



Office of the Ohio Public Defender

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HB 86 UPDATE PACKET

Si necesita documentos legales en español, por favor envíe un “kite” al Defensor Público con “Spanish HB 86 Packet” escrito en la parte trasera.

In the summer of 2011, the governor signed House Bill 86 (HB 86) which resulted in several changes to the law. This law became effective on September 30, 2011. Portions of the law apply only to those who committed crimes on or after that date. Other portions apply to all inmates.

BE ALERT TO INACCURATE PRISON RUMORS. HOUSE BILL 86 DOES NOT AUTOMATICALLY REDUCE SENTENCES. IT DOES NOT RETURN “GOOD TIME.” IT DOES PROVIDE FOR ADDITIONAL “EARNED CREDIT” FOR ELIGIBLE OFFENDERS.

Among the changes, House Bill 86: (1) increases the maximum penalty for a first degree felony to 11 years incarceration; (2) modifies the range of penalties available for a third degree felony; (3) increases opportunities for eligible inmates to earn credit as a deduction from a prison term; (4) re-defines the term “eligible offender” and modifies time periods for judicial release eligibility; (5) creates “risk reduction” sentencing; and (6) authorizes DRC to petition the sentencing court for release of an eligible inmate who has served 80% of his term. Some of these are discussed further below.

IT WILL TAKE TIME FOR THE COURTS TO INTERPRET HOUSE BILL 86 AND FOR DRC TO PUT INTO PRACTICE ANY NEW PRISON POLICIES OR REGULATIONS RESULTING FROM THE LAW. YOU SHOULD CONTACT YOUR CASE MANAGER FOR SPECIFIC QUESTIONS REGARDING PRISON POLICY OR PROCEDURE PERTAINING TO PROGRAMS LIKE EARNED CREDIT OR THE 80% RELEASE MECHANISM.

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 sentence printout 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.

- You cannot obtain earned credit while serving mandatory time. R.C. 2929.13(F); 2967.193(C).
- If otherwise eligible, you can file for judicial release after the expiration of any mandatory time and the additional waiting period. R.C. 2929.20(C). See “Judicial Release” below.
- Certain mandatory prison terms, if not otherwise ineligible under a “disqualifying” or “restricting” term, qualify for the 80% early release mechanism. R.C. 2967.19(C)(1). See page 5 below.

ALL OF THE EARLY RELEASE OPTIONS BELOW HAVE ELIGIBILITY REQUIREMENTS. THIS PACKET ATTEMPTS TO SUMMARIZE THOSE REQUIREMENTS. YOU MAY OR MAY NOT BE ELIGIBLE DEPENDING UPON YOUR PARTICULAR CRIME, TYPE OF SENTENCE, OR OTHER FACTORS.

JUDICIAL RELEASE (R.C. 2929.20)

Judicial Release is a form of early release granted by your judge. House Bill 86 made two important changes to the prior Judicial Release law:

- The 10 year sentence cap has been eliminated. If otherwise eligible, you can file for Judicial Release even if your total sentence, including any mandatory time, exceeds 10 years.
- Your eligibility date is determined in part by your total non-mandatory time.

The new judicial release law applies to any judicial release **decision** made on or after September 30, 2011. R.C. 2929.20(M). Thus, it does not matter when the crime occurred or when you were sentenced. If the judge rules on the motion on or after September 30, 2011, the new law applies.

You are not eligible if you are serving only a mandatory sentence. You must be serving at least one non-mandatory sentence. 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.

WHEN CAN YOU FILE?

- If your total non-mandatory sentence is **less than two years**, your motion may be filed after you have served 30 days **in prison**. If your sentence includes **mandatory time**, your motion may be filed not earlier than **30 days after** you have served the mandatory portion of your sentence.
- 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 **in prison**. 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 in prison. 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 the 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, kite the Public Defender to request a judicial release packet. 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 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 release is denied after a hearing, you cannot file again.
- If your motion is denied without a hearing, the law allows you to file another motion for judicial release, unless the court denies the motion “with prejudice.” The law does not specify a time frame for filing a second judicial release motion.
- If a court denies a motion “with prejudice,” you cannot file again but the court may later consider judicial release on its own motion.
- 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.**

HOUSE BILL 86 DOES NOT AUTOMATICALLY REDUCE PRISON SENTENCES. IT DOES NOT PROVIDE FOR “GOOD TIME.” IT PROVIDES FOR INCREASED EARNED CREDIT FOR ELIGIBLE OFFENDERS. DO NOT LISTEN TO PRISON RUMORS THAT SAY OTHERWISE.

ADDITIONAL EARLY RELEASE POSSIBILITIES UNDER HOUSE BILL 86

EARNED CREDIT (R.C. 2967.193)

Before House Bill 86, eligible offenders could earn one day of credit as a deduction for each full month of program participation. House Bill 86 increases available “earned credit” for eligible offenders. It is not “good time.” It must be earned. An offender can earn one or five days credit toward a prison term for each completed month during which he or she 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 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;
- A mandatory prison term (R.C. 2967.193(C)(1));
- 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).

The total number of days earned may not exceed 8% of the total number of days in your sentence. The credit is “provisionally earned,” meaning it can be taken away for rules violations. **The Ohio Public Defender has no involvement with earned credit.** Contact your case manager for details.

80% RELEASE MECHANISM (R.C. 2967.19)

House Bill 86 creates a release mechanism for eligible offenders who have served 80% of their prison term. You must be serving a “stated prison term” of **one year or more**. The law applies to any inmate regardless of the date of offense, if otherwise eligible. Unlike judicial release, DRC starts the process by petitioning the trial court. It is DRC’s decision whether to do so. **You cannot petition the court on your own for this type of release.** The petition is a recommendation by DRC that the court “strongly consider” release. See R.C. 2967.19(B). **The Ohio Public Defender has no involvement with this program.**

To qualify you must be serving an “eligible prison term.” An offender serving a stated prison term that includes a “disqualifying prison term” is not eligible. An offender serving a prison term that consists solely of one or more “restricting prison terms” is not eligible for release. An offender serving one or more “restricting prison terms” and one or more “eligible prison terms” becomes eligible for release after having fully served each “restricting prison term.” R.C. 2967.19 defines these prison terms.

You may qualify even if you are serving a mandatory term. Certain mandatory terms, if not otherwise a “disqualifying” or “restricting” term, qualify for the 80% release mechanism. R.C. 2967.19(C)(1). If you are serving a “restricting term” as part of a sentence you become eligible once the restricting term is fully served.

The court may deny release without a hearing. The court shall not grant release without a hearing. If the court denies release without a hearing, the court may later consider release of the offender on a subsequent petition filed by DRC.

If the court grants release, the offender is placed on community control for a period up to five years. 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. The court may re-impose the sentence it reduced, if the offender violates the terms of his community control supervision. Contact your case manager for details.

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

Under House Bill 86, the court may recommend that the offender serve a risk reduction sentence. **The court makes the recommendation at sentencing.** 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 and treatment 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 issues raised in the assessment. R.C. 2929.143(A)(1)-(4).

An offender who is serving a risk reduction sentence is not entitled to any earned credit under R.C. 2967.193.

IF YOU HAVE FURTHER QUESTIONS, 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**

End

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