

ORIGINAL

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO	:	NO. 2009-0299
Plaintiff-Appellee	:	On Appeal from the Hamilton County Court of Appeals, First Appellate District
vs.	:	
LYNN ROBERTS	:	Court of Appeals Case Number C-080571
Defendant-Appellant	:	

MERIT BRIEF OF PLAINTIFF-APPELLEE

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Introduction

The law requires the Department of Rehabilitation and Correction to notify the sentencing court about its intent to place an inmate into an intensive program prison. That notice had to be sent either via certified or electronic mail (the law recently changed and now only allows it to be sent via certified mail). The DRC is not permitted to place the inmate into an IPP until ten days after it receives a receipt showing that its notice was received by the sentencing court.

None of that happened here. The DRC faxed its notice. Assuming that anyone actually received it, it faxed it to the wrong judge. It never received a return receipt showing that the notice was received by anyone. Despite all of that, it placed Lynn Roberts into an IPP and then released him.

Roberts' inappropriate release likely would not have been noticed had Roberts not continued to pursue his direct appeal after he had been released. But since his appeal

resulted in having his sentence vacated, everyone learned that he had been improperly released from prison. And once that was learned, the trial court reincarcerated him. The question before this Court is whether the trial court was permitted to do that.

Statement of the Case and Facts

Lynn Roberts' criminal case was assigned to Judge Ralph E. Winkler. Judge Winkler assigned the matter to Visiting Judge Fred Cartolano. After Roberts was found guilty of possession and trafficking in heroin, he was sentenced to five years in prison. The entry was silent as to whether Roberts could be placed into an intensive program prison.

While his direct appeal was pending before the First District Court of Appeals, the Ohio Department Rehabilitation and Correction placed Roberts into an IPP. Roberts was released from the IPP and placed on postrelease control. While still serving the postrelease control portion of his sentence, the First District vacated his convictions and remanded the matter to the trial court.

The trial court held a new sentencing hearing after the date Roberts' postrelease control would have ended. Roberts attempted to prevent the trial court from resentencing him by filing a petition for a writ of prohibition in the First District. After his writ was denied, the trial court held a new sentencing hearing.

Roberts filed a motion to dismiss, arguing that the trial court could not resentence him because he had completed the IPP. Prior to sentencing him, the trial court held a

hearing on Roberts' motion to dismiss. At that hearing, the trial court heard from Kelly Taynor-Arledge, who screens inmates for placement into IPP; James Richard Guy, counsel for the DRC; and Richard McIntyre, a bailiff employed by former Hamilton County Court of Common Pleas Judge Fred Nelson.¹

After Roberts was admitted into prison, Taynor-Arledge checked to see if he was eligible for an IPP.² She found that he was.³ She checked to see what judge was responsible for Roberts' case and found that it was Judge Cartolano, but she could not find him in her judge directory.⁴

Unable to find Judge Cartolano, Taynor-Arledge called and spoke to someone that worked for the Clerk of Courts.⁵ This person apparently told her that the correct judge was Judge Nelson, who was elected to Judge Cartolano's seat after he had to retire due to age restrictions.⁶ She then contacted yet another person that worked for the Clerk of Courts and was apparently told the same thing.⁷ At no point in time was Taynor-Arledge able to say who these people were.

Though the notice said that it was being sent via certified mail, return receipt requested,⁸ Taynor-Arledge faxed the notice of intent to place Roberts into an IPP to

¹In 2008, Judge Nelson lost reelection to Judge Jerome Metz.

²T.p. 10.

³T.p. 10.

⁴T.p. 10-11.

⁵T.p. 11.

⁶T.p. 13.

⁷T.p. 13.

⁸T.p. 19 & Defendant's Exhibit C.

Judge Nelson.⁹ Other than assuming that if she got a fax confirmation sheet that it must have made it to Judge Nelson, Taynor-Arledge had no knowledge about whether the fax was ever received by anyone.¹⁰

McIntyre testified that he would occasionally receive faxes that should have gone to other judges and when that happened he would redirect the fax to the proper judge.¹¹ McIntyre, however, had no recollection of ever receiving any faxes related to Roberts.¹²

Taynor-Arledge testified that while three notices should have been sent, she only attempted to send one of those notices.¹³ Guy, staff counsel for the DRC, also testified that the DRC is required to give three different notices about placing an inmate into an IPP and that he could only find one notice in the DRC's files.¹⁴

Guy also testified that the DRC is required to follow the Ohio Administrative Code when it wants to place someone into an IPP, more specifically OAC 5120:11-03(D).¹⁵ That section, amongst other things, required the DRC to send notice of its intent to place an inmate into an IPP either through electronic or certified mail and to wait ten days from when it received the return receipt before it placed an inmate into an IPP.

⁹T.p. 14-15.

¹⁰T.p. 25-26.

¹¹T.p. 65-66.

¹²T.p. 67-68.

¹³T.p. 30-31.

¹⁴T.p. 49-50.

¹⁵T.p. 48.

Before ruling on Roberts' motion to dismiss, Judge Winkler stated that "[t]his court, myself, personally never received anything as to the defendant being granted this early release program, and there's no evidence or information that convinces the court that Judge Cartolano, the judge that I assigned the case to, received the notice either."¹⁶

The trial court then denied Roberts' motion and resentenced him to the original five year sentence, giving him credit for time he already served. The court stated in its entry that Roberts was not to be placed into an IPP a second time.

¹⁶T.p. 93.

State's First Proposition of Law: To properly place a defendant into an intensive program prison, the Ohio Department of Rehabilitation and Correction must properly notify the sentencing judge of its intent to place the defendant into the program and must also comply with the Ohio Administrative Code.

Though it failed to send notice to either of the judges that handled his case and failed to follow the Ohio Administrative Code, Roberts argues that the Ohio Department of Rehabilitation and Correction properly placed him into an intensive program prison. When the DRC fails to follow the law, is its placement of an inmate into an IPP void ab initio, thus allowing a trial court to resentence the defendant to prison?

Ohio Revised Code 5120.032 allows the DRC to place inmates into IPPs. The relevant portion of that section states: "If the sentencing court does not make a recommendation on the placement of a prisoner in an intensive program prison and if the department determines that the prisoner is eligible for placement in a prison of that nature, the department shall screen the prisoner and determine if the prisoner is suited for the prison. If the prisoner is suited for the intensive program prison, at least three weeks prior to placing the prisoner in the prison, the department shall notify the sentencing court of the proposed placement of the prisoner in the intensive program prison and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement. If the sentencing court disapproves the placement, the department shall not proceed with it. If the sentencing court does not timely disapprove of the placement, the department may proceed with plans for it."

The Ohio Administrative Code instructs the DRC on how to issue the notice discussed in RC 5120.032. The relevant section of the code is OAC 5120:11-03(D), which stated: "If an applicant is eligible pursuant to paragraph (E) and either paragraph (C)(3) or (C)(2) of this rule and the sentencing entry is silent on the prisoner's placement in an intensive program prison, then the warden or contract monitor, if applicable, shall notify, by certified or electronic mail, the sentencing judge of its intention to place the applicant in a [sic] intensive program prison. If the judge notifies the warden or contract monitor, if applicable, within ten days after the mail receipt, that the judge does not approve intensive program prison for the prisoner, then the warden or contract monitor, if applicable, shall notify, in writing, the prisoner of the disapproved placement. If the sentencing judge does approve intensive program prison for the prisoner or does not notify the warden or contract monitor, if applicable, of the disapproved placement within ten days after the mail receipt, then the director may place the prisoner in the program. This notification process does not apply if the sentencing court finds statutory eligibility for the prisoner's placement in an intensive program prison and/or the sentencing entry either approves or recommends such placement."¹⁷

This section of the OAC has been recently amended. It no longer allows for notice to be sent via electronic mail and has changed the waiting period from ten days to thirty days.¹⁸

¹⁷OAC 5120:11-03(D) (2006).

¹⁸OAC 5122:11-03(D) (2008).

- A. The DRC was not authorized to place Roberts into an IPP because it did not properly notify the sentencing judge of its intent to place Roberts into an IPP, did not utilize an authorized means of communicating its intent, and did not have a return receipt that would have triggered the ten-day period of time it had to wait before placing Roberts into an IPP.**

The First District correctly ruled that the DRC did not properly place Roberts into an IPP for three reasons. First, there was no evidence that the DRC notified the sentencing judge of its intention to place Roberts into an IPP. Second, the DRC did not follow its own procedures, which required sending three notices, nor did it comply with the Ohio Administrative Code, which required the notice be sent either via electronic or certified mail. Finally, a return receipt is required to show that the DRC's notice was actually received by someone; because there was no return receipt in this matter, the DRC was never authorized to place Roberts into an IPP.

- 1. There was no evidence showing that the DRC notified the sentencing judge of its intention to place Roberts into an IPP.**

The evidence presented during the motion to dismiss hearing showed only that the DRC had faxed a notice of its intent to place Roberts into an IPP. But no one from the DRC was able to say who, if anyone, actually received its notice. And even if it is assumed that the DRC's fax was received by someone in the court of common pleas, the law required the DRC to notify the sentencing judge, not just any judge who happens to be a part of the court of common pleas.

