

No. 2020-1496

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## IN THE SUPREME COURT OF OHIO

DISCRETIONARY APPEAL FROM THE  
LOGAN COUNTY COURT OF APPEALS,  
THIRD APPELLATE DISTRICT,  
CASE No. CA-8-20-01

STATE OF OHIO,  
*Plaintiff-Appellee,*

v.

CHRISTOPHER HACKER,  
*Defendant-Appellant.*

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### **MERIT BRIEF OF AMICUS CURIAE THE OHIO PUBLIC DEFENDER IN SUPPORT OF APPELLANT CHRISTOPHER HACKER**

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## INTRODUCTION

Amicus Curiae, the Ohio Public Defender's Office, routinely represents people in matters before the Ohio Parole Board and the Ohio Adult Parole Authority, both of which are under the Ohio Department of Rehabilitation and Correction ("DRC"). Before COVID, Amicus also had staff working inside two prisons who helped newly incarcerated people understand their rights, and who responded to inquiries from incarcerated people across the state. The Ohio Public Defender's Office has institutional knowledge about the practices of the DRC that this court might find useful in resolving this case.

After reviewing the jurisdictional memorandum filed by counsel for Mr. Hacker, which properly addresses the due process and separation of powers arguments relevant to this case, which Amicus supports, Amicus does not see the need to reiterate the same arguments. Instead, Amicus presents this short brief explaining some of the relevant Administrative Code sections and DRC's internal policies.

The Ohio Public Defender supports indefinite sentences. It does not support allowing the executive branch to extend judicially imposed prison terms, especially when the criteria for doing so are vague and subject to interpretation that is both arbitrary and unreviewable.

## **STATEMENT OF THE FACTS**

Amicus defers to Appellant's factual statement.

## ARGUMENT

### Proposition of Law:

**Ohio Revised Code Section 2967.271 violates the Ohio Constitution and the Constitution of the United States.**

#### I. Text of R.C. 2967.271:

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

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

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

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

(a) During the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff of a state correctional institution or its inmates, or physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated.

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

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

(3) At the time of the hearing, the offender is classified by the department as a security level three, four, or five, or at a higher security level.<sup>1</sup>

## **II. Background.**

### **A. The original sentence.**

When a trial court imposes a prison term for a first- or second-degree felony, in addition to the definite prison term, the court must authorize the Ohio Department of Rehabilitation and Correction to incarcerate the person for an additional indefinite prison term that is generally equal to one half of the most serious first- or second-degree felony that the person is sentenced for. R.C. 2929.144(B).

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<sup>1</sup> Amicus surveyed all other states' sentencing systems, but could find no other state that had a similar executive-branch add-on to prison terms.

**B. Only the Ohio Department of Rehabilitation and Correction decides whether an incarcerated person must serve an indefinite sentence.**

**1. A presumption of release with exceptions.**

A person has a statutory presumption of release at the end of their definite prison term, but as they approach that date, the Ohio Department of Rehabilitation and Correction (“DRC”) must hold a hearing to decide whether that presumption has been rebutted. R.C. 2967.271(B)–(E). Generally, DRC may find that the presumption has been rebutted if it finds all of the following: 1) the person has committed certain rule violations, 2) has violated the law without being prosecuted, and 3) if those violations show that the person is a threat to society. R.C. 2967.271(C)(1). The main statutory categories of rule violations that can trigger additional prison time are those that involve:

- compromising the security of a state correctional institution;
- compromising the safety of the staff of a state correctional institution or its inmates; and
- physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates.

*Id.*

The presumption may also be rebutted if DRC has chosen to classify the person as a level three, four, or five by the time of release, or has chosen to put the person in “extended restrictive housing” (basically, what DRC now calls what it used to classify as “Level 5”) in the year preceding the hearing. R.C. 2967.271(C)(2) and (3).

