



## **Judicial Release Pro Se Packet**

This packet is designed for someone filing his or her own motion for Judicial Release under R.C. 2929.20. Judicial Release is a form of early release granted by your judge. You will not need the packet if you already have an attorney who will file for your Judicial Release. This packet is intended only as an introduction to the Judicial Release process. More detailed information can be obtained by reading R.C. 2929.20 in the law library.

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 supervision. You will be required to serve up to 5 years on community control.

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

The way to apply for Judicial Release is by filing a motion. It is always better if you can go through a lawyer to file any motions with the court. The court is not required to appoint a lawyer to file your Judicial Release motion. You can write to your original attorney to ask if he or she will file the motion. If you need your attorney's address, check the Ohio Supreme Court's online attorney directory, the county clerk's online case docket, or write the Ohio Public Defender.

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 connected with 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.



## SENATE BILL 2, HOUSE BILL 86, AND SENATE BILL 201

If your crimes occurred between July 1, 1996 and September 29, 2011 you were sentenced under Senate Bill 2. Except for indefinite life terms for certain offenses, the court imposed a “definite” term, sometimes called “flat time.”

If your crimes occurred on or after September 30, 2011 and before March 21, 2019 you were sentenced under House Bill 86. Like Senate Bill 2, except for indefinite life terms, the court imposed a “definite” term or “flat time.” Those sentenced under House Bill 86 have expanded opportunities to obtain earned credit to reduce prison terms.

If your crimes occurred on or after March 22, 2019 you were sentenced under Senate Bill 201. If you were convicted of fifth, fourth, or third-degree felonies the judge imposed a “definite” (flat time) prison term. However, if you were convicted of first- or second-degree felonies, the judge imposed both a minimum and maximum “indefinite” term. For the purposes of determining judicial release eligibility, the minimum term should be considered. Earned credit opportunities available under House Bill 86 remain for eligible offenses.

## SENATE BILL 288

In 2023 Senate Bill 288 added two new categories of individuals who are eligible for Judicial Release: (1) “state of emergency-qualifying offender” and (2) “eighty per cent-qualifying offender.” The eighty per cent-release mechanism used to be under R.C. 2967.19 and was moved to the Judicial Release law under R.C. 2929.20. Both categories are very limited in scope and likely will not apply to your situation. They are not addressed in depth here. **This packet is not designed for “state of emergency” or “eighty per cent” offenders. For more information about these categories, see the Judicial Release – SB 288 Supplement.**

The third category– “eligible offender”– is the most common category and remains from prior law. An eligible offender is someone who is serving a prison term that includes one or more nonmandatory prison terms. **This packet is designed for the eligible offender category.**

### A. ELIGIBILITY

Determining eligibility and the appropriate time for filing a motion for Judicial Release can be difficult. This packet does not cover all possible sentences, nor does our explanation include a complete list of those offenses for which Judicial Release is precluded. If you are in doubt about your eligibility, read the Judicial Release statute, R.C. 2929.20, or contact the Ohio Public Defender. You may also review the statute or statutes under which you were convicted, as those statutes may contain language disqualifying you from eligibility for Judicial Release.

You must be serving at least one non-mandatory sentence to be eligible for Judicial Release. You are not eligible during any period you are serving a mandatory sentence. You are not eligible if you are serving only a mandatory sentence. Mandatory terms are defined at R.C. 2929.13(F) and division (B) of 2929.14.

## B. WHEN CAN YOU FILE?

Under R.C. 2929.20 the Judicial Release eligibility date is determined by the length of the “aggregated” nonmandatory prison term or terms. Aggregated means total. This packet uses the word “total” in place of “aggregated.” The total nonmandatory prison term means the total of the following: (a) All nonmandatory definite (flat time) prison terms; and (b) All nonmandatory minimum prison terms imposed as part of a non-life felony indefinite prison term or terms.

- If the total nonmandatory prison term or terms is less than two years, you may file the motion at any time after you are delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, at any time after the expiration of all mandatory prison terms.
- If the total nonmandatory prison term or terms is at least two years but less than five years, you may file the motion not earlier than one hundred eighty days after you are delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than one hundred eighty days after the expiration of all mandatory prison terms.
- If the total nonmandatory prison term or terms is five years, you may file the motion not earlier than the date on which you have served four years of your stated prison term or, if the prison term includes a mandatory prison term or terms, not earlier than four years after the expiration of all mandatory prison terms.
- If the total nonmandatory prison term or terms is more than five years but not more than ten years, you may file the motion not earlier than the date on which you have served five years of your stated prison term or, if the prison term includes a mandatory prison term or terms, not earlier than five years after the expiration of all mandatory prison terms.
- If the total nonmandatory prison term or terms is more 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) 5 years after the expiration of all mandatory prison terms. (Stated prison term means your total sentence, including both non-mandatory and mandatory).

