



**Office of the Ohio Public Defender**

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## LEGAL PACKET

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

**This legal packet has been prepared for you by the staff of the Ohio Public Defender, which has attorneys stationed at each of the prison reception centers. It is only a guide. It only summarizes the law. Laws often contain exceptions. Therefore, carefully apply the discussed laws to your particular case.**

### PRISON LEGAL SERVICES

Prison Legal Services is a division of the Office of the Ohio Public Defender. 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. Please understand our ability to meet individually is greatly limited given the large number of inmates and our limited resources.

Prison Legal Services program does not have the resources to prepare legal documents on your behalf or to represent you in court. However, we do provide certain types of pro-se packets such as for a notice of appeal, judicial release, or post-conviction relief. In some cases, Prison Legal Services will contact the Columbus office if further review of your case is necessary. After arriving at your parent institution, you may contact the Office of the Ohio Public Defender at its main office in Columbus:

**Ohio Public Defender  
Intake Section  
250 E. Broad Street, Suite 1400  
Columbus, Ohio 43215**

**PLEASE NOTE:** You cannot kite the Ohio Public Defender from a parent institution. Only inmates at CRC, ORW, and LORCI may kite the public defender. Kites received from all other institutions will not be answered. Inmates at parent institutions must write to the Ohio Public Defender at the address above.

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## I. THE BASICS

Our office can only help you with matters related to your criminal case. We cannot assist you with institutional matters such as medical care or with civil matters such as divorce and child custody. If you are trying to find out what is going on with your case, contact your attorney or write to your county's clerk of court. If that fails, kite the Public Defender at the reception center or write the Ohio Public Defender in Columbus. It is very important not to miss any filing deadlines.

Attached to this packet is printout of your sentencing information 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 board date) based on your sentence and the number of days of jail time credit the court has provided.

### **Errors in Sentence/Convictions**

**If you believe there is an error in the sentence or offense indicated in your packet, you should kite BOSC or you may write to:**

**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/convictions 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. Kite the "Law Library" for a pass. The Public Defender has no connection with the law library. Kites addressed to "Legal Services" will be sent to the Public Defender, who can't get you a pass to the law library. Remember that inmate clerks, who work in the law library, while well intentioned, are not attorneys. They are not affiliated with the Ohio Public Defender.

### **B. LEGAL KITS**

A legal kit containing writing materials 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 reception or the main office in Columbus.**

If your trial attorney was court-appointed, she is probably no longer being paid by the court to assist you. Appointed trial counsel's obligation usually does not include filing for judicial release, jail time credit, or other such matters. However, check with your trial counsel first. She 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 her. 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 at the reception center or write to the Columbus office.

If you no longer have an attorney, you may be able to get help through the law library in filling out the forms and in 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, as well as a copy to the prosecutor. However, some counties may require as many as five copies. 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."

## II. YOUR SENTENCE

### A. SENATE BILL 2 and HOUSE BILL 86

Senate Bill 2 (SB 2) is the sentencing law which took effect July 1, 1996. SB 2 is known as the "truth in sentencing" law. Most sentences are "definite" or sometimes called "flat time." Under SB 2 inmates who are serving nonlife sentences have no parole consideration. For the most part, parole supervision was replaced with "postrelease control." Under SB 2 there was no reduction of your time based on good behavior, but it did provide for limited "earned credit."

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. Until recently, SB 2 was commonly referred to as "new law." However, given passage of House Bill 86 that term is no longer accurate. Thus, this packet will avoid calling SB 2 "new law."

**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 recommend to the sentencing court that the court consider releasing from prison an eligible inmate who has served 80% of his term. Some of these are discussed further below.

## **B. POSTRELEASE CONTROL REPLACES PAROLE**

For the most part, SB 2 replaced parole with postrelease control (PRC). You will not see the Parole Board unless you are serving either (1) a life sentence with parole eligibility imposed under SB 2 or HB 86 or (2) any SB 2 or HB 86 sentence and also have pre-SB 2 parole time remaining. The Parole Board will, however, screen your case to determine if postrelease control is appropriate in your case. It is similar to parole in that it involves having to report to a parole officer for a period of time after you have served your entire sentence. Postrelease control is mandatory for (1) a first or second degree felony; (2) a felony sex offense regardless of the degree; or (3) any other third degree felony that is an offense of violence. It is otherwise discretionary. R.C. 2967.28.