**2. It is not clear which “institutional rule infractions” would trigger additional prison time under R.C. 2967.271(C)(1)(a).**

DRC divides rules into categories such as “assault,” and “contraband,” but it has no category of “compromising the security” of the prison, which is a category listed in R.C. 2967.271(C)(1)(a). OAC 5120-9-06(C). While some offenses would clearly cause physical harm (assault) or threaten the security of the prison (riot), the statute gives no guidance as to how many other infractions would qualify, such as possession of contraband, which can include a regular cigarette, food from meals, sweatpants turned into shorts, a state-issued hat they brought with them to a new institution, property that they legitimately own when they cannot document ownership, or properly obtained but expired over-the-counter medications, such as Metamucil. OAC 5120-9-06(C)(51). The consensual use of another person’s property, such as a television, is a violation. OAC 5121-9-06(C)(50). It is also a rule infraction to violate any “published institutional rules, regulations or procedures[,]” which allows punishment for not following any sign posted in the prison. OAC 5120-9-06(C)(61). Fighting is an offense regardless of whether the person was an aggressor or a victim who protected themselves. OAC 5120-9-06(19). And being “out of place,” which can be either being in a place that might facilitate escape, or being a foot harmlessly in the wrong direction in the visiting room, is a violation. OAC 5120-9-06(C)(35). “Out of place” can also mean arriving for chow a few minutes too early.

**3. An incarcerated person has only a limited right to contest charges that they violated prison rules.**

An incarcerated person's ability to contest charges is limited because such challenges are heard by two DRC "staff members" who have authority to limit any presentation of evidence based on "relevancy, redundancy, unavailability, or security reasons." OAC 5120-9-08(B) and (E)(3).

Also, a jury recently found that DRC successfully brought rule-violation charges against an incarcerated person and increased his security level in retaliation for reporting misconduct by a correctional officer. *Briscoe v. Mohr*, N.D. Ohio No. 1:18-cv-02417, 2022 U.S. Dist. LEXIS 7195, at \*3 (Jan. 13, 2022), on remand from *Briscoe v. Mohr*, 6th Cir. No. 19-3306, 2020 U.S. App. LEXIS 8343 (Mar. 16, 2020).

**4. An incarcerated person does not have the right to contest the facts at the hearing.**

At the hearing DRC holds to determine whether to extend a prison term, the incarcerated person is allowed to present "mitigating information," but does not have the right to compel or present other evidence. *Additional Term Hearing*, Ohio DRC Policy 105-PBD-15 (Mar. 15, 2021), IV.F.8. And the person is not allowed the assistance of counsel at the hearing. IV.F.5. There is no mechanism for the person to challenge the factual basis for an increased security, such as whether the person really is a member of a "security threat group" ("STG") which is what most people would call a "gang."

Incarcerated people have no way to know how someone in DRC placed the “STG” label on them.

**C. Internal procedures for seeking a reduction in the minimum term under R.C. 2967.271(F).**

DRC has adopted a policy to explain its procedures for persons who wish to seek early release under R.C. 2967.271(F). *Petition for Discretionary Release, Policy 78-REL-10* (Mar. 15, 2021). The process is started when the incarcerated person fills out a request for the reduction on their own, possibly with the help of a unit case manager (a DRC employee responsible for a specific group of incarcerated people). *Id.* VI.B.1–3. Incarcerated people is responsible for documenting their own eligibility. *Id.*

Once the unit case manager decides that the application is complete, it is forwarded to the “managing officer.” *Id.* VI.B.4. The managing officer can deny the application without meeting with the incarcerated person, but must meet with the person if the managing officer is considering recommending the reduction. *Id.* IV.B.5. The managing officer can deny the application, or they can send it to the DRC Director, who then decides whether to recommend the reduction to the trial court. *Id.* VI.B.6–9.

## CONCLUSION

The relevant policies and administrative code sections show that under R.C. 2967.271, the Ohio Department of Rehabilitation and Correction has only vague guidance from the General Assembly about when to extend a prison term, and that DRC’s power is effectively unreviewable. Further, the process to recommend against a

reduction relies on the incarcerated person's self-advocacy, and can be denied at multiple levels but can be granted at only one.

For the substantive reasons stated in Mr. Hacker's Merit Brief, this court should hold that the Ohio Department of Rehabilitation and Correction cannot require a person to serve the indefinite prison terms set forth in R.C. 2967.271.

