CENTER, CONTACT THE INTAKE SECTION AT THE OHIO PUBLIC DEFENDER'S OFFICE IN COLUMBUS, AT THE FOLLOWING ADDRESS:

**OHIO PUBLIC DEFENDER
INTAKE SECTION
250 E. BROAD STREET
SUITE 1400
COLUMBUS, OHIO 43215**

A. TIMELY APPEAL

A timely notice of appeal must be filed within 30 days of the date of the entry of judgment. The entry date is the date stamped on the entry by the clerk. The clerk's filing date may differ from the actual sentencing date.

The notice of appeal is filed in the **trial court clerk's office**. The heading (the words at the very top) of the Notice of Appeal should read "In the Court of Common Pleas."

It is very important that you also file (1) a motion for appointment of counsel, (2) an affidavit of indigency, (3) a docketing statement, (4) a motion for transcripts at state's expense, and (5) a praecipe.

B. DELAYED APPEAL

If there is a reasonable explanation as to why you did not file a Notice of Appeal within 30 days of your conviction, you may ask the appellate court for "leave" (permission) to file a Delayed Appeal under Appellate Rule 5. You should support the motion with an affidavit explaining the reason(s) for the delay.

File the Delayed Appeal motion in the **court of appeals clerk's office**. The heading of the motion should read the "In the Court of Appeals." At the same time, you must also file a Notice of Appeal with the trial court clerk and a copy with the court of appeals clerk. Often the court of appeals clerk and the trial court clerk are located in the same county courthouse. However, this is not always the case.

V. POSTCONVICTION RELIEF

A. WHAT IS POSTCONVICTION RELIEF? (R.C.2953.21)

Postconviction petitions are based on issues and evidence that are outside the trial record. Generally, the trial record consists of court filings, exhibits, and the transcript of what was said in court. There are many issues that can be raised in a postconviction petition. The OPD **will not** review your case for a postconviction petition.

Among the most commonly raised issues are:

- broken plea agreements;
- trial counsel's failure to prepare for trial or to investigate the case; and
- misconduct by trial counsel, police, prosecutor, jurors, judges, or witnesses.

Although postconviction and direct appeal proceedings can occur at the same time, they are quite different. On direct appeal, you raise the errors that occurred at your trial, but *you do not introduce any new evidence*. In postconviction, you **must** introduce new evidence and identify issues or events that occurred off the trial record.

To obtain postconviction relief, you must have the evidence, usually in the form of affidavits, demonstrating that you are entitled to postconviction relief. Affidavits and other supporting evidence must be attached to the postconviction petition.

Postconviction relief is very difficult to achieve. It can be a slow process, sometimes taking a year or more to obtain a hearing or ruling. A successful postconviction petition generally does not wipe out the underlying case. A successful petition might result in your receiving a new trial, at which you may be reconvicted.

IF YOU NEED A PRO-SE POSTCONVICTION PACKET, KITE THE PUBLIC DEFENDER WHILE AT THE RECEPTION CENTER OR WRITE THE MAIN OFFICE IN COLUMBUS.

B. WHEN MUST I FILE?

If you appeal your case	→	up to 365 days after the date the trial transcript is filed in the Court of Appeals
If you do not appeal your case	→	up to 365 days after the last date for filing a timely notice of appeal
If you miss your deadline, you may file for delayed postconviction relief only if you can meet the two-part test set forth in R.C. 2953.23. This is a very difficult test to meet.		

VI. SPEEDY TRIAL & DETAINERS

Ohio law requires that the warden or superintendent promptly inform a prisoner confined in an Ohio correctional institution of any known pending and untried indictment, information, or complaint and also the prisoner's right to request "final disposition" (AKA Speedy Trial). You must make a request for final disposition under R.C. 2941.401. **Do not contact the court on your own.** You should request final disposition by kiting information about the pending case to "Central Records Office – Detainer Section" and asking for a speedy case disposition. The Central Records Office will prepare the paperwork, including the required warden's certificate, and send it to the judge and prosecutor. Upon receipt, the court has 180 days to bring you to trial. If they fail to do so within that time, the charge must be dismissed. R.C. 2941.401.

Misdemeanor Charges

Speedy trial requests under R.C. 2941.401 also apply to pending,ailable misdemeanors. *State v. Schwartz*, 1998 Ohio App. LEXIS 1923 (5th Dist. 1998); see, also, *State v. Lowry*, Fifth District No. 07 CA 37, 2009-Ohio-803. If the institution advises you otherwise, contact the Public Defender.

Out of State Charges

If you have pending, in another state or federally, an untried indictment, information, or complaint and a detainer has been lodged against you, kite the Central Records Office – Detainer Section noting the case number, state, county, and request for a speedy trial. They will file through the Interstate Agreement on Detainers to help you resolve the case.

If there is no detainer from that state, then they will contact the state and request that they place one. If the state refuses to file a detainer, however, then you will not be able to resolve the charge while incarcerated in Ohio. **Do not contact the jurisdiction on your own.** R.C. 2963.30.