- a. **The evidence shows only that a fax was sent from the DRC. It does not show that the fax was actually received by anyone, let alone the sentencing judge.**

Taynor-Arledge testified that she spoke to two different employees of the Clerk of Courts. She had no clue, however, who those people were. Based off of what these two unnamed people who didn't even work for the Court of Common Pleas apparently told her, she faxed a notice of the DRC's intention to place Roberts into an IPP to Judge Nelson. Oddly, the notification stated not that it was being faxed, but that it was being sent via certified mail. Regardless, other than relying upon a confirmation sheet that her fax machine printed, she had no idea whether the notice was received by anyone in the Court of Common Pleas. Without any other form of verification, she just assumed that if the fax went through that it must have been received by Judge Nelson.

McIntyre, Judge Nelson's bailiff, testified that he would occasionally get things that were in no way related to anything that Judge Nelson was handling. When that happened, he redirected these things to the proper judge. He had no recollection of receiving the notice related to Roberts, let alone delivering it to either Judge Winkler or Judge Cartolano.

As the First District correctly found, there is no evidence that either Judge Winkler or Judge Cartolano, the two judges who handled Roberts' case, were notified that the DRC wanted to place Roberts into an IPP.

b. The DRC was required to send notice to the sentencing judge, not just any judge who happens to sit on the court of common pleas.

Overlooking the fact that there is no evidence that anyone in the Court of Common Pleas received the DRC's notice, let alone a judge, Roberts argued below that the definition of "sentencing court," a term used once in the OAC, should be stretched to mean the DRC could send its notice to any judge that is sitting on the Court of Common Pleas. This definition was properly rejected for two reasons: First, it would allow judges who knew nothing about a defendant to alter the sentence and, second, it ignores the OAC's intent that notice be given to the judge that handled the prisoner's case.

If "sentencing court" were given Robert's definition then it would be possible for judges that do not even handle criminal cases – such as probate or domestic relations judges – to allow changes to a defendant's sentence.

It would not even make sense to stretch the definition to include only those courts that do handle criminal matters. That would still give judges the ability to alter sentences on cases that they knew nothing about. Even worse, it would give the DRC the ability to judge shop for those judges that it knew would always go along with its recommendations.

Roberts' desired definition ignores the Ohio Administrative Code, which specified that the DRC's notice was to be sent "by certified or electronic mail, [to] the sentencing *judge*."¹⁹ It continues to refer to the "judge" three more times: "If the *judge* notifies the

¹⁹OAC 5120:11-03(D) (2006) (emphasis added.)

warden or contract monitor, if applicable, within ten days after the mail receipt, that the *judge* does not approve intensive program prison for the prison, then the warden or contract monitor, if applicable, shall notify, in writing, the prison of the disapproved placement. If the sentencing *judge* does approve intensive prison program for the prisoner or does not notify the warden or contract monitor, if applicable, of the disapproved placement within ten days after the mail receipt, then the director may place the prisoner in the program."²⁰

The OAC only referred to "the sentencing court" once: "This notification process does not apply if the sentencing court finds statutory eligibility for the prisoner's placement in an intensive program prison and/or the sentencing entry either approves or recommends such placement."²¹

The OAC requires that the DRC's notice be sent to the judge that handled an inmate's case, not any judge who happens to sit on the Court of Common Pleas. This makes sense because it ensures that the notice is sent to the judge who knows why the inmate was sentenced and who can properly determine whether that sentence should be modified by allowing the inmate to be placed into an IPP. It makes sure that the judge who sentenced an inmate and gave consideration to the sentencing principles set forth in R.C. 2929.11 and 2929.12 is the same judge who determines whether that inmate should be given a chance for early release through an IPP.

²⁰*Id.*

²¹*Id.*

To adopt Roberts' definition would require this Court to redraft the statute – a statute that has since been modified to only allow notifications to be sent via certified mail.²² Yet even if Roberts' definition could be adopted it would not matter because there was never any proof that anyone on the Court of Common Pleas received the DRC's notice. And even if some proof had been offered that at least showed that someone actually received the fax it still would not change the result of this case because the DRC followed neither its own procedures, which required sending the notice three times, nor the OAC, which required sending the notice via either electronic or certified mail.

2. **The Ohio Department of Rehabilitation and Correction did not follow its own procedures, which required sending three notices, nor did it comply with the Ohio Administrative Code, which required the notice be sent either via electronic or certified mail.**

Both Taynor-Arledge and the DRC's staff counsel, Guy, testified that the DRC's own procedures required it to send three notices to the sentencing court. Both testified that only one of the three notices had been sent. Yet even if the DRC had followed its own procedures and sent three faxes it still would not have meant that it properly placed Roberts into an IPP because faxes are not an acceptable means of issuing the DRC's notice.

²²OAC 5120:11-03(D) (2008).

Ohio Administrative Code 5120:11-03(D) required the DRC to "notify, by certified or electronic mail, the sentencing judge of its intention to place the applicant in an intensive program prison."²³ The OAC allows the DRC to notify the sentencing court either by certified mail or by electronic mail. It does not give the option of sending a fax. As the First District correctly ruled, by failing to follow the OAC the DRC lacked the authority to place Roberts into an IPP and to grant him an early release from prison.

Roberts could try to argue that a fax is a form of electronic mail, but the OAC distinguishes the two means of communication and specifies when faxes are permitted. For example, OAC 126:1-1-01 allows the Ohio Office of Budget and Management to issue public notice of its public meetings by sending a copy of the notice "by United States mail, electronic mail, or facsimile (FAX) to each person whose name is included on the mailing list." In OAC 1301:5-1-12, fees may be charged against people who have requested notice of the Ohio Real Estate Commission's hearings be faxed to them while fees may not be assessed against people who request electronic mail notification. And OAC 3745:89-08 allows notice of laboratory testing of public water to be sent either "by fax or by electronic mail."

The OAC does not allow the DRC to send notice of its intent to place inmates into an IPP via facsimile. This is likely because, as this case demonstrates, it is not possible to know who actually received a fax or if it was even received. Someone has to sign for

²³OAC 5120:11-03(D) (2006).

certified mail and return receipts can be requested for electronic mail. Neither can be done with a fax. Yet even if faxes were an acceptable means of sending notice, the DRC still was not authorized to place Roberts into an IPP because it had to wait 10 days after receiving a return receipt before it would have been authorized to place him into the IPP.

- 3. A return receipt is required to show that the DRC's notice was actually received by someone; because there was no return receipt in this matter, the DRC was never authorized to place Roberts into an IPP.**

The OAC specifies that the DRC is not to place an inmate into an IPP until ten days after it received a return receipt showing that its notice has been received.²⁴ There is no return receipt in this case, thus the DRC was never authorized to place Roberts into an IPP.

The Eighth District recently ruled that without a return receipt that the DRC has no authority to place an inmate into an IPP. In *Kempf v. State*,²⁵ an inmate was placed in an IPP after the DRC sent the notice of their intent via regular mail. The trial court never received the notice, thus it never had a chance to respond. The court only learned that this had happened after Kempf was released from prison. Unlike this matter, the DRC admitted that it had erroneously placed Kempf into an IPP and arranged for Kempf to be reincarcerated.

²⁴OAC 5120:11-03(D) (2006).

²⁵*State v. Kempf*, 8th Dist. No. 91211, 2009-Ohio-1877.

In rejecting Kempf's argument that she should not have been reincarcerated, the Eight District ruled "that the statutory language 'receipt of the notice' is the critical and controlling language. The use of this language shows that the statutory scheme requires actual receipt and knowing approval by the trial court. Without that actual receipt, the statutory prerequisite is not fulfilled, and Kempf's participation in the IPP was void ab initio."²⁶

The same holds true here. The DRC did not have a return receipt showing that its notice had been received by anyone. Roberts' placement into an IPP, therefore, was void ab initio.

B. Because the DRC did not properly place Roberts into an IPP, its attempt to modify his sentence was void ab initio. Because it was void ab initio, the trial court properly resentenced him to prison.

There is no evidence that anyone on the court of common pleas, let alone a judge that actually handled Roberts' case, received the DRC's notice. The DRC did not follow its own procedures and violated the law when it apparently attempted to notify the sentencing court via a single fax. And, most importantly, it did not have a return receipt showing that its notice had actually been received by the trial court.

For any one or all of those reasons, Roberts' placement into an IPP was improper and was void ab initio. The trial court was, therefore, authorized to resentence him to the remainder of his sentence. Any ruling to the contrary would authorize the DRC to

²⁶*Id.* at ¶ 17.

modify an inmate's sentence without permission to do so from the judiciary, which would violate the separation of powers doctrine.

State's Second Proposition of Law: The Ohio Department of Rehabilitation and Correction violated the separation of powers doctrine by placing Roberts into an IPP without properly notifying the sentencing judge of its intent to do so.

Without receiving permission to do so from the trial court, the DRC took it upon itself to shave years off of Roberts' judicially imposed sentence. Did this usurping of judicial power violate the separation of powers doctrine?

