



Ohio Revised Code

Section 2967.271 Presumptions related to sentence to non-life felony indefinite prison term.

Effective: March 22, 2019

Legislation: Senate Bill 201 - 132nd General Assembly

(A) As used in this section:

(1) "Offender's minimum prison term" means the minimum prison term imposed on an offender under a non-life felony indefinite prison term, diminished as provided in section 2967.191 or 2967.193 of the Revised Code or in any other provision of the Revised Code, other than division (F) of this section, that provides for diminution or reduction of an offender's sentence.

(2) "Offender's presumptive earned early release date" means the date that is determined under the procedures described in division (F) of this section by the reduction, if any, of an offender's minimum prison term by the sentencing court and the crediting of that reduction toward the satisfaction of the minimum term.

(3) "Rehabilitative programs and activities" means education programs, vocational training, employment in prison industries, treatment for substance abuse, or other constructive programs developed by the department of rehabilitation and correction with specific standards for performance by prisoners.

(4) "Security level" means the security level in which an offender is classified under the inmate classification level system of the department of rehabilitation and correction that then is in effect.

(5) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

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



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

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

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

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

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

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

(D)(1) If the department of rehabilitation and correction, pursuant to division (C) of this section, rebuts the presumption established under division (B) of this section, the department may maintain the offender's incarceration in a state correctional institution under the sentence after the expiration of the offender's minimum prison term or, for offenders who have a presumptive earned early release date, after the offender's presumptive earned early release date. The department may maintain the



offender's incarceration under this division for an additional period of incarceration determined by the department. The additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender's maximum prison term.

(2) If the department maintains an offender's incarceration for an additional period under division (D)(1) of this section, there shall be a presumption that the offender shall be released on the expiration of the offender's minimum prison term plus the additional period of incarceration specified by the department as provided under that division or, for offenders who have a presumptive earned early release date, on the expiration of the additional period of incarceration to be served after the offender's presumptive earned early release date that is specified by the department as provided under that division. The presumption is a rebuttable presumption that the department may rebut, but only if it conducts a hearing and makes the determinations specified in division (C) of this section, and if the department rebuts the presumption, it may maintain the offender's incarceration in a state correctional institution for an additional period determined as specified in division (D)(1) of this section. Unless the department rebuts the presumption at the hearing, the offender shall be released from service of the sentence on the expiration of the offender's minimum prison term plus the additional period of incarceration specified by the department or, for offenders who have a presumptive earned early release date, on the expiration of the additional period of incarceration to be served after the offender's presumptive earned early release date as specified by the department.

The provisions of this division regarding the establishment of a rebuttable presumption, the department's rebuttal of the presumption, and the department's maintenance of an offender's incarceration for an additional period of incarceration apply, and may be utilized more than one time, during the remainder of the offender's incarceration. If the offender has not been released under division (C) of this section or this division prior to the expiration of the offender's maximum prison term imposed as part of the offender's non-life felony indefinite prison term, the offender shall be released upon the expiration of that maximum term.

(E) The department shall provide notices of hearings to be conducted under division (C) or (D) of this section in the same manner, and to the same persons, as specified in section 2967.12 and Chapter 2930. of the Revised Code with respect to hearings to be conducted regarding the possible release on parole of an inmate.



(F)(1) The director of the department of rehabilitation and correction may notify the sentencing court in writing that the director is recommending that the court grant a reduction in the minimum prison term imposed on a specified offender who is serving a non-life felony indefinite prison term and who is eligible under division (F)(8) of this section for such a reduction, due to the offender's exceptional conduct while incarcerated or the offender's adjustment to incarceration. If the director wishes to recommend such a reduction for an offender, the director shall send the notice to the court not earlier than ninety days prior to the date on which the director wishes to credit the reduction toward the satisfaction of the offender's minimum prison term. If the director recommends such a reduction for an offender, there shall be a presumption that the court shall grant the recommended reduction to the offender. The presumption established under this division is a rebuttable presumption that may be rebutted as provided in division (F)(4) of this section.