### EXAMPLES

- The court imposed 2 *concurrent* 1-year non-mandatory terms. Your total (aggregated) non-mandatory term is 1 year.
- The court imposed 2 *consecutive* 3-year non-mandatory terms. Your total (aggregated) non-mandatory term is 6 years.
- The court imposed 1 non-mandatory indefinite 2–3-year term. Your total (aggregated) nonmandatory minimum term is 2 years.
- The court imposed 2 *concurrent* non-mandatory indefinite 2–3-year terms. Your total (aggregated) non-mandatory minimum term is 2 years.
- The court imposed 2 *consecutive* non-mandatory indefinite 2–3-year terms totaling 4-5 years. Your total (aggregated) non-mandatory minimum term is 4 years.

**Table A: Prison Sentence with No Mandatory Time**

<b><u>Total prison sentence</u></b>	<b><u>Can File After</u></b>
Under 2 Years	Reaching prison
2 years or more, but under 5 years	180 days ( <b>not reduced by jail-time credit</b> )
Exactly 5 years	4 years
Over 5 years, but 10 years or less	5 years
Over 10 years	After you serve half of your sentence

**Table B: Prison Sentence with Mandatory Time**

<b><u>Total non-mandatory prison sentence</u></b>	<b><u>Can File After</u></b>
Under 2 Years	Mandatory sentence complete*
2 years or more, but under 5 years	Mandatory sentence complete* + 180 days ( <b>not reduced by jail-time credit</b> )
Exactly 5 years	Mandatory sentence complete* + 4 years**
Over 5 years, but 10 years or less	Mandatory sentence complete* + 5 years**
Over 10 years	The <b>later</b> of: (1) 1/2 of your total prison term (mandatory + non-mandatory) or (2) Mandatory sentence complete* + 5 years**

\* **Mandatory** time for a gun specification cannot be reduced by jail-time credit. *State v. Moore*, 154 Ohio St.3d 94, 2018-Ohio-3237, 111 N.E.3d 1146, ¶ 10; See also R.C. 2929.14(B)(1)(b).

\*\* If the **non-mandatory** portion of your sentence is 5 years or more it is uncertain at this time whether jail-time credit can reduce the 4 or 5 years you must serve AFTER your mandatory time is complete. See *State v. Clinkscale*, 10th Dist. Franklin No. 22AP-708, 2023-Ohio-4146 (holding jail-time credit does apply), *appeal docketed*, No. 2024-0005 (Ohio Jan. 2, 2024).

## PREPARING THE MOTION

At the top of the front page of the motion fill in your case information - name, county, and case number. Next, provide your current institution and the date you were delivered to the reception center. At the bottom, sign and provide current address. If you do not have access to a typewriter, *neatly* fill in the blanks with the information about your case in pen.

### 1. The Memorandum in Support

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

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

You will need to tell the court specifically what you plan to do to break the cycle of criminal behavior in your life. Your plan can include inpatient or outpatient treatment, a support network, as well as avoiding negative places and people. Tell the court if you have a place to live, if you have employment or a source of income available, as well as any other resources you have available in the community, such as a supportive family.

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

If you were convicted of a felony of the first or second degree you must explain to the court (a) that a sanction other than a prison term would adequately punish you and protect the public from future criminal violations because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism; and (b) that a sanction other than a prison term would not demean the seriousness of the offense. R.C. 2929.20(J)(1)(a)-(b); 2929.12.

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

- You have a release plan with available housing and employment.
- You did not cause or threaten harm to any person or property.
- You did not intend harm to any person or property.
- Your offense was the result of circumstances which are unlikely to reoccur.
- You have no prior offenses or criminal history.

- You led a law-abiding life for a substantial period of time before committing the offense.
- You are not likely to commit another offense.
- You will make restitution for injury, damage, or loss.
- Imprisonment is an undue hardship on you and your family.
- You have demonstrated genuine remorse.
- You served in the military.