A. Under the separation of powers doctrine, the power to impose or to modify a sentence is held by the judiciary.

Though not found in the Ohio Constitution, the separation of powers doctrine is inherent in the constitutional framework that defines the scope of authority conferred upon the three separate governmental branches.²⁷ This Court has long held that no branch of the government should have an overruling influence over another branch: "The essential principle underlying the policy of the division of powers of government into three departments is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others."²⁸

²⁷*State v. Sterling*, 113 Ohio St. 3d 255, 2007-Ohio-1790, 864 N.E.2d 630, ¶ 22.

²⁸*State ex rel. Bryant v. Akron Metro Park Dist.* (1929), 120 Ohio St. 424, 473, 166 N.E.2d 407.

This Court has specifically ruled that the other branches must not interfere with the judiciary's administration of justice: "It is a well-established principle that the administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers. The proper administration of justice requires that the judiciary be free from interference in its operations by such other branches. Indeed, it may well be said that it is the duty of such other branches of government to facilitate the administration of justice by the judiciary."²⁹

This Court has repeatedly ruled that any attempt by the executive branch to usurp judicial powers is unconstitutional. Thus, in *State v. Sterling*, this Court ruled that prosecutors could not prevent a trial court from considering an inmate's application for DNA testing because doing so allowed the executive branch to prevent 'the court's function in determining guilt, which is solely the province of the judicial branch of government."³⁰ And in *S. Euclid v. Jemison*,³¹ this Court ruled that the Registrar of Motor Vehicles could not review and reverse a trial-court order that suspended a driver's license, certificate of registration, or registration plates upon failure to provide proof of financial responsibility because it "grant[ed] appellate review to an executive

²⁹*State ex rel. Foster v. Bd. of County Commrs.* (1968), 16 Ohio St. 2d 89, 242 N.E.2d 884.

³⁰*Sterling*, *supra*, 2007-Ohio-1790 at ¶ 35.

³¹*S. Euclid v. Jemison* (1986), 28 Ohio St. 3d 157, 161, 503 N.E.2d 136.

administrator, in a manner that conflicts with the constitutional powers of the courts of appeals."

Turning to actions taken by the DRC, in *State ex rel. Bray v. Russell*, this Court ruled that the executive branch could not impose "bad time" on a prisoner's original prison term for offenses that would constitute a crime, regardless of whether the prisoner was actually prosecuted for the offense.³² It was found that doing so violated the separation of powers doctrine because it allowed the executive branch to take on functions reserved for the judiciary: "In our constitutional scheme, the judicial power resides in the judicial branch. The determination of guilt in a criminal matter and the sentencing of a defendant convicted of a crime are solely the province of the judiciary."³³

B. The DRC violated the separation of powers doctrine when it usurped judicial power by modifying Roberts' sentence without first receiving authorization from the sentencing judge.

Because there was no evidence that the DRC's notice was received, the question of whether the statute violates the separation of powers doctrine by allowing a trial court's silence after receiving the notice to be treated as assent is not before this Court. Instead, the question here is whether the DRC's actions violated the separation of powers doctrine when it modified Roberts' sentence by placing him into an IPP without ever receiving the authority to do so from the courts.

³²*State ex rel. Bray v. Russell* (2000), 89 Ohio St. 3d 132, 729 N.E.2 359.

³³*Id.* at 136 (internal citations omitted.)

The power to set an inmate's sentence is held by the judiciary; the power to execute that sentence is given to the executive.³⁴ By placing Roberts into an IPP, the DRC modified his sentence. It reduced his five year sentence down to mere months. It did this without receiving permission to do so from the judiciary. By reducing Roberts' sentence without being given permission from the judicial branch, the DRC usurped judicial sentencing powers and thus violated the separation of powers doctrine.

Roberts' placement into an IPP was unconstitutional as it violated the separation of powers doctrine. The DRC's actions were unconstitutional and void ab initio, thus the trial court properly resentenced Roberts to prison.

State's Third Proposition of Law: A defendant who is on postrelease control has not served his entire prison sentence.

Despite still being on postrelease control when his case was remanded back for resentencing, Roberts argues that the trial court should not have resentenced him because he believed he had served his entire prison sentence. Considering post-release control is part of a defendant's sentence, is a defendant's sentence final when they have been improperly released onto post-release control?

Roberts was on postrelease control when the First District vacated his convictions and remanded this matter to the trial court. Postrelease control is part of a defendant's

³⁴See *State ex rel. Atty. Gen. v. Peters* (1885), 43 Ohio St. 629, 4 N.E. 81. See also *State ex rel. Bray v. Russell*, supra, 89 Ohio St. 3d 132.

sentence.³⁵ Thus Roberts was still serving his sentence when the First District vacated and remanded his case. It does not matter that Roberts' postrelease control was scheduled to end between the time that he won his appeal and when the trial court scheduled his new sentencing hearing because the First District's remand vacated his sentence before his postrelease control ended.

A. When a matter is reversed and remanded it is returned to the trial court at the point in time where the error in the proceedings occurred.

Over 150 years ago, this Court ruled that when a case is remanded it returns to the trial court at the point in time just before the error occurred: "Where a judgment is reversed, for error, and remanded for further proceedings, the cause may be taken up, by the court below, at the point where the first error was committed, and be proceeded with, as in other cases, to final judgment."³⁶ Thus, Roberts' case was returned to the point in time just before he had been sentenced.

This Court recently dealt with a similar situation. In *State v. Danny Roberts*,³⁷ Danny (to avoid confusion with the appellant in this matter, the State is using Danny Robert's first name) had successfully argued to the First District that his sentence should have been reduced to two years. Despite a stay and an appeal to this Court, the DRC

³⁵See *Woods v. Telb*, 89 Ohio St. 3d 504, 2001-Ohio-171, 733 N.E.2d 1103.

³⁶*Montgomery Cty. Com'rs v. Carey* (1853), 1 Ohio St. 463. See also, *Wilson v. Kreuzsch* (1996), 111 Ohio App. 3d 47, 51, 675 N.E.2d 571.

³⁷*State v. Danny Roberts*, 119 Ohio St. 3d 294, 2008-Ohio-3835, 893 N.E.2d 818.

released Danny. After he was released, this Court found that reducing Danny's sentence to two years was erroneous and remanded the matter to the trial court for resentencing.

Danny argued that it was unconstitutional to return him to prison. This Court disagreed. Though it also found that a stay provided an additional reason for Danny to not have a reasonable expectation of finality,³⁸ it also ruled that an active appeal also removed any expectation of finality: "An inmate's release from prison does not necessarily vest him or her with an expectation of finality regarding his or her sentence if the length of the sentence is currently an issue on appeal."³⁹

Just like the appeals in Danny's case did, Roberts' own appeal placed his convictions in doubt. Roberts could have chosen to abandon his appeal after he was placed (albeit improperly) on postrelease control. But he didn't. He chose to continue to pursue having his convictions vacated. By doing so he chose to keep the finality of his sentence in doubt.

B. Promissory estoppel does not apply in this matter because it does not apply to the State. Even if it did apply to the State it would not apply in this case because Roberts' appeal placed his sentence in doubt.

Though he kept the finality of his sentence in doubt, Roberts wants to argue that it is so grossly unfair to return him to prison that this Court should take the extraordinary step of applying promissory estoppel to the State. Because promissory estoppel does not

³⁸*Id.* at ¶ 24-26.

³⁹*Id.* at ¶ 20.

generally apply to the State and because Roberts kept the finality of his sentence in doubt with his appeal, that extraordinary step should not be taken.

The dissenting opinion upon which Roberts and amicus so heavily rely states that "some courts" have held that promissory estoppel does not apply to the government, almost as if there were a split of authority on the issue. But it has been this Court that has consistently ruled that it does not apply.⁴⁰ Roberts even argues that principles of promissory estoppel deprived the trial court of subject matter jurisdiction, but this Court specifically rejected that argument in *Ford v. Indus. Comm.*: "Estoppel is an equitable principle and has no bearing upon venue and jurisdiction of subject matter."⁴¹

The Eighth District also recognized that promissory estoppel did not prevent reincarcerating someone who had been improperly placed into an IPP in *Kempf*: "The problematic issue, that it is unfair to allow the department to declare a prisoner ineligible because it cannot document receipt when its disregard of the certified-mail requirement prevented it from doing so, is trumped by the longstanding principle that the state is not estopped when exercising governmental function, like administering the prison

⁴⁰See, for example, *Sekerak v. Fairhill Mental Health Center* (1986), 25 Ohio St.3d 38, 39, 495 N.E.2d 14, 15; *Besl Corp. v. Pub. Util. Comm.* (1976), 45 Ohio St.2d 146, 150, 341 N.E.2d 835, citing, *inter alia*, *State ex rel. Upper Scioto Drainage & Conserv. Dist., v. Tracy* (1932), 125 Ohio St. 399, 181 N.E. 811; *State ex rel. Kildrow, v. Indus. Comm.* (1934), 128 Ohio St. 573, 192 N.E. 873; *Interstate Motor Freight System v. Donahue* (1966), 8 Ohio St.2d 19, 221 N.E.2d 711. See also, *Griffith v. J.C. Penney Co.* (1986), 24 Ohio St.3d 112, 113-114, 493 N.E.2d 959; *Chevalier v. Brown* (1985), 17 Ohio St.3d 61, 63, 477 N.E.2d 623; *Switzer v. Kosydar* (1973), 36 Ohio St.2d 65, 303 N.E.2d 860.