Respectfully submitted,

Office of the Ohio Public Defender

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### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was forwarded by electronic mail on this 13th of June, 2022, to Tina McFall, mcfall@tmwlawyers.com and to Eric C. Stewart, eric@pros.co.logan.oh.

/s/: Stephen P. Hardwick

Stephen P. Hardwick (0062932)  
Assistant Public Defender

No. 2020-1496

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IN THE SUPREME COURT OF OHIO

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DISCRETIONARY APPEAL FROM THE  
LOGAN COUNTY COURT OF APPEALS,  
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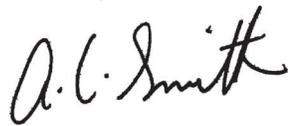
**APPENDIX TO**

**MERIT BRIEF OF AMICUS CURIAE THE OHIO PUBLIC DEFENDER  
IN SUPPORT OF APPELLANT CHRISTOPHER HACKER**

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**Department of  
Rehabilitation & Correction**

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

**I. AUTHORITY**

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

**II. PURPOSE**

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

**III. APPLICABILITY**

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

**IV. DEFINITIONS**

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

**[Definitions Link](#)**

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

**V. POLICY**

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

**VI. PROCEDURES**

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

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

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

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

1. Upon a finding of guilt for violations of the Inmate Rules of Conduct by the RIB, the RIB chair will verify that the individual is serving a non-life felony indefinite sentence.
2. If the offense of which the individual is found guilty is a Tier 1 or Tier 2 Rule Violation, the RIB chair shall make an electronic referral of the disposition to the Parole Board on the SB201 Referral for Additional Term Hearing Review (DRC3196).
3. If an incarcerated adult serving a non-life felony indefinite sentence violates any of the Inmate Rules of Conduct less than sixty (60) days prior to the expiration of the individual's current sentence, then the referral of the disposition to the Parole Board will be expedited by the managing officer's administrative assistance (correction warden assistant 2). Referrals shall be made by routing the SB201 Referral for Additional Term Hearing Review (DRC3196) to the ODRC SB201 Additional Term Hearing ([DRC.SB201AdditionalTermHearing@odrc.state.oh.us](mailto:DRC.SB201AdditionalTermHearing@odrc.state.oh.us)).

**C. Annual Security Review Team**

1. The Annual Security Review Team may use discretion to refer a case to the Parole Board for a possible Additional Term Hearing based upon concerns regarding any of the following:
  - a. The individual's overall behavior demonstrates a poor adjustment to incarceration,

- b. The individual has been involved in the conveyance of contraband and was not prosecuted,
  - c. The individual is an active or disruptive member of a security threat group (STG),
  - d. The individual has been found guilty of any STG-related offense,
  - e. The individual is currently classified at Security Level 3 or higher,
  - f. The individual has more than one (1) conduct report for refusal to attend mandatory programming (i.e., mandatory education or mandatory sex offender programming),
  - g. The individual's assessment from the Ohio Risk Assessment System (ORAS), if available, indicates they are moderate or high risk, or
  - h. The individual has been found guilty of a Tier 3 Rule Violation.
2. If the Annual Security Review Team refers an individual to the Parole Board, the Parole Board chair/designee shall review the request and determine if a hearing is warranted. If the Parole Board chair/designee determines that a hearing is warranted, then an Additional Term hearing shall be scheduled by the Parole Board chair/designee. The Parole Board chair's/designee's decision shall be documented on the SB201 Referral for Additional Term Hearing Review (DRC3196). Referrals shall be made by routing the SB201 Referral for Additional Term Hearing Review (DRC3196) to the ODRC SB201 Additional Term Hearing ([DRC.SB201AdditionalTermHearing@odrc.state.oh.us](mailto:DRC.SB201AdditionalTermHearing@odrc.state.oh.us)).