- **Technical Violation.** If you violate postrelease 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 postrelease 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 (1) up to one year or (2) for the period of postrelease control supervision remaining on the earlier felony. R.C. 2929.141(A) (1).

The Office of the Ohio Public Defender is not involved in the determination as to whether you are placed on postrelease control. Should you wish to challenge that decision, please contact:

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

### C. JAIL TIME CREDIT

Jail time credit issues are best resolved at sentencing and, if necessary, on direct appeal from sentencing. If you still have issues with your jail-time credit you may move the trial court later to grant you additional credit. Pursuant to R.C. 2929.19(B)(2)(g)(iii), an offender may, at any time after sentencing, file a motion in the sentencing court to correct any error made in making a determination under R.C. 2929.19(B)(2)(g)(i), and the court may in its discretion grant or deny that motion. If the court changes the number of days in its determination or redetermination, the court shall cause the entry granting that change to be delivered to the department of rehabilitation and correction without delay. However, courts have interpreted this law differently. Some courts have found any jail time credit issue waived if not raised at sentencing or on direct appeal.

The Ohio Public Defender's ability to resolve individual jail time credit issues is limited. As you can imagine, this matter involves potentially thousands of cases. Generally, our attorneys are permitted to assist indigent state prisoners only in matters directly related to their criminal convictions. If you were represented by either the Cuyahoga or Franklin County Public Defender, contact that office regarding your jail time credit issue. If you need a pro se jail time credit packet, kite the Public Defender at reception or contact the main office in Columbus. If the court denies the 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, as long as it was on that case. See R.C. 2967.191. A court is not required to give you jail time credit for time in a rehabilitation program, unless you were confined in a Community Based Correctional Facility (CBCF).

At the bottom of the second page of your legal packet under "Jail Time Credit" you will find the number of days of jail time credit that you have received as of the date your legal packet was prepared. 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 the Bureau of Sentence Computation (BOSC). Once BOSC receives paperwork from your county with the number of days of jail time credit, BOSC should send you an "Update/Correction," which is a computer printout that will tell you how much credit you received, as well as your new out date. If you believe that your initial report of jail time credit is wrong and if you do not receive an "Update/Correction" from BOSC, kite your case manager for your current jail time credit amount.

If your jail time credit has not arrived within 20 days after you arrived at the reception center, then you may need to file a jail time credit motion. If you are still at the reception center, you can kite the "Public Defender" 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. It is always better to go through your attorney in filing any type of motion with the court. If you do not have an attorney, you can try filing the motion yourself (pro se).

Once you have filled it out, you should file it with the court that sentenced you. **Do not send the motion to the Ohio Public Defender. Do not send the motion to BOSCO. Attach your evidence of confinement (e.g. jail or CBCF records) to your motion.** You will need to go to the law library to research the rules for your county, both to determine how many copies you need to send and to where you need to send them. You will know that the credit has been awarded when you receive an “Update/Correction.”

#### **D. 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, repeat violent offender, or firearm specifications. See R.C. 2929.13(F) 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 page 9 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 13 below.

#### **E. PAROLE**

The only people sentenced under SB 2 or HB 86 who will see the parole board are people with certain life sentences, or those who were previously on parole and have committed a new felony. If your time is listed under paragraph 4 of your sentence printout, the date you see is a Parole Board review date. It is not a certain out date.