⁴¹*Ford v. Indus. Comm.* (1945), 145 Ohio St. 1, 4-5, 60 N.E.2d 471.

system."⁴² Even if promissory estoppel were applicable in this matter it would not change this case's result of this case for two reasons.

First, to establish a claim for promissory estoppel, a plaintiff must show (1) a clear and unambiguous promise; (2) reliance on the promise; (3) that the reliance is reasonable and foreseeable; and (4) that he was injured by his reliance.⁴³ Roberts did not put forth any arguments, let alone evidence, about promissory estoppel in his motion to dismiss. Instead, he focused on whether he had been properly placed in an IPP and had completed his prison sentence. Having presented no evidence or arguments on any one of the four parts of the promissory estoppel test, Roberts failed to meet his burden for such a claim.

Second, even if evidence had been presented, Roberts could not prove that he was injured by his reliance on the promise. Regardless of whatever promise Roberts may try to argue he relied upon, it was his own actions that kept reincarceration a possibility.

He could have dismissed his appeal after he was released from prison to postrelease control. But he chose to continue his attempt to have his convictions reversed on appeal. No one – certainly not the State that he wants to blame for violating a doctrine that generally does not apply to it – forced him into continuing to pursue his appeal. He voluntarily chose to put himself at risk for being resentenced for his crimes

⁴²*Kempf*, supra, 2009-Ohio-1877 at ¶ 19 citing *State ex rel Barletta v. Fersch*, 99 Ohio St. 3d 295, 2003-Ohio-3629, 791 N.E.2d 452; *Campbell v. Campbell* (1993), 87 Ohio App. 3d 48, 621 N.E.2d 853; and *State ex rel Holcomb v. Walton* (1990), 66 Ohio App. 3d 751, 586 N.E.2d 176.

⁴³*Patrick v. Painesville Commercial Properties, Inc.* (1997), 123 Ohio App. 3d 575, 583, 704 N.E.2d 1249.

by voluntarily choosing to continue challenging his convictions even after he had been released from prison.

Roberts may try to argue that he never claimed he was improperly sentenced on allied offenses of similar import in his direct appeal, which was why the First District remanded the matter. Instead, he argued that his convictions were not supported by the sufficiency or the manifest weight of the evidence. But had he been successful on that argument, his convictions would have been remanded to a point in time prior to his being sentenced or could have been completely thrown out.⁴⁴ Either way, it would have resulted in his sentence being vacated.

Because his sentence had been vacated, the matter was returned to the trial court as if Roberts had never been sentenced. While Roberts was entitled to credit for the time he served, he was not entitled to claim that he served his entire sentence. The trial court, therefore, properly sentenced Roberts.

State's Response to Amicus' Second Argument on Ex Parte Communications

Amicus puts forth a rather novel argument that, by requiring the DRC to contact the trial courts, the IPP statute creates an impermissible ex parte communication. Instead of following the OAC and sending the notice to the sentencing judge, amicus argues that the DRC should be required to send notice to the clerk of courts and that the clerk should

⁴⁴See generally, See *State v. Bridgeman* (1978), 55 Ohio St. 2d 261, 381 N.E.2d 184, syllabus; *State v. Jenks* (1991), 61 Ohio St. 3d 259, 273, 574 N.E.2d 492; and *State v. Thomkins* (1997), 78 Ohio St. 3d 380, 678 N.E.2d 541.

then make sure that the notice of the intent gets distributed to the correct trial court and parties. This is something that was not argued at any stage below and should not be considered for the first time here.

Even if this had been raised below it would still be properly rejected. Amicus wants this Court redraft the OAC from the bench by telling the DRC who and how it should notify about IPP placement regardless of what the laws the Legislature has drafted require. Would a changing it to require sending the notice to the clerk of courts be a better way of issuing notice of the DRC's intent? Maybe. If this Court had the power to redraft the OAC then the State would likely argue that allowing the DRC to take a trial court's silence as assenting to IPP placement isn't a very good idea. But the time and place for those discussions is in front of the general assembly, not this Court.

Conclusion

Roberts was not properly placed into an IPP. The DRC failed to follow the law when it attempted to send notice of its intent to place him in an IPP via fax when the law required it to be sent via certified or electronic mail. It continued to ignore the law when it placed him in an IPP without receiving a return receipt showing that the sentencing judge had received the notice. Roberts' placement in an IPP, therefore, was void ab initio and the DRC's placement and subsequent release violated the separation of powers doctrine.

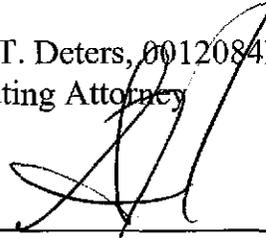
Considering Roberts was on post-release control at the time his appeal was decided, he was still serving his sentence when it was vacated and remanded for a new sentencing hearing. Because his sentence was not final, the trial court was able to resentence him.

Finally, promissory estoppel does not apply to this matter because it does not apply to governmental functions, such as administering the prison system. Even if it did apply, Roberts did not argue, let alone establish, such a claim below. Had he tried, Roberts would have failed because his own actions kept any finality of his sentence in doubt.

Roberts was properly reincarcerated. This matter, therefore, should be affirmed.

Respectfully,

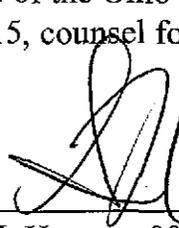
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Certificate of Service

I hereby certify that I have sent a copy of the foregoing Merit Brief of Plaintiff-Appellee, by United States mail, addressed to Robert R. Hastings Jr., Hamilton County Public Defender's Office, 230 East 9th Street, Suite 2000, Cincinnati, Ohio 45202, counsel of record, and to Katherine A. Szudy, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, counsel for amicus, this 10th day of August, 2009.



Scott M. Heenan, 0075734P
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Appendix

Ohio Revised Code

R.C. 2929.11	A-2.
R.C. 2929.12	A-3.
R.C. 5120.032	A-5.

Ohio Administrative Code

OAC 126:1-1-01	A-7.
OAC 1301:5-1-12	A-9.
OAC 3745:89-08	A-11.
OAC 5120:11-03(D) (2006)	A-12.
OAC 5122:11-03(D) (2008)	A-18.

R.C. § 2929.11

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes--Procedure (Refs & Annos)

Chapter 2929. Penalties and Sentencing (Refs & Annos)

Felony Sentencing

→2929.11 Overriding purposes of felony sentencing

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

CREDIT(S)

(1995 S 2, eff. 7-1-96)

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R.C. § 2929.12

Baldwin's Ohio Revised Code Annotated CurrentnessTitle XXIX. Crimes--Procedure (Refs & Annos)^ Chapter 2929. Penalties and Sentencing (Refs & Annos)

^ Felony Sentencing

→2929.12 Factors to consider in felony sentencing

(A) Unless otherwise required by section 2929.13 or 2929.14 of the Revised Code, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct and the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

(B) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense:

(1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.

(2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.

(3) The offender held a public office or position of trust in the community, and the offense related to that office or position.

(4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

(5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

(6) The offender's relationship with the victim facilitated the offense.

(7) The offender committed the offense for hire or as a part of an organized criminal activity.

(8) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

(9) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

(C) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense:

(1) The victim induced or facilitated the offense.

(2) In committing the offense, the offender acted under strong provocation.

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(3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.

(4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

(D) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is likely to commit future crimes:

(1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-release control for a prior offense pursuant to division (B) of section 2967.16 or section 2929.141 of the Revised Code.

(2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has a history of criminal convictions.

(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

(4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

(5) The offender shows no genuine remorse for the offense.

(E) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is not likely to commit future crimes:

(1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.

(2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.

(3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.

(4) The offense was committed under circumstances not likely to recur.

(5) The offender shows genuine remorse for the offense.

CREDIT(S)

(2002 H 327, eff. 7-8-02; 2000 S 179, § 3, eff. 1-1-02; 1999 S 107, eff. 3-23-00; 1999 S 9, eff. 3-8-00; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96)

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R.C. § 5120.032

Baldwin's Ohio Revised Code Annotated Currentness

Title LI. Public Welfare

^ Chapter 5120. Department of Rehabilitation and Correction (Refs & Annos)

^ Administrative Provisions

➔ **5120.032 Intensive program prisons**

(A) No later than January 1, 1998, the department of rehabilitation and correction shall develop and implement intensive program prisons for male and female prisoners other than prisoners described in division (B)(2) of this section. The intensive program prisons shall include institutions at which imprisonment of the type described in division (B)(2)(a) of section 5120.031 of the Revised Code is provided and prisons that focus on educational achievement, vocational training, alcohol and other drug abuse treatment, community service and conservation work, and other intensive regimens or combinations of intensive regimens.