#### **D. Determination of Available Additional Time**

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

#### **E. Parole Board**

1. The Parole Board chair/designee shall review all referrals, confirm that the individual is serving a non-life felony indefinite sentence, and determine whether an Additional Term Hearing is warranted based upon the information presented in the SB201 Referral for Additional Term Hearing Review (DRC3196). The review decision shall be documented, and if warranted, a hearing will be scheduled. The Parole Board chair/designee shall determine the amount of available additional time that may potentially be imposed. If there is no available additional time, then no further action is required.
2. After verifying that additional time is available to be imposed, a hearing shall be scheduled as follows:
  - a. Tier 1 Rule Violation Referral – If the individual has been found guilty of a Tier 1 Rule Violation, then a hearing will be scheduled approximately ninety (90) calendar days after the determination that a hearing is warranted.
  - b. Other Referrals – If the individual has been referred for an Additional Term Hearing for any reason other than a Tier 1 Rule Violation, the hearing schedule will depend on the time remaining to be served on the current sentence.

- i. If more than 270 calendar days remain on the current sentence, the hearing will be scheduled no earlier than the mid-point of the current sentence and no later than 270 calendar days prior to the expiration of the current sentence.
    - ii. If less than 270 calendar days remain on the current sentence, the hearing will be scheduled within approximately ninety (90) calendar days if sufficient time remains.
  - c. Before any hearing, notices must be provided as mandated by Ohio law and outlined in ODRC Policy 105-PBD-13, Statutory Notice.
  - d. Designated Parole Board staff shall provide written notice to the individual of the scheduled hearing (DRC3210) at least thirty (30) calendar days prior to the month in which the hearing is scheduled unless the Parole Board chair/designee gives prior approval for notice to be provided less than thirty (30) calendar days prior to that month.
  - e. A hearing may be delayed for good cause, including without limitation a determination that the conduct forming the basis of the rule violation has been referred to law enforcement for prosecution as a criminal offense or is the basis for pending criminal charges.
3. Written input received from victims shall be uploaded to OnBase by designated Office of Victim Services staff and/or Parole Board staff.
  4. Written input received from any other stakeholders (e.g., from a judge or prosecutor) shall be uploaded to OnBase by designated Parole Board staff.

#### **F. Conducting an Additional Term Hearing**

1. Parole Board staff shall not participate in any stage of the hearing process for a particular case when a conflict of interest exists. When there is a potential conflict of interest, the Parole Board chair/designee shall be informed, and the Parole Board chair/designee will decide as to the validity of the conflict of interest and how to proceed.
2. All Additional Term Hearings shall be conducted at the individual's institution in a setting which shall be private, secure, comfortable, and dignified.
3. Before the individual is brought into the hearing room, or prior to the initiation of the video conference hearing, the Parole Board hearing officer/designee conducting the Additional Term Hearing shall review all relevant RIB documents to which they have access and any other information including but not limited to the Annual Security Review Team referral, written input received pursuant to statutory notification, and the result of any specified risk instrument when available, along with the result of any supplemental risk tool specific to the particular type of offense or incarcerated adult. The Parole Board hearing officer cannot consider any conduct that was a violation of law that was prosecuted.

4. The hearing shall be conducted in person or via video conference on the scheduled hearing date. If the hearing cannot be held on the scheduled hearing date, then after the decision to reschedule has been finalized and processed to the Parole Board minutes, the individual will be notified in writing of the new scheduled hearing date using the Additional Term Hearing and Minutes (DRC3272)
5. Attendance at the Additional Term Hearing is limited to Parole Board staff, the incarcerated adult, and if required, special needs facilitators (i.e., an interpreter, translator, or other persons authorized by the Parole Board chair/designee to observe the hearing process). When deemed appropriate or necessary by the Parole Board staff, mental health staff or security personnel may also be present in the hearing room. The sole purpose of the presence of mental health staff shall be to assist an incarcerated adult with understanding the hearing process when the incarcerated adult has such diminished capacity that it renders the individual incapable or substantially unable to understand the process without assistance.
6. Each institutional hearing or interview shall be conducted with the incarcerated adult present in person or via video conference unless the Parole Board chair/designee determines, for good cause shown, that attendance by the incarcerated adult is inappropriate or unwarranted. The reasons for conducting a hearing without the incarcerated adult's attendance shall be documented in the Additional Term Hearing Decision and Minutes (DRC3272). The first instance of an incarcerated adult's refusal to appear does not by itself constitute good cause to conduct a hearing without the incarcerated adult's attendance. Incarcerated adults refusing to appear at an institutional hearing cannot receive an additional term based solely on that refusal. For the first such refusal to appear, the hearing shall be rescheduled to approximately ninety (90) calendar days later. Unit staff shall interview the individual to determine the reasons for the refusal and attempt to resolve the problem. A subsequent refusal to appear may be considered good cause to hold the re-scheduled hearing without the individual present.
  - a. If there is not enough time remaining prior to the incarcerated adult's scheduled release date to allow for a ninety (90) day continuance, the hearing will be set for an appropriate date to allow a decision to be made prior to the existing scheduled release date.
7. The Parole Board hearing officer/designee is responsible for completing all required paper or electronic forms. The Parole Board hearing officer should use the Additional Term Hearing Decision and Minutes (DRC3272) as a guide to conducting the hearing and ensuring that all relevant information is reviewed during the Additional Term Hearing. The Parole Board hearing officer should inform the incarcerated adult of the reason(s) for holding the Additional Term Hearing and the potential consequence of a finding that the presumption of release has been rebutted.
8. During the hearing, using the Additional Term Hearing Decision and Minutes (DRC3272), the Parole Board hearing officer should inform the incarcerated adult that they may provide mitigating information, and should briefly explain what information may be mitigating. The individual shall be given an opportunity to provide any mitigating information.