### **III. EARLY RELEASE OPTIONS**

**All of the early release options below have eligibility requirements. This packet attempts to only summarize those requirements. You may or may not be eligible depending upon your particular crime, type of sentence, or other factors.**

#### **A. JUDICIAL RELEASE (R.C. 2929.20)(Offenses committed after July 1, 1996).**

Judicial Release is a form of early release granted by your judge. It applies to offenses committed after July 1, 1996. In 2011 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 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, 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, while well intended, 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.**

## **B. HOUSE BILL 483 SHOCK PROBATION**

In September of 2014 the Governor signed into law House Bill 483. The law returns what was commonly referred to as "shock" probation under pre-SB 2 law. **To be eligible you must be serving a pre-SB 2 sentence. Thus, your offense must have been committed before July 1, 1996.** The new law provides that an offender whose offense was committed before July 1, 1996, and who otherwise satisfies the eligibility criteria for shock probation under the former law as it existed immediately prior to July 1, 1996, may apply to the offender's sentencing court for shock probation under that section. The law is set forth under R.C. 2929.201.

## **C. INTENSIVE PROGRAM PRISON/BOOT CAMP (R.C. 5120.032)**

Intensive Program Prison (IPP) is an alternative form of correctional life stressing a highly structured and regimented daily routine which includes programming and counseling. Successful completion of the program may result in early release. There are a number of eligibility requirements. Every individual admitted to the prison system is automatically screened to determine if they qualify for IPP. You will have an orientation with the people who administer this program, and they will tell you whether you qualify for this type of early release.

Even if you qualify, your judge can refuse to allow you to participate in the program. You are required to spend 90 days in the boot camp program. After graduating from the program, you will be released on postrelease control under the supervision of the Adult Parole Authority. **The Ohio Public Defender has no involvement with this program.** Contact your case manager for details.

#### **D. TRANSITIONAL CONTROL (R.C. 2967.26)**

This is another type of early release for which you will automatically be screened by the Parole Board. If you are serving at least six months when you are admitted to the prison system, the Parole Board will review your file to determine if you qualify for transitional control. There are several eligibility requirements. However, even if you qualify, the judge can refuse to allow you to be released on transitional control. **The Ohio Public Defender has no involvement with this program.** Contact your case manager for details.

Transitional control involves serving the last three to six months of your sentence in a halfway house. An offender placed into the transitional control program will remain in the status of inmate. 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. Contact your case manager for any 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.**

Remember: House Bill 86 does not automatically reduce prison sentences. It does not provide for “good time.” Rather, 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**

#### **E. 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. Whether you can earn one or five depends on your crime. **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.

#### **F. 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. R.C. 2967.19 provides that DRC may recommend in writing to the sentencing court that the court consider releasing from prison any offender who has served 80% of a stated 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 decides whether to initiate the process. **You cannot petition the court on your own for this type of release.** Submission of the written notice constitutes a recommendation by the director that the court strongly consider release of the offender 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.

## **G. 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.**

## **IV. DID YOU FILE AN APPEAL?**

You have the right to appeal your conviction, whether you pleaded guilty or went to trial. However, a guilty plea waives most appeal issues. It is important to understand that if your guilty plea is vacated on appeal you risk facing all original charges again, including any that were dismissed under the plea agreement.

Do not assume an appeal was filed. Sometimes trial counsel files the notice of appeal. However, in some instances 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 unsure whether an appeal was filed, kite the Public Defender or write the Ohio Public Defender in Columbus. If you are still in reception, and you went to trial and wish to discuss your case, kite the Public Defender immediately.

### **A. TIMELY APPEAL**

A timely notice of appeal must be filed within 30 days of the date of the entry of judgment. The “date of entry” is when the judgment entry was filed with the clerk. The date the judgment entry was filed in the clerk’s office 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 the “In the Court of Common Pleas.” It is very important that you also file a motion for appointment of counsel, affidavit of indigency, docket statement, motion for transcripts at state’s expense, and a praecipe. **If for whatever reason you are unable to file all the required documents or the required number of copies, file what you have.**

**It is often more beneficial to file an incomplete but timely appeal than a delayed appeal. It may be possible to correct this deficiency later.**

## **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 to file a Delayed Appeal under Appellate Rule 5. You should support the motion with an affidavit setting forth reasons 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. File a copy of the Notice of Appeal 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.

**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:**

**Office of the Ohio Public Defender  
250 East Broad Street, Suite 1400  
Columbus, Ohio 43215**

## **V. POSTCONVICTION RELIEF**

### **A. WHAT IS POSTCONVICTION RELIEF?**

Ohio's postconviction statute is 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. There are many issues that can be raised in 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 might be reconvicted.