(B)(1)(a) Except as provided in division (B)(2) of this section, if an offender is sentenced to a term of imprisonment under the custody of the department, if the sentencing court either recommends the prisoner for placement in the intensive program prison under this section or makes no recommendation on placement of the prisoner, and if the department determines that the prisoner is eligible for placement in an intensive program prison under this section, the department may place the prisoner in an intensive program prison established pursuant to division (A) of this section. If the sentencing court disapproves placement of the prisoner in an intensive program prison, the department shall not place the prisoner in any intensive program prison.

If the sentencing court recommends a prisoner for placement in an intensive program prison and if the department subsequently places the prisoner in the recommended prison, the department shall notify the court of the prisoner's placement in the recommended intensive program prison and shall include with the notice a brief description of the placement.

If the sentencing court recommends placement of a prisoner in an intensive program prison and the department for any reason does not subsequently place the prisoner in the recommended prison, the department shall send a notice to the court indicating why the prisoner was not placed in the recommended prison.

If the sentencing court does not make a recommendation on the placement of a prisoner in an intensive program prison and if the department determines that the prisoner is eligible for placement in a prison of that nature, the department shall screen the prisoner and determine if the prisoner is suited for the prison. If the prisoner is suited for the intensive program prison, at least three weeks prior to placing the prisoner in the prison, the department shall notify the sentencing court of the proposed placement of the prisoner in the intensive program prison and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement. If the sentencing court disapproves the placement, the department shall not proceed with it. If the sentencing court does not timely disapprove of the placement, the department may proceed with plans for it.

If the department determines that a prisoner is not eligible for placement in an intensive program prison, the department shall not place the prisoner in any intensive program prison.

(b) The department may reduce the stated prison term of a prisoner upon the prisoner's successful completion of a ninety-day period in an intensive program prison. A prisoner whose term has been so reduced shall be required to serve an intermediate, transitional type of detention followed by a release under post-release control sanctions or, in the alternative, shall be placed under post-release control sanctions, as described in division (B)(2)(b)(ii) of section 5120.031 of the Revised Code. In either case, the placement under post-release control sanctions shall be under terms set by the parole board in accordance with section 2967.28 of the Revised Code and shall be subject to the provisions of that section and section 2929.141 of the Revised Code with respect to a violation of any

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post-release control sanction.

(2) A prisoner who is in any of the following categories is not eligible to participate in an intensive program prison established pursuant to division (A) of this section:

(a) The prisoner is serving a prison term for aggravated murder, murder, or a felony of the first or second degree or a comparable offense under the law in effect prior to July 1, 1996, or the prisoner previously has been imprisoned for aggravated murder, murder, or a felony of the first or second degree or a comparable offense under the law in effect prior to July 1, 1996.

(b) The prisoner is serving a mandatory prison term, as defined in section 2929.01 of the Revised Code.

(c) The prisoner is serving a prison term for a felony of the third, fourth, or fifth degree that either is a sex offense, an offense betraying public trust, or an offense in which the prisoner caused or attempted to cause actual physical harm to a person, the prisoner is serving a prison term for a comparable offense under the law in effect prior to July 1, 1996, or the prisoner previously has been imprisoned for an offense of that type or a comparable offense under the law in effect prior to July 1, 1996.

(d) The prisoner is serving a mandatory prison term in prison for a third or fourth degree felony OVI offense, as defined in section 2929.01 of the Revised Code, that was imposed pursuant to division (G) (2) of section 2929.13 of the Revised Code.

(C) Upon the implementation of intensive program prisons pursuant to division (A) of this section, the department at all times shall maintain intensive program prisons sufficient in number to reduce the prison terms of at least three hundred fifty prisoners who are eligible for reduction of their stated prison terms as a result of their completion of a regimen in an intensive program prison under this section.

CREDIT(S)

(2002 S 123, eff. 1-1-04; 2002 H 327, eff. 7-8-02; 1999 S 22, eff. 5-17-00; 1999 S 107, eff. 3-23-00; 1996 S 166, eff. 10-17-96; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96)

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Ohio Admin. Code § 126:1-1-01

BALDWIN'S OHIO ADMINISTRATIVE CODE ANNOTATED
126 BUDGET AND MANAGEMENT OFFICE
126:1 CONTROLLING BOARD
CHAPTER 126:1-1. MEETINGS

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Rules are complete through July 26, 2009;
Appendices are current to February 8, 2009

126:1-1-01 Procedures for meetings, notices of meetings, and minutes of the controlling board

(A) Meetings

All meetings of the controlling board are public meetings open to the public at all times, except when the controlling board holds executive sessions or closed meetings pursuant to the requirements under section 121.22 of the Revised Code. A member of the controlling board must be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

(B) Notice of meetings

(1) Any person may ascertain the time and place of all regularly scheduled meetings and the time, place, and purpose of all scheduled special meetings by contacting "the controlling board, 30 East Broad Street, 34th floor, Columbus, Ohio 43266-0411, telephone (614) 466-5721, TDD (614) 466-1574 or facsimile (FAX) (614) 466-3813." Any person planning to attend a meeting who has special parking, building access, or other accommodation needs may contact the controlling board at (614) 466-5721 or TDD (614) 466-1574 prior to the hearing to advise the controlling board of those needs.

(2) Posting of notice

Prior to each meeting, the controlling board shall give notice of the meeting by sending an electronic or paper copy of the notice of the meeting to the statehouse press room.

(a) For a regular meeting, the controlling board shall give notice at least twenty-four hours prior to the regular meeting and shall specify in the notice the time and place of the meeting.

(b) For a special meeting, not of an emergency nature, the controlling board shall give notice at least twenty-four hours prior to the special meeting and shall specify in the notice the time, place, and purpose of the meeting.

(c) For a special meeting of an emergency nature, the controlling board shall give notice immediately upon the calling of the meeting and shall specify in the notice the time, place, and purpose of the meeting.

(3) Request for notice of regular or special meetings

The controlling board shall provide a copy of the notice of a regular or special meeting to any person, including representatives of the news media, who requests it. The request shall be directed to the secretary of "the controlling board, 30 East Broad Street, 34th floor, Columbus, Ohio 43266-0411, telephone (614) 466-5721 or facsimile (FAX) number (614) 466-3813," and shall include the name and mailing address, electronic mailing address, or facsimile (FAX) number of the person desiring the copy of the notice of meeting or a maximum of two telephone numbers where the person requesting the notice of meeting can be reached or a message left. The

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controlling board shall maintain a mailing list of the names of all persons who have requested notice of meetings pursuant to this paragraph.

The controlling board shall determine the appropriate mode of notice, which may include mailing or providing the controlling board's schedule of meetings, meeting agendas, or telephoning persons named on the list. If written notification is given, the controlling board shall send a copy of the public notice by United States mail, electronic mail, or facsimile (FAX) to each person whose name is included in the mailing list. Telephone notice shall be complete if a message has been left for the person at either of the numbers provided by the person requesting notice.

(a) In the event of a regular meeting or a special meeting not of an emergency nature, the controlling board shall notify all persons on the list of such meeting at least twenty-four hours prior to the meeting.

(b) In the event of a special meeting of an emergency nature, the controlling board shall notify all persons on the list of such meeting by telephone or facsimile. In such event, the notice need not be given at least twenty-four hours prior to the meeting, but shall be given immediately upon the calling of the meeting.

(4) Request for notice of specific type of business to be discussed

Any person may obtain reasonable advance notice of all meetings at which any specific type of public business is to be discussed by requesting that such notice be provided. A request for such notice shall be directed to "the secretary of the controlling board, 30 East Broad Street, Columbus, Ohio 43266- 0411, facsimile (FAX) (614) 466-3813," and shall include the name of the person to be contacted, mailing address, facsimile (FAX) number, if available, a maximum of two telephone numbers where the person requesting the notice can be reached or a message left, and the specific type of public business about which the notice of meeting is requested. The controlling board shall maintain a list of the names of all persons who have requested notice meeting pursuant to this paragraph.

The controlling board shall provide advance notice of regular or special meetings at which specific types of business are to be discussed as provided under paragraph (B) (3) of this rule.

(C) Minutes

(1) The secretary of the controlling board, as designated in accordance with section 127.13 of the Revised Code, shall keep minutes of all regular and special meetings. The secretary of the controlling board shall cause the minutes to be promptly prepared, filed and maintained, and the minutes shall be open to public inspection during normal business hours.

(2) The minutes shall contain facts and information, including agenda items discussed and any votes or actions taken at the meeting, sufficient to permit the public to understand and appreciate the rationale behind any decision of the controlling board. The minutes need only reflect the general subject matter of discussions in authorized executive session.