9. After the hearing has concluded, the Parole Board hearing officer shall determine whether the presumption of release has been rebutted, and whether to maintain incarceration for an additional period of time.
10. The Parole Board hearing officer may determine that the presumption has been rebutted only if the Parole Board hearing officer determines that one or more of the following applies:
  - a. Regardless of the security level in which the incarcerated adult is classified at the time of the hearing, both of the following apply:
    - i. During the individual's incarceration, the individual committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff or member of the incarcerated population of a state correctional institution, or physical harm or the threat of physical harm to the staff or member of the incarcerated population of a state correctional institution, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the individual has not been rehabilitated; and
    - ii. The individual's behavior while incarcerated, including but not limited to the infractions and violations described in the paragraph above, demonstrate that the individual continues to pose a threat to society.
  - b. Regardless of the security level in which the incarcerated adult is classified at the time of the hearing, the individual has been placed in extended restrictive housing at any time within the year preceding the date of the hearing.
  - c. At the time of the hearing, the individual is classified by the department at security level 3 or higher.
11. If the Parole Board hearing officer determines that an additional term is warranted, they will verify the amount of remaining time available as identified in the SENTN screen of DOTS Portal and issue a reasonable additional term of specific days, in day-long increments, of up to 365 days. If the Parole Board hearing officer determines that a term of more than 365 additional days is warranted, the Parole Board hearing officer shall staff the matter with a Chief Hearing Officer for review and approval. The Parole Board hearing officer shall utilize the Additional Term Hearing Grid (DRC3106) when determining the amount of additional time to impose.
12. The Parole Board hearing officer will review the Additional Term Hearing Decision and Minutes (DRC3272) with the incarcerated adult and inform the individual whether the presumption of release at the minimum has been rebutted, and if so, the additional period of incarceration that will be imposed.
13. The decision to impose an additional period of incarceration shall be noted on the Additional Term Hearing Decision and Minutes (DRC3272). Decisions rendered by the Parole Board hearing officer/designee shall be processed and noted in the Parole Board

Minutes within five (5) business days. Parole Board Minutes are considered public record after they are certified by the Parole Board chair.

14. A completed copy of the Additional Term Hearing Decision and Minutes (DRC3272) shall be provided to the incarcerated adult after the decision has been finalized and processed to the Parole Board Minutes.
15. The decision is final and non-appealable. The incarcerated adult shall be notified that the decision is final and non-appealable and shall be notified that future Additional Term Hearings may be held as long as they remain incarcerated and until the expiration of their maximum term.