## **B. WHEN MUST I FILE?**

In 2015 the time to file a timely postconviction petition was extended from 180 days to 365 days under House Bill 663. The new law became effective on March 23, 2015. Under the new law, if you filed a timely direct appeal from your conviction, a petition shall be filed no later than 365 days after the date on which the trial transcript is filed in the court of appeals. If a timely appeal was not filed in your case, your postconviction petition is due 365 days after the date a timely notice of appeal was due to be filed. (Sentencing entry filed + 30 + 365 = 395 total days from sentencing). See R.C. 2953.21.

**If you need a pro-se postconviction packet, kite the Public Defender while at reception or write the main office in Columbus.**

## **VI. 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. Do not confuse a "Notify Detainer" with a "Wanted Detainer." A "Wanted Detainer" is placed on untried cases. A "Notify Detainer" is generally placed on cases in which the inmate is not eligible to file a fast and speedy such as a probation violation or a case in which he or she has already been sentenced.

You must make a request for final disposition under R.C. 2941.401. **Do not contact the court on your own.** The request for final disposition shall be given or sent by the prisoner to the warden or superintendent having custody of him, who shall promptly forward it with the certificate to the appropriate prosecuting attorney and court by registered or certified mail, return receipt requested. Upon receipt of the request, the jurisdiction has 180 days to bring you to trial absent any continuances. If they fail to do so within that time, the charge is required to be dismissed. R.C. 2941.401. The Public Defender provides a guide you may find useful.

### **Misdemeanor Charges**

Revised Code 2941.401 applies to a prisoner charged with a jailable misdemeanor. *State v. Schwartz*, 1998 Ohio App. LEXIS 1923 (5th Dist. 1998); see *State v. Lear*, 5th Dist. Licking No. 15-CA-72, 2016-Ohio-2675. Thus, you have a right to a speedy trial even if it is a misdemeanor. Pursuant to R.C. 2941.401, when a prisoner in a state correctional institution provides appropriate officials written notice of his place of imprisonment and a request for final disposition of a pending misdemeanor charge that is set forth in a complaint filed with a municipal court, the prisoner may be removed from the institution and taken to the municipal

court for final disposition of the matter. 2002 Ohio Op. Atty. Gen. No. 27. If the institution advises you otherwise, contact the Public Defender.

### **Out of State Charges**

If you have pending in another state an untried indictment, information, or complaint and a detainer has been lodged against you, advise the Warden's office of this and tell them, in no uncertain terms, that you are making a demand for a speedy trial. **Do not contact the jurisdiction on your own.** Ohio is a party with other states to the Interstate Agreement on Detainers (IAD). The IAD basically (1) gives a prisoner the right to demand a trial within 180 days; and (2) gives a State the right to obtain a prisoner for purposes of trial. R.C. 2963.30. The purpose of the IAD is to provide the mechanism for the speedy disposition of outstanding charges filed in one member state, against a prisoner incarcerated in another member state.

## **VII. OTHER MATTERS**

### **A. DIVORCE AND OTHER CIVIL MATTERS**

The Office of the Ohio Public Defender is precluded by law from assisting you in any 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 Office of the Ohio Public Defender is also precluded by law from furnishing legal services to inmates for claims pertaining to institutional conditions. 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 institution's resolution, we suggest that you contact the Chief Inspector at:

Office of the Chief Inspector  
Department of Rehabilitation & Correction  
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. 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 programing needs. You will be notified by mail or case manager as to where your parent institution will be. You will also be apprised 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.

**IF YOU HAVE ANY FURTHER QUESTIONS, WHILE IN RECEPTION, YOU CAN KITE THE PUBLIC DEFENDER OR WRITE THE INTAKE SECTION OF THE OHIO PUBLIC DEFENDER'S OFFICE IN COLUMBUS. IF YOU ARE AT YOUR PARENT INSTITUTION WRITE THE OHIO PUBLIC DEFENDER 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 “times and crimes” 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 four years and eight months. If your sentence is 0.92 years, that equals eleven months. One month equals 30.42 days.

End

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