See R.C. 2929.12(F)-(G).

You may also wish to attach copies of any certificates you have earned in the institution, employment references, and housing information. If you are granted a hearing, the warden will send the court an institutional summary report on your conduct in the institution and in any institution from which you may have been transferred. The report is also sent to the prosecutor. The institutional summary report covers your participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against you. R.C. Code 2929.20(G).

## **2. Certificate of Service**

The Certificate of Service is the last part of the Judicial Release motion. This is simply your promise to the court that you have mailed a copy of the motion to the prosecutor's office.

## **C. FILING THE MOTION**

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

- **File the motion in the county clerk of court's office.**
- **Do not send the motion directly to your judge.**
- **Do not send it to the Office of the Ohio Public Defender.**
- **Send a copy to the prosecutor.**

You will need to send the original and at least one copy to the clerk of courts for your county of conviction. You can find the address for the clerk of courts at your institution's law library or the county clerk's website. You should send the clerk a self-addressed stamped envelope and ask that a date-stamped copy of the filed motion be returned to you. You will also need to mail one copy of your motion to the prosecutor's office for your county. You can find the address for the prosecutor's office at the law library.

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

- Your motion can only be granted after a hearing.
- The court may deny your motion without a hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed. R.C. 2929.20(D)(2)(a).
- *If the court grants a hearing* on a motion for Judicial Release, the offender shall attend the hearing if ordered to do so by the court.
- The court shall only hold one hearing for any eligible offender.
- “Denied,” “Dismissed,” and “Overruled” all mean “No.”

### **If the court denies your motion for Judicial Release without holding a hearing:**

- Denied without prejudice. If the court's entry states that your motion was denied “without prejudice,” or if the entry does not mention “prejudice,” the court may consider a subsequent motion for Judicial Release.
- Denied with prejudice. If the court's entry states that your motion was denied, “with prejudice,” then the court may not consider a subsequent motion for Judicial Release. However, the court may still grant a Judicial Release on its own motion.

While the court has the final say, it will probably not rule on your motion until it hears the prosecutor's recommendation. If the court grants Judicial Release, you will be under supervision for up to 5 years. None of the time you spend under supervision will count toward your sentence. If you violate the terms of your supervision, you may be returned to prison to serve the remainder of your sentence.

- The prosecutor may appeal, as a matter of right, a trial court's decision to grant Judicial Release to an offender sentenced for a felony of the first or second degree. R.C. 2953.08(B)(3).
- R.C. 2929.20 does not specify any time limits for filing a second or additional motion for Judicial Release.

**You may contact the Office of the Ohio Public Defender in Columbus:**

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

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, OHIO

STATE OF OHIO, :  
 :  
Plaintiff, : Case No. \_\_\_\_\_  
 :  
vs. :  
 :  
\_\_\_\_\_, : **HEARING REQUESTED**  
 :  
Defendant. :

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**MOTION FOR JUDICIAL RELEASE**

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\_\_\_\_\_ is incarcerated at \_\_\_\_\_  
\_\_\_\_\_, was delivered to the prison system on the \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, and is now eligible for Judicial Release pursuant to R.C. 2929.20.

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

Respectfully submitted,

\_\_\_\_\_  
DEFENDANT-APPELLANT, PRO SE

\_\_\_\_\_  
Inmate Number/Institution

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code



## MEMORANDUM IN SUPPORT

Judicial Release would accomplish the overriding purposes of felony sentencing by protecting the public from future crime by the offender, punishing the offender, and promoting the effective rehabilitation of the offender by using a minimum sanction to accomplish those purposes without imposing an unnecessary burden on state or local government resources. R.C. 2929.11(A).

Defendant respectfully submits that a sanction other than a prison term would adequately punish, and also protect the public from future criminal violations by Defendant because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism and that a sanction other than a prison term would not demean the seriousness of the offense. R.C. 2929.20(J)(1).

In support of the foregoing motion, Defendant offers the following reasons in favor of being granted Judicial Release.

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[illegible]

[illegible]

- Respectfully submitted,

Inmate Number/Institution

City, State, and Zip Code

### **CERTIFICATE OF SERVICE**

I certify a copy of the foregoing MOTION FOR JUDICIAL RELEASE has been sent by regular U.S. mail to the office of the \_\_\_\_\_ County Prosecutor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Mailed to:

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT-APPELLANT, PRO SE