**G. Application of Additional Time by the Bureau of Sentence Computation**

1. Once a decision is rendered, the hearing officer shall provide a copy of the Additional Term Hearing Decision and Minutes (DRC3272) to the BOSC Parole Board Section.
2. BOSC shall verify that the individual’s non-life felony indefinite maximum prison term allows for application of an additional period of incarceration. If there is sufficient time remaining, BOSC shall apply the additional period noted on the Additional Term Hearing Decision and Minutes (DRC3272) and determine the new expiration date of the incarcerated adult’s minimum term. If there is not sufficient time remaining to be served, BOSC shall immediately notify the Parole Board hearing officer/designee.
3. BOSC shall notify the unit management chief at the incarcerated adult’s institution, the ODRC Notifications (drc.notifications@odrc.state.oh.us), and the Office of Victim Services of the additional period imposed and the new expected release date.
4. BOSC shall notify the incarcerated adult of the new expected release date.

**Referenced ODRC Policies**

105-PBD-13 Statutory Notice

**Referenced Forms:**

Non-Life Felony Indefinite Prison Term Notification Form	DRC3088
Additional Term Hearing Grid	DRC3106
SB201 Referral for Additional Term Hearing Review	DRC3196
Notice to Incarcerated Adult of Additional Term Hearing	DRC3210
Additional Term Hearing Decision and Minutes	DRC3272



**Department of  
Rehabilitation & Correction**

SUBJECT: <b>Petition for Discretionary Reduction</b>	PAGE <u> 1 </u> OF <u> 6 </u>
	NUMBER: <b>78-REL-10</b>
RULE/CODE REFERENCE: ORC 2967.271, 5120.01; AR 5120-2-19, AR 5120-9-06	SUPERSEDES: <b>NEW</b>
RELATED ACA STANDARDS: NA	EFFECTIVE DATE: <b>March 15, 2021</b>
	APPROVED: 

**I. AUTHORITY**

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

**II. PURPOSE**

The purpose of this policy is to establish a standard procedure for the Ohio Department of Rehabilitation and Correction (ODRC) to carry out its duties efficiently and consistently concerning the Reduction Process for persons serving a serving a non-life felony indefinite prison term, as permitted by ORC 2967.271(F).

**III. APPLICABILITY**

This policy applies to all employees of the ODRC. This policy also applies to incarcerated adults sentenced pursuant to the provisions of SB 201 (132<sup>nd</sup> Ohio General Assembly).

**IV. DEFINITIONS**

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

[Definitions Link](#)

- **Senate Bill 201 (SB201)**

**V. POLICY**

It is the policy of the ODRC to refer eligible incarcerated adults who have exhibited exceptional conduct or adjustment to incarceration to the appropriate sentencing court authority so they may receive a hearing regarding possible reduction in their sentence, in accordance with ORC 2967.271.

**VI. PROCEDURES****A. Minimum Qualifications for a Reduction in Minimum Prison Term**

1. Eligible incarcerated adults sentenced shall be identified in the Departmental Offender Tracking System (DOTS) with a “SB201” indicator.
2. An incarcerated adult is not qualified to submit a petition for a reduction in minimum prison term unless they can demonstrate that all the following conditions have been satisfied:
  - a. The incarcerated adult has served at least 50% of the term of the SB201 minimum sentence,
  - b. The incarcerated adult has less than two (2) years remaining until the expiration of their term,
  - c. The incarcerated adult is not serving a mandatory prison term at the time of their petition, and
  - d. The incarcerated adult is not serving an indefinite prison term for a sexually-oriented offense, as defined under ORC 2950.01.
3. To be considered for a sentence reduction, the incarcerated adult must meet all the above-stated minimum qualifications and must demonstrate exceptional conduct or adjustment to incarceration, as defined in AR 5120-2-19, Recommended Reduction of Non-Life Felony Indefinite Prison Term.

**B. Petition for a Reduction in Minimum Prison Term**

1. Incarcerated adults seeking petition for reduction in a minimum prison term must first meet with their unit case manager and complete an Incarcerated Adult Petition for Sentence Reduction SB201 (DRC3197). Additionally, the incarcerated adult shall complete a Release of Mental Health Information (DRC5159). Once these forms are completed and signed by the incarcerated adult, they shall submit them to their unit case manager for processing in accordance with section VI.B.2 of this policy. The incarcerated adult should also present all supporting documentation to their unit case manager at this time to include with the petition. An incarcerated individual may only petition for a reduction in minimum term pursuant to this policy once each calendar year.
2. The unit case manager shall review the contents of the petition (DRC3197) with the incarcerated adult. If the form is complete, the unit case manager shall verify Section I of the Incarcerated Adult Petition for Sentence Reduction SB201 (DRC3197) in DOTS Portal (CERT2).
  - a. If the unit case manager determines that the incarcerated adult has not correctly completed the Incarcerated Adult Petition for Sentence Reduction SB201 (DRC3197), they shall review the petition with the incarcerated adult and provide guidance on the incomplete sections, allowing for proper completion before submitting to the managing officer.

