



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Judicial Release Pro Se Packet

Judicial Release is a form of early release granted by your judge. This packet is designed for someone filing his or her own motion for Judicial Release. 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 Revised Code 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's Prison Legal Services Section 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, legal directories are available in the law library. If you do not remember your lawyer's name, you will need to write to the clerk of court in your county of conviction or write the Ohio Public Defender.

If you need assistance in filling out the forms, you can write the law library to receive assistance from an inmate clerk. Remember, however, inmate clerks are not connected 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.

A. ELIGIBILITY

Determining eligibility and the appropriate time for filing a motion for Judicial Release can be complex. This packet does not cover all possible sentences, nor does our explanation include a list of those offenses for which Judicial Release is precluded. If you are in doubt about your eligibility, read the Judicial Release statute, Revised Code 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 Revised Code 2929.13(F) and division (B) of 2929.14.

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 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. Earned credit opportunities available under House Bill 86 remain for eligible offenses.

B. WHEN CAN YOU FILE?

Under Revised Code 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 or terms means the total of the following: (a) All nonmandatory definite (flat time) prison terms; (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 the date on which you have served one-half of your stated prison term or 5 years after the expiration of all mandatory prison terms. (Stated prison term means 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 prison 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 4-6 years. Your total (aggregated) non-mandatory minimum term is 4 years.

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

PREPARING THE MOTION

At the top of the front page of the motion, you will find the caption that identifies your case. If you do not have access to a typewriter, neatly fill in the blanks with the information about your case in pen. Your case number can be found on the second page of your legal packet under the heading “Docket Number.”

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. If there are reasons you have been unable to do programs, explain.

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. Revised Code 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 Revised Code 2929.12(E)-(F)

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 head of the state correctional institution 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. Revised 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. While the court has the final say, it will probably not rule on your motion until it hears the prosecutor's recommendation.

C. FILING THE MOTION

File the motion in the trial court. The court does not have to appoint an attorney to file your Judicial Release motion. Find out if your original attorney is willing to file your motion by writing to him or her. If you do not have an attorney to file your Judicial Release motion, you may use the pro se form attached to this packet or prepare your own.

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.

- **Do not send the motion directly to your judge.**
- **Do not send it to the Office of the Ohio Public Defender.**

You will need to send the original and at least one copy to the clerk of courts for your county of conviction, whose address can be found at the bottom left corner on the front page of your legal packet. 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, whose address you will find in the bottom right-hand corner of the front page of your legal packet.

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 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.

If the court grants Judicial Release, you will be under supervision for 1, 2, 3, 4, or 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. Revised Code 2953.08(B)(3)
- Revised Code 2929.20 does not specify any time limits for filing a second or additional motion for Judicial Release.

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

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

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

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

MOTION FOR JUDICIAL RELEASE

_____ 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, punish the offender, and promote 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 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.

For the foregoing reasons, Defendant hereby respectfully requests:

- 1. that this court order a hearing be held on this motion, pursuant to R.C. §2929.20(D); and,
- 2. that this court issue an order compelling Defendant's attendance at the hearing; pursuant to R.C. §2929.20(H); and,
- 3. that Judicial Release be granted, subject to appropriate community control sanctions.

Respectfully submitted,

DEFENDANT-APPELLANT, PRO SE

Inmate Number/Institution

Address

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