HISTORY: 2002-03 OMR 1928 (A), eff. 3-27-03; 1997-98 OMR 1371 (R-E), eff. 1- 1-98; Prior rules 1 and 2

RC 119.032 rule review date(s): 12-31-07; 12-31-02

Ohio Admin. Code § 1301:5-1-12

BALDWIN'S OHIO ADMINISTRATIVE CODE ANNOTATED
1301 COMMERCE DEPARTMENT
1301:5 REAL ESTATE DIVISION
CHAPTER 1301:5-1. REAL ESTATE COMMISSION; LICENSING

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Rules are complete through July 26, 2009;
Appendices are current to February 8, 2009

1301:5-1-12 Open public meetings

(A) Any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings by:

- (1) Writing to the following address - "Ohio Real Estate Commission, Division of Real Estate and Professional Licensing, 77 South High Street, Columbus, Ohio 43215-6133."
- (2) Calling the following telephone number during normal business hours - 614- 466-4100, or
- (3) Accessing the division of real estate and professional licensing web site.

(B) Any person may receive notice of all meetings of the Ohio real estate commission. The superintendent shall cause a list to be maintained of all persons who have requested such notification.. Any person wishing to receive notification shall notify the superintendent that they wish to be included on the mailing list for such notices. Requests shall:

- (1) be given in writing to the address given in paragraph (A)(1) of this rule or by electronic mail sent to REPLD@com.state.oh.us or such other address as may from time to time be published on the division's web site.
- (2) State that the requestor wishes to be notified of all public meetings of the board or those at which specific topics stated by the requestor are to be discussed.
- (3) Indicate if the requestor wishes to be notified by electronic mail, fax, or printed notice.
- (4) Provide the requestor's electronic mail address, mailing address or fax number.
- (5) State if the requestor is a media representative who wishes to be notified of special meetings pursuant to division (F) of section 121.22 of the Revised Code. If a media representative requests notice of special meetings the media representative shall also provide no more than two telephone numbers at which they may be reached.

(C) The superintendent shall cause a notice to be distributed to all persons on the mailing list at least five calendar days before each regularly scheduled meeting of the board.

The superintendent shall cause all reasonable effort to be made to provide notice of all special meetings in compliance with division (F) of section 121.22 of the Revised Code.

(D) No fee shall be assessed to persons requesting to be notified by electronic mail.

The superintendent may from time to time assess a reasonable fee on all persons requesting printed notices or fax transmission of notices of meetings. Such fee shall not exceed the cost of producing and mailing or transmitting the notices. The superintendent may request that such fees be paid in advance.

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HISTORY: 2006-07 OMR pam. #9 (R-E), eff. 3-26-07; 2001-02 OMR 2978 (A), eff. 6-21-02; 2000-2001 OMR 2116 (RRD); 2000-2001 OMR 233 (A), eff. 9-24-00; 1988-89 OMR 1100 (A), eff. 6-1-89; 1984-85 OMR 1009 (A), eff. 4-8-85; prior COr-1-13

RC 119.032 rule review date(s): 6-30-11; 6-29-06; 6-29-01

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3745-89-08 Reporting of analytical results

Reporting of analytical data for determining compliance with Chapters 3745-81, 3745-82, 3745-9 and rule 3745-91-06 of the Administrative Code shall be completed by a laboratory certified by the director to perform drinking water testing, or by a facility acceptable to the director, as follows:

(A) Results shall be reported to the director and to the public water systems by the tenth day following the month in which the chemical analyses are completed and by the tenth day following the month in which a sample is collected for microbiological analysis.

(B) All positive and all repeat sample results required by rules 3745-81-14 and 3745-81-21 shall be reported to the director and to the public water systems either by fax or by electronic mail by no later than the end of the next business day after the result was obtained. Overnight mail delivery may be used in lieu of fax or electronic mail for reporting positive and repeat samples to the public water systems.

(C) All results that exceed any maximum contaminant level specified in rule 3745-81-11, 3745-81-12, or 3745-81-15 of the Administrative Code, and all resample results to confirm MCL exceedances, shall be reported to the director and to the public water systems by fax or by electronic mail by no later than the end of the next business day after the result was obtained. Overnight mail delivery may be used in lieu of fax or electronic mail for reporting positive and repeat samples results to the public water systems.

(D) Reports required under this rule shall be submitted on forms or in a form acceptable to the director and shall be complete and correct. Each report shall include at least the analytical data, the name and certification number of the laboratory performing and/or reporting the analysis, the analytical method type, the dates that the sample was collected and received as well as the date the analysis was completed, the sample identification number as separately assigned by the laboratory for each sample, the name(s) of the laboratory analyst(s) who performed the analyses, the sample collector's identification information, and complete sample and public water system identification information including sample location description, sample monitoring point, and sample type.

(E) The director may establish reporting limits for any approved analytical method for contaminants listed in Chapter 3745-81 of the Administrative Code. Laboratories shall report analytical results in accordance with the reporting limits established in appendix B of rule 3745-89-03 of the Administrative Code.

(F) Failure by a laboratory to file appropriate, complete, correct, and timely reports of analytical results required by this rule may be considered by the director as failure to meet an acceptable level of performance and as failure to successfully meet the requirements for renewal of its laboratory certification(s).

(G) Analytical results required by rules 3745-81-73 to 3745-81-75, 3745-81-80 to 3745-81-90, and 3745-83-01 and Chapter 3745-82 of the Administrative Code, except for paragraph (G)(1) of rule 3745-81-75 of the Administrative Code, shall be reported to the director only when requested by the director.

(H) A laboratory or a facility that subcontracts, as defined in rule 3745-89-01 of the Administrative Code, is responsible for meeting the reporting requirements in this rule. A laboratory or facility may arrange with a subcontracted laboratory to perform this reporting, however, the laboratory retains the ultimate responsibility for these reporting requirements.

HISTORY: 2003-04 OMR pam. #12 (R-E), eff. 6-18-04; 2002-03 OMR 3041 (A), eff. 6-28-03; 1998-99 OMR 1088 (A), eff. 4-1-99; 1995-96 OMR 326 (E), eff. 10-1-95

RC 119.032 rule review date(s): 6-18-09; 6-28-08; 4-1-04; 3-14-03; 4-1-99

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5120-11-03

Intensive program prison eligibility and selection criteria.

- (A) Selection for an intensive program prison is open to any eligible prisoner in accordance with this rule, regardless of race, sex, religion, age, disability or national origin. The wardens of reception centers and institutions with an intensive program prison shall designate staff to screen for eligibility into that program based on the requirements in this rule.
- (B) If a court's sentencing entry specifically expresses disapproval, objection or ineligibility for placement in an intensive program prison, the prisoner is ineligible for such placement. If the court's sentencing entry specifically expresses approval of or recommends placement in an intensive program prison, or if the sentencing entry is silent regarding such placement, the prisoner shall be screened for placement according to this rule. A prisoner meeting the requirements of paragraph (C) of this rule shall receive an explanation of the program including, if applicable, the thirty-day curriculum on motivation, in order to determine the prisoner's desire to participate.
- (C) A prisoner is eligible to participate in the program, if he meets the applicable statutory eligibility requirements set forth in paragraph (C)(1) or paragraph (C)(2) or paragraph (C)(3) of this rule.
- (1) The following requirements apply to a person upon whom a court imposed a term of imprisonment prior to July 1, 1996, and a person upon whom a court, on or after July 1, 1996, and in accordance with law existing prior to July 1, 1996, imposed a term of imprisonment for an offense that was committed prior to July 1, 1996. An eligible prisoner:
- (a) Has been convicted of or pleaded guilty to, and has been sentenced for a felony of the third or fourth degree;
- (b) Has not, during the commission of that offense or the offense of indictment, caused physical harm to any person, as defined in section 2901.01 of the Revised Code or made an actual threat of physical harm to any person with a deadly weapon, as defined in section 2923.11 of the Revised Code;
- (c) Has not been sentenced for an offense with a firearm specification;
- (d) Has not been previously convicted of or pleaded guilty to any felony for which, pursuant to sentence, he was confined for thirty days or more in a correctional institution in this state or in a similar institution in any other state or the United States;

- (e) Is not less than eighteen years of age nor more than thirty years of age at the time of admission to the department;
 - (f) Does not have a sentence of actual incarceration; and
 - (g) Has no conviction for a sex offense, as set forth in Chapter 2907. of the Revised Code, as it existed prior to July 1, 1996, or any comparable offense under the laws of any other state or the United States.
- (2) The following requirements apply to a person upon whom a court imposed a stated prison term for a non-OMVI offense committed on or after July 1, 1996. A prisoner who has been convicted of or pleaded guilty to, and has been sentenced for, a felony is eligible unless serving a prison term in any of the following categories:
- (a) Aggravated murder, murder, or a felony of the first or second degree or a comparable offense under the law in effect prior to July 1, 1996 or the prisoner previously has been imprisoned for aggravated murder, murder, or a felony of the first or second degree or a comparable offense under the law in effect prior to July 1, 1996;
 - (b) A mandatory prison term, as designated by the court's sentencing entry,
 - (c) A felony of the third, fourth, or fifth degree that either is a sex offense, an offense betraying public trust as indicated by the nature of the offense, an element of the offense or by a finding of the sentencing court of such a sentencing factor, or an offense in which the prisoner caused or attempted to cause actual physical harm to a person, the prisoner is serving a prison term for a comparable offense under the law in effect prior to July 1, 1996, or the prisoner previously has been imprisoned for an offense of that type or a comparable offense under the law in effect prior to July 1, 1996.
 - (d) A mandatory prison term imposed for a third or fourth degree felony OMVI offense, as defined in section 2929.01 of the Revised Code, that was imposed pursuant to section 2929.13 (G)(2) of the Revised Code.
- (3) The following requirements apply to a prisoner upon whom a court imposed a stated prison term(s) for third and/or fourth degree felony OMVI offense(s) committed on or after July 1, 1996. That prisoner who has been sentenced to one or more mandatory prison term(s) for third and/or fourth degree felony OMVI offense(s) is eligible to participate in a OMVI treatment program

unless any of the following applies regarding that prisoner:

- (a) In addition to the mandatory prison term for the third and/or fourth degree felony OMVI offense(s), the prisoner also is serving a prison term of a type described in paragraph (C)(2)(a), (C)(2)(b), or (C)(2)(c) of this rule. A mandatory prison term, as defined in section 2929.01 of the Revised Code, does not include a third or fourth degree felony OMVI offense for ineligibility purposes.
 - (b) The prisoner previously has been imprisoned for an offense of a type described in paragraph (C)(2)(a), or (C)(2)(c) of this rule or a comparable offense under the law in effect prior to July 1, 1996.
- (D) If an applicant is eligible pursuant to paragraph (E) and either paragraphs (C)(3) or (C)(2) of this rule and the sentencing entry is silent on the prisoner's placement in an intensive program prison ~~or if an applicant is eligible pursuant to paragraph (C)(3) of this rule~~, then the warden or contract monitor, if applicable, shall notify, by certified or electronic mail, the sentencing judge of its intention to place the applicant in a intensive program prison. If the judge notifies the warden or contract monitor, if applicable, within ten days after the mail receipt, that the judge does not approve intensive program prison for the prisoner, then the warden or contract monitor, if applicable, shall notify, in writing, the prisoner of the disapproved placement. If the sentencing judge does approve intensive program prison for the prisoner or does not notify the warden or contract monitor, if applicable, of the disapproved placement within ten days after the mail receipt, then the director may place the prisoner in the program. This notification process does not apply if the sentencing court finds statutory eligibility for the prisoner's placement in an intensive program prison and/or the sentencing entry either approves or recommends such placement.
- (E) In determining program approval of eligible prisoners, the warden's designee or contract monitor's designee, if applicable, shall examine each prisoner's record. No prisoner shall be selected unless the prisoner:
- (1) Has not more than sixty months to serve before the expiration of his definite sentence or he becomes eligible for parole consideration if serving an indefinite sentence, or expiration of his stated prison term. However, if the prisoner is eligible pursuant to paragraph (C)(3) of this rule, then the prisoner shall not have more than twenty four months to serve such sentence or term;
 - (2) Has a sentence or stated prison term with sufficient time to serve the ninety-day imprisonment phase of the program;

- (3) Has no outstanding felony detainers, felony warrants or pending felony charges;
- (4) Has no conviction for an escape as defined in section 2921.34 of the Revised Code, or any comparable offense under the laws of any other state or the United States;
- (5) Has been classified as level one or level two security. However, if the prisoner is eligible pursuant to paragraph (C)(3) of this rule, then the prisoner has been classified as level one security;
- (6) Has not been identified as an active or disruptive security threat group participant;
- (7) Has demonstrated an acceptable institutional adjustment and the prisoner's placement in the program is in the best interests of the department;
- (8) Is at least eighteen years of age, ~~and~~;
- (9) Has completed no more than ~~two~~ one intensive program prison ~~placements.~~ placement; and
- (10) Has no conviction for illegal conveyance of weapons, drugs or other prohibited items onto the grounds of a detention facility or institution in violation of section 2921.36 of the Revised Code.

(F) Eligible prisoners who satisfy the requirements of paragraph (E) of this rule and being considered for placement at Camp REAMS or Camp MERIDIAN, shall be referred to health professionals to undergo medical, only if a medical level two or above, and mental health only if a C1 classification, screenings which focus on current physical and mental health issues which could compromise the prisoner's ability to successfully complete the program. The health professional shall make recommendations on the prisoner's physical and mental ability to participate in the Camp REAMS or Camp MERIDIAN program.

In the event the prisoner is found to have some physical or mental impairment, the health professional shall consult with the intensive program prison, unit administrator or the program supervisor to determine whether the impairment would substantially limit the prisoner's participation in the program. If not substantially limiting, then the prisoner's participation in the program should not be disapproved due to the impairment. If substantially limiting, then eligibility for the program turns on whether the prisoner can perform the essential functions of the program, with or without a reasonable accommodation. The prisoner must be able

to perform, even with a reasonable accommodation for his or her impairment, the essential functions of the program. If the prisoner cannot so perform then the health professional shall not recommend the prisoner for the program. If the prisoner can so perform, even with a reasonable accommodation then the health professional shall recommend the prisoner for the program. The prisoner must remain physically and mentally capable of performing the essential functions of the program in all phases of the program in order to continue participation in the program.

- (G) If the prisoner meets the eligibility criteria of paragraph (C) of this rule, the requirements for program selection in paragraph (E) of this rule, and, if applicable, the sentencing judge has not disapproved intensive program prison, the director shall review all relevant information, including but not limited to, the prisoner's application, the warden's designee's or contract monitor's designee, if applicable, recommendation, the health professionals' recommendations, and any conviction for a felony offense of violence within the previous five years, and approve or disapprove the prisoner's placement in the program. Prisoners shall be notified in writing of the director's decision.
- (H) A prisoner approved for the program may be confined at the reception center or other designated correctional institution until the prisoner is transferred to the intensive program prison. Acceptance in the intensive program prison shall not be deemed to occur until the prisoner is admitted into such program. A prisoner to be placed into an intensive program prison for an OMVI offense(s) is to be admitted into the program as soon as practicable, given the time period for the program selection process, after arrival at the prison unless the record officer indicates such an admission date due to the prisoner serving a mandatory sentence of one hundred twenty days or more. A prisoner to be placed into a therapeutic alcohol or other drug intensive program prison shall complete a thirty-day pre-treatment curriculum on motivation prior to admittance into such program.
- (I) When a prisoner is accepted to participate in the program, the director shall notify the sentencing court, in writing, pursuant to paragraph (B) of rule 5120-11-21 of the Administrative Code. If the sentencing court did not disapprove a prisoner's placement in the program pursuant to notice set forth in paragraph (D) of this rule and, in any event, if such placement does not occur, the director shall notify, in writing, the court of the reasons therefore.
- (J) Participation in the program is a privilege. No prisoner has a right to participate or to continue to participate because he meets the eligibility and selection criteria. However, once a prisoner is admitted into the program, the prisoner is not permitted to voluntarily withdraw from the program within twenty-one days of admittance.

Effective: 12/15/2006

R.C. 119.032 review dates: 01/10/2008

CERTIFIED ELECTRONICALLY

Certification

12/04/2006

Date

Promulgated Under: 119.03
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Rule Amplifies: 5120.031, 5120.032, 5120.033
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Ohio Admin. Code § 5120-11-03

BALDWIN'S OHIO ADMINISTRATIVE CODE ANNOTATED
5120 REHABILITATION AND CORRECTION DEPARTMENT
CHAPTER 5120-11. INTENSIVE PROGRAM PRISON

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Rules are complete through June 30, 2009;
Appendices are current to February 8, 2009

5120-11-03 Intensive program prison eligibility and selection criteria

(A) Selection for an intensive program prison is open to any eligible prisoner in accordance with this rule, regardless of race, sex, religion, age, disability or national origin. The wardens of reception centers and institutions with an intensive program prison shall designate staff to screen for eligibility into that program based on the requirements in this rule.

(B) If a court's sentencing entry specifically expresses disapproval, objection or ineligibility for placement in an intensive program prison, the prisoner is ineligible for such placement. If the court's sentencing entry specifically expresses approval of or recommends placement in an intensive program prison, or if the sentencing entry is silent regarding such placement, the prisoner shall be screened for placement according to this rule. A prisoner meeting the requirements of paragraph (C) of this rule shall receive an explanation of the program including, if applicable, the thirty-day curriculum on motivation, in order to determine the prisoner's desire to participate.

(C) A prisoner is eligible to participate in the program, if he meets the applicable statutory eligibility requirements set forth in paragraph (C)(1) or paragraph (C)(2) or paragraph (C)(3) of this rule.

(1) The following requirements apply to a person upon whom a court imposed a term of imprisonment prior to July 1, 1996, and a person upon whom a court, on or after July 1, 1996, and in accordance with law existing prior to July 1, 1996, imposed a term of imprisonment for an offense that was committed prior to July 1, 1996. An eligible prisoner:

(a) Has been convicted of or pleaded guilty to, and has been sentenced for a felony of the third or fourth degree;

(b) Has not, during the commission of that offense or the offense of indictment, caused physical harm to any person, as defined in section 2901.01 of the Revised Code or made an actual threat of physical harm to any person with a deadly weapon, as defined in section 2923.11 of the Revised Code;

(c) Has not been sentenced for an offense with a firearm specification;

(d) Has not been previously convicted of or pleaded guilty to any felony for which, pursuant to sentence, he was confined for thirty days or more in a correctional institution in this state or in a similar institution in any other state or the United States;

(e) Is not less than eighteen years of age nor more than thirty years of age at the time of admission to the department;

(f) Does not have a sentence of actual incarceration; and

(g) Has no conviction for a sex offense, as set forth in Chapter 2907. of the Revised Code, as it existed prior to July 1, 1996, or any comparable offense under the laws of any other state or the United States.