3. The unit case manager shall review all documentation provided and determine if the incarcerated adult meets the minimum qualifications as outlined in subsection VI.A.2 of this policy.
  - a. If the incarcerated adult does not meet the minimum qualifications, the unit case manager shall document the reason for not meeting the minimum qualifications on the DRC Response to a Petition for Reduction in Minimum Sentence (DRC3195). A copy of the response, along with any accompanying documentation to include the Incarcerated Adult Petition for Sentence Reduction SB201 (DRC3197), shall be provided to the incarcerated adult and the entire petition packet scanned to OnBase under the UM-SB201 Director Reduction folder.
4. If the unit case manager verifies the incarcerated adult has correctly completed the form and meets the minimum qualifications as outlined in subsection VI.A.2 of this policy, the unit case manager shall complete the following steps:
  - a. Determine if the incarcerated adult has a mental health designation. If the incarcerated adult has a mental health designation as C1 or C2, the unit case manager shall contact the mental health manager and confirm the incarcerated adult is compliant with their Mental Health Treatment Plan, including medication compliance.
    - i) If an incarcerated adult is not compliant with their Mental Health Treatment Plan, the incarcerated adult shall be informed that consideration of their petition will be placed in abeyance until they achieve compliance for a period of at least ninety (90) days.
  - b. Confirm all verifiable information provided in the petition.
  - c. Complete the DRC Response to a Petition for Reduction in Minimum Sentence (DRC3195).
  - d. Complete an Institutional Summary Report (ISR).
  - e. Identify the incarcerated adult's proposed housing plan on the Incarcerated Adult Petition for Sentence Reduction for SB201 (DRC3197)
  - f. Forward the entire petition and accompanying documentation to the managing officer.
5. The managing officer shall review all Incarcerated Adult Petition for Sentence Reduction SB201 (DRC3197), along with accompanying documentation, forwarded to their attention and determine whether to recommend a reduction and submit the petition to the Director or deny the petition at their level. This function may not be delegated.
  - a. If the managing officer is considering a recommended reduction, they shall interview the incarcerated adult before referring a petition to the Director. The managing officer may deny the petition at their level and not submit it for the Director's review without interviewing the incarcerated adult. The managing officer's decision to deny a petition is not appealable.
  - b. Before reaching a decision, the managing officer shall consider all information regarding the incarcerated adult's criminal, behavioral, and programming history that is available to the managing officer.

- c. Before reaching a decision, the managing officer shall consider public safety in determining whether to deny the petition or refer it to the Director and recommend a reduction.
6. If the managing officer denies a petition, they shall provide a written explanation of the reasons for that decision on the DRC Response to a Petition for Reduction in Minimum Sentence (DRC3195). The managing officer shall ensure that the denial decision, the petition, and all accompanying documentation are scanned into OnBase under the UM-SB201 Director Reduction folder. The written explanation and the petition shall be provided to the incarcerated adult within fourteen (14) calendar days of the denial decision.
7. If the managing officer recommends reduction to the Director, they shall forward that recommendation in writing to the Director, along with the petition and accompanying documentation.
8. The Director or designee shall review all petitions that a managing officer submits with a recommended reduction. If the Director or designee denies the petition, the incarcerated adult shall be provided with a written explanation and reasons for denial. The denial, petition, and all accompanying documentation must be scanned to OnBase in the BOSCO section under the SC-SB201 Director Reduction folder and to the managing officer's administrative assistant for distribution to the incarcerated adult within fourteen (14) calendar days of the denial decision.
9. Only the Director can approve an Incarcerated Adult Petition for Sentence Reduction SB201 (DRC3197) and issue a recommended reduction to the sentencing court. The Director's approval shall be issued in writing and signed by the Director. This cannot be delegated.
10. If the Director approves a petition for recommended reduction, the Director or designee shall provide the incarcerated adult with written notification of the decision and the reasons that qualify the incarcerated adult for the recommended reduction, which shall include the percent reduction recommended, pursuant to Administrative Rule 5120-2-19, Recommended Reduction of Non-Life Felony Indefinite Prison Term. The Director or designee shall also notify the BOSC of the recommended reduction.