VII. OTHER MATTERS

A. DIVORCE AND OTHER CIVIL MATTERS

The OPD legally cannot assist you in civil matters such as bankruptcy, family law, civil suits, etc. You should contact an outside attorney or your county's Legal Aid office for any representation or advice.

B. MEDICAL CARE, PRISON CONDITIONS, AND RIB

The OPD also legally cannot pursue inmate institutional conditions claims. Complaints about mail, visitation, medical care, RIB procedures, work assignments, grievances, transfers, etc., are outside the scope of the services we provide. If you are not satisfied with the prison's resolution, we suggest that you contact the Chief Inspector at:

Office of the Chief Inspector
Department of Rehabilitation & Corrections
770 West Broad Street
Columbus, Ohio 43222

The Chief Inspector monitors the application of the inmate grievance procedure in the institutions ensuring that inmate concerns and problems are being appropriately addressed.

C. CLASSIFICATIONS

Your initial classification and institution assignment is determined by several factors, including nature of offense, length of sentence, medical and mental health status, gang involvement, and program activity. The OPD has no involvement in classification. During the period an inmate is incarcerated at a reception center, he is usually given a temporary security level of Level 3. The security level remains in effect until the Bureau of Classification and Reception makes the security level and institution assignment and the appropriate transfer has been completed.

You will be interviewed while at the reception center. At that time, visiting procedures, as well as general information, are discussed with you. The institution will forward its recommendation to the Bureau of Classification and Reception. The Bureau will then designate an initial classification and assign you to an institution most compatible with your security level and programming needs. You will be notified by mail or your case manager as to where your parent institution will be. You will also be informed of your security level. See Administrative Code Section 5120-9-52.

Reconsideration of Initial Classification and/or Institution Assignment: If you feel you have been adversely affected by your classification and/or assignment, you may ask for reconsideration. Reception center staff will explain the reconsideration process. If you need further assistance, or have questions you may write the Bureau at:

Bureau of Classification and Reception
Department of Rehabilitation & Correction
770 West Broad Street
Columbus, Ohio 43222

D. TRANSFERS

An inmate may be transferred to another prison for several reasons including programing, security, or to facilitate visitation. A transfer may be initiated by the inmate or DRC. An inmate seeking transfer must first file a formal, written request to transfer through the case manager. The case manager sends the inmate's request to the institutional unit classification committee. The classification committee interviews the inmate to determine eligibility. The request is forwarded to the institution warden or warden designee for approval. The request is then forwarded to the Bureau of Classification and Reception. The Bureau investigates the request to determine final approval and transfer if applicable. If the warden denies an inmate's request, the inmate may appeal in writing to the Bureau of Classification and Reception.

E. VIOLENT OFFENDER REGISTRY

Starting on March 20, 2019, Ohio started a violent offender database. You must register if you were convicted of Aggravated Murder, Murder, Voluntary Manslaughter, Kidnapping, or 2nd degree Abduction. Additionally, this requirement applies to you if you were found guilty by plea or trial and are still imprisoned or confined for the offense. The required registration period is 10 years with the possibility of extension to life.

You must sign up personally with the sheriff of the county you are living in (within 10 days of release from incarceration) and renew annually (within 10 days of your prior registration date). Additionally, you must report to the sheriff within 3 business days of a change of address. Out-of-state offenders (people with offenses committed out of state that would otherwise qualify for registration) must register within 10 days of learning about the requirements and living in Ohio for 3 days in a specific dwelling or 14+ total days over the course of a year. Failure to register is a 5th Degree Felony carrying 6-12 months in prison.

The duty to register is rebuttable in court if you show, after filing a motion, that it was more likely than not that you were not the principal offender. Motions can be filed at or before sentencing or while incarcerated. If the court agrees that you were not the principal

offender, then it shall determine if you will be required to register anyway based on:

- (1) prior convictions for violent offenses & propensity for violence based on them,
- (2) risk assessment results,
- (3) your amount of responsibility in the crime, and
- (4) public interest and safety.

Your prosecutor can seek extension of 10-year period to a life period for a new violent misdemeanor or felony conviction, or for violations of terms or conditions of sanctions related to your sentence. A motion to end the extended period can be filed at any time, but only once every 5 years.

IF YOU HAVE ANY FURTHER QUESTIONS, KITE THE PUBLIC DEFENDER OR WRITE THE INTAKE SECTION OF THE OHIO PUBLIC DEFENDER'S OFFICE IN COLUMBUS.

Fractions used for sentences/terms in months

MONTHS	FRACTION
01	.08
02	.17
03	.25
04	.33
05	.42
06	.50
07	.58
08	.67
09	.75
10	.83
11	.92
12	1.00

On your “time and crime” sheet attached to this packet, your prison term is stated in fractions instead of months, when applicable. This table will help you to convert the fractions to terms of months. For instance, if your sentence is 4.67 years, you can use the chart above to know that your sentence is 4 years and 8 months. If your sentence is 0.92 years, that equals 11 months.

End

Rev/4-12-19