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(2) The following requirements apply to a person upon whom a court imposed a stated prison term for a non-OMVI offense committed on or after July 1, 1996. A prisoner who has been convicted of or pleaded guilty to, and has been sentenced for, a felony is eligible unless serving a prison term in any of the following categories:

(a) Aggravated murder, murder, or a felony of the first or second degree or a comparable offense under the law in effect prior to July 1, 1996 or the prisoner previously has been imprisoned for aggravated murder, murder, or a felony of the first or second degree or a comparable offense under the law in effect prior to July 1, 1996;

(b) A mandatory prison term, as designated by the court's sentencing entry,

(c) A felony of the third, fourth, or fifth degree that either is a sex offense, an offense betraying public trust as indicated by the nature of the offense, an element of the offense or by a finding of the sentencing court of such a sentencing factor, or an offense in which the prisoner caused or attempted to cause actual physical harm to a person, or the prisoner is serving a prison term for a comparable offense under the law in effect prior to July 1, 1996, or the prisoner previously has been imprisoned for an offense of that type or a comparable offense under the law in effect prior to July 1, 1996.

(d) A mandatory prison term imposed for a third or fourth degree felony OMVI offense, as defined in section 2929.01 of the Revised Code, that was imposed pursuant to division (G)(2) of section 2929.13 of the Revised Code.

(3) The following requirements apply to a prisoner upon whom a court imposed a stated prison term(s) for third and/or fourth degree felony OMVI offense(s) committed on or after July 1, 1996. That prisoner who has been sentenced to one or more mandatory prison term(s) for third and/or fourth degree felony OMVI offense(s) is eligible to participate in a OMVI treatment program unless any of the following applies regarding that prisoner:

(a) In addition to the mandatory prison term for the third and/or fourth degree felony OMVI offense(s), the prisoner also is serving a prison term of a type described in paragraph (C)(2)(a), (C)(2)(b), or (C)(2)(c) of this rule. A mandatory prison term, as defined in section 2929.01 of the Revised Code, does not include a third or fourth degree felony OMVI offense for ineligibility purposes unless convicted of a specification under section 2941.1413 of the Revised Code.

(b) The prisoner previously has been imprisoned for an offense of a type described in paragraph (C)(2)(a), or (C)(2)(c) of this rule or a comparable offense under the law in effect prior to July 1, 1996.

(D) If an applicant is eligible pursuant to paragraph (E) and either paragraph (C)(3) or (C)(2) of this rule and the sentencing entry is silent on the prisoners placement in an intensive program prison, then the warden or contract monitor, if applicable, shall notify, by certified mail, the sentencing judge of its intention to place the applicant in a intensive program prison. If the judge notifies the warden or contract monitor, if applicable, within thirty days after the mail receipt, that the judge does not approve intensive program prison for the prisoner, then the warden or contract monitor, if applicable, shall notify, in writing, the prisoner of the disapproved placement. If the sentencing judge does approve intensive program prison for the prisoner or does not notify the warden or contract monitor, if applicable, of the disapproved placement within thirty days after the mail receipt, then the director may place the prisoner in the program. This notification process does not apply if the sentencing court finds statutory eligibility for the prisoner's placement in an intensive program prison and/or the sentencing entry either approves or recommends such placement.

(E) In determining program approval of eligible prisoners, the warden's designee or contract monitor's designee, if applicable, shall examine each prisoner's record. No prisoner shall be selected unless the prisoner:

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- (1) Has not more than sixty months to serve before the expiration of his definite sentence or he becomes eligible for parole consideration if serving an indefinite sentence, or expiration of his stated prison term. However, if the prisoner is eligible pursuant to paragraph (C)(3) of this rule, then the prisoner shall not have more than twenty four months to serve such sentence or term;
- (2) Has a sentence or stated prison term with sufficient time to serve the ninety-day imprisonment phase of the program;
- (3) Has no outstanding felony detainers, felony warrants or pending felony charges;
- (4) Has no conviction for an escape as defined in section 2921.34 of the Revised Code, or any comparable offense under the laws of any other state or the United States;
- (5) Has been classified as level one or level two security. However, if the prisoner is eligible pursuant to paragraph (C)(3) of this rule, then the prisoner has been classified as level one security;
- (6) Has not been identified as an active or disruptive security threat group participant;
- (7) Has demonstrated an acceptable institutional adjustment and the prisoner's placement in the program is in the best interests of the department;
- (8) Is at least eighteen years of age;
- (9) Has completed no more than one intensive program prison placement; and
- (10) Has no conviction for illegal conveyance of weapons, drugs or other prohibited items onto the grounds of a detention facility or institution in violation of section 2921.36 of the Revised Code.

(F) Eligible prisoners who satisfy the requirements of paragraph (E) of this rule and being considered for placement at Camp Reams or Camp Meridian, shall be referred to health professionals to undergo medical, only if a medical level two or above, and mental health only if a C1 classification, screenings which focus on current physical and mental health issues which could compromise the prisoner's ability to successfully complete the program. The health professional shall make recommendations on the prisoner's physical and mental ability to participate in the Camp Reams or Camp Meridian program.

In the event the prisoner is found to have some physical or mental impairment, the health professional shall consult with the intensive program prison, unit administrator or the program supervisor to determine whether the impairment would substantially limit the prisoner's participation in the program. If not substantially limiting, then the prisoner's participation in the program should not be disapproved due to the impairment. If substantially limiting, then eligibility for the program turns on whether the prisoner can perform the essential functions of the program, with or without a reasonable accommodation. The prisoner must be able to perform, even with a reasonable accommodation for his or her impairment, the essential functions of the program. If the prisoner cannot so perform then the health professional shall not recommend the prisoner for the program. If the prisoner can so perform, even with a reasonable accommodation then the health professional shall recommend the prisoner for the program. The prisoner must remain physically and mentally capable of performing the essential functions of the program in all phases of the program in order to continue participation in the program.

(G) If the prisoner meets the eligibility criteria of paragraph (C) of this rule, the requirements for program selection in paragraph (E) of this rule, and, if applicable, the sentencing judge has not disapproved intensive program prison, the director shall review all relevant information, including but not limited to, the prisoner's application, the warden's designee's or contract monitor's designee, if applicable, recommendation, the health professionals' recommendations, and any conviction for a felony offense of violence within the previous five years, and approve or disapprove the prisoner's placement in the program. Prisoners shall be notified in writing of the director's decision.

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(H) A prisoner approved for the program may be confined at the reception center or other designated correctional institution until the prisoner is transferred to the intensive program prison. Acceptance in the intensive program prison shall not be deemed to occur until the prisoner is admitted into such program. A prisoner to be placed into an intensive program prison for an OMVI offense(s) is to be admitted into the program as soon as practicable, given the time period for the program selection process, after arrival at the prison unless the record officer indicates such an admission date due to the prisoner serving a mandatory sentence of one hundred twenty days or more. A prisoner to be placed into a therapeutic alcohol or other drug intensive program prison shall complete a thirty-day pre-treatment curriculum on motivation prior to admittance into such program.

(I) When a prisoner is accepted to participate in the program, the director shall notify the sentencing court, in writing, pursuant to paragraph (B) of rule 5120-11-21 of the Administrative Code. If the sentencing court did not disapprove a prisoner's placement in the program pursuant to notice set forth in paragraph (D) of this rule and, in any event, if such placement does not occur, the director shall notify, in writing, the court of the reasons therefore.

(J) Participation in the program is a privilege. No prisoner has a right to participate or to continue to participate because he meets the eligibility and selection criteria. However, once a prisoner is admitted into the program, the prisoner is not permitted to voluntarily withdraw from the program within twenty-one days of admittance.

HISTORY: 2008-09 OMR pam. #6 (A), eff. 12-29-08; 2007-08 OMR pam. #9 (A), eff. 3-27-08; 2006-07 OMR pam. #6 (A), eff. 12-15-06; 2004-05 OMR pam. #9 (A), eff. 3-30-05; 2002-03 OMR 1725 (RRD); 2000-2001 OMR 1014 (A), eff. 12-31-00; 1997-98 OMR 3038 (A), eff. 5-22-98; 1995-96 OMR 2901 (A), eff. 7-1-96; 1994-95 OMR 1167 (A), eff. 12-18-94; 1994-95 OMR 505 (A*), eff. 9-29-94; 1991-92 OMR 312 (E), eff. 10-3-91; 1991-92 OMR 112 (E*), eff. 7-12-91

RC 119.032 rule review date(s): 1-12-13; 1-11-08; 1-10-08; 1-12-03; 1-10-03; 5-12-98

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