### **C. Approved Petitions for Recommended Reduction**

1. Upon notification that the Director has approved an incarcerated adult's petition for a recommended reduction, BOSC shall notify the Adult Parole Authority (APA). The APA shall initiate a placement investigation starting with the housing plans identified in the Incarcerated Adult Petition for Sentence Reduction for SB201 (DRC3197).
2. BOSC shall calculate the anticipated expiration date of the incarcerated adult's sentence based on the percent reduction of sentence recommended by the Director.
3. The APA shall notify BOSC when it has completed a placement investigation and provide the results of that investigation in writing.

4. BOSC shall complete a Notice to the Court of Recommended Reduction (DRC3212), which will:
  - a. Identify the incarcerated adult,
  - b. Identify the length of recommended reduction in term,
  - c. Identify the anticipated date of the incarcerated adult's sentence based on the Director's recommended reduction, and
  - d. Include a statement that the court must notify ODRC of the court's approval or denial of reduction no later than sixty (60) days after receipt of the Notice by the Court of Recommended Reduction (DRC3212).
5. BOSC shall send, by certified mail, the following documentation to the sentencing court and prosecuting attorney of the county in which the incarcerated adult was indicted not earlier than ninety (90) days prior to the date on which the Director wishes to credit the reductions toward the satisfaction of the incarcerated adult's minimum prison term:
  - a. A copy of the Director's Notice to the Court of Recommended Reduction (DRC3212) that states the reasons that qualify the incarcerated adult for the recommended reduction,
  - b. A copy of the DRC Response to a Petition for Reduction in Minimum Sentence (DRC3195)
  - c. A copy of the Incarcerated Adult Petition for Sentence Reduction for SB201 (DRC3197) and accompanying documentation,
  - d. A copy of the APA's placement investigation, and
  - e. An Institutional Summary Report.
6. BOSC shall notify the Office of Victim Services (OVS) that a Notice to the Court of Recommended Reduction (DRC3212) has been submitted to the sentencing court.
7. BOSC shall scan the entire petition packet, to include the court approval letter to OnBase in the BOSCO section under the SC-SB201 Director Reduction folder.

#### **D. Court Disapproved Reductions**

Upon notification from the sentencing court that the Director's recommended reduction has been rebutted and disapproved, BOSC shall notify the incarcerated adult that the reduction will not be credited towards satisfaction of the incarcerated adult's minimum prison term. BOSC shall also notify the UMC and managing officer's administrative assistant at the individual's institution, OVS, and APA that they can close out the placement.

#### **E. Court Granted Reductions**

1. Upon notification from the sentencing court that the Director's recommended reduction has been granted, BOSC shall credit the amount of the reduction toward satisfaction of the incarcerated adult's minimum prison term and determine the incarcerated adult's presumptive earned early release date.

2. If the granted reduction results in the imminent release of the incarcerated adult, BOSC shall notify the following:
  - a. Incarcerated adult,
  - b. BOSC Release Section,
  - c. APA,
  - d. Parole Board,
  - e. OVS,
  - f. Unit Management Chief (UMC) at the incarcerated adult's institution, and
  - g. Managing Officer's Administrative Assistant at the incarcerated adult's institution.
  
3. If the granted reduction does not result in an imminent release, BOSC shall notify the following:
  - a. Incarcerated adult,
  - b. OVS,
  - c. UMC at the incarcerated adult's institution, and
  - d. Managing Officer's Administrative Assistant at the incarcerated adult's institution.

**Referenced Forms:**

DRC Response to a Petition for Reduction in Minimum Sentence	DRC3195
Incarcerated Adult Petition for Sentence Reduction for SB201	DRC3197
Notice to the Court of Recommended Reduction	DRC3212