The director shall include with the notice sent to a court under this division an institutional summary report that covers the offender's participation while confined in a state correctional institution in rehabilitative programs and activities and any disciplinary action taken against the offender while so confined, and any other documentation requested by the court, if available.

The notice the director sends to a court under this division shall do all of the following:

- (a) Identify the offender;
- (b) Specify the length of the recommended reduction, which shall be for five to fifteen per cent of the offender's minimum term determined in accordance with rules adopted by the department under division (F)(7) of this section;
- (c) Specify the reason or reasons that qualify the offender for the recommended reduction;
- (d) Inform the court of the rebuttable presumption and that the court must either approve or, if the court finds that the presumption has been rebutted, disapprove of the recommended reduction, and that if it approves of the recommended reduction, it must grant the reduction;
- (e) Inform the court that it must notify the department of its decision as to approval or disapproval



not later than sixty days after receipt of the notice from the director.

(2) When the director, under division (F)(1) of this section, submits a notice to a sentencing court that the director is recommending that the court grant a reduction in the minimum prison term imposed on an offender serving a non-life felony indefinite prison term, the department promptly shall provide to the prosecuting attorney of the county in which the offender was indicted a copy of the written notice, a copy of the institutional summary report described in that division, and any other information provided to the court.

(3) Upon receipt of a notice submitted by the director under division (F)(1) of this section, the court shall schedule a hearing to consider whether to grant the reduction in the minimum prison term imposed on the specified offender that was recommended by the director or to find that the presumption has been rebutted and disapprove the recommended reduction. Upon scheduling the hearing, the court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the offender was indicted and to the department. The notice shall inform the prosecuting attorney that the prosecuting attorney may submit to the court, prior to the date of the hearing, written information relevant to the recommendation and may present at the hearing written information and oral information relevant to the recommendation.

Upon receipt of the notice from the court, the prosecuting attorney shall notify the victim of the offender or the victim's representative of the recommendation by the director, the date, time, and place of the hearing, the fact that the victim may submit to the court, prior to the date of the hearing, written information relevant to the recommendation, and the address and procedure for submitting the information.

(4) At the hearing scheduled under division (F)(3) of this section, the court shall afford the prosecuting attorney an opportunity to present written information and oral information relevant to the director's recommendation. In making its determination as to whether to grant or disapprove the reduction in the minimum prison term imposed on the specified offender that was recommended by the director, the court shall consider any report and other documentation submitted by the director, any information submitted by a victim, any information submitted or presented at the hearing by the prosecuting attorney, and all of the factors set forth in divisions (B) to (D) of section 2929.12 of the Revised Code that are relevant to the offender's offense and to the offender.



Unless the court, after considering at the hearing the specified reports, documentation, information, and relevant factors, finds that the presumption that the recommended reduction shall be granted has been rebutted and disapproves the recommended reduction, the court shall grant the recommended reduction. The court may disapprove the recommended reduction only if, after considering at the hearing the specified reports, documentation, information, and relevant factors, it finds that the presumption that the reduction shall be granted has been rebutted. The court may find that the presumption has been rebutted and disapprove the recommended reduction only if it determines at the hearing that one or more of the following applies:

- (a) Regardless of the security level in which the offender is classified at the time of the hearing, during the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff of a state correctional institution or its inmates, or physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated.
- (b) The offender's behavior while incarcerated, including, but not limited to, the infractions and violations specified in division (F)(4)(a) of this section, demonstrates that the offender continues to pose a threat to society.
- (c) At the time of the hearing, the offender is classified by the department as a security level three, four, or five, or at a higher security level.
- (d) During the offender's incarceration, the offender did not productively participate in a majority of the rehabilitative programs and activities recommended by the department for the offender, or the offender participated in a majority of such recommended programs or activities but did not successfully complete a reasonable number of the programs or activities in which the offender participated.
- (e) After release, the offender will not be residing in a halfway house, reentry center, or community residential center licensed under division (C) of section 2967.14 of the Revised Code and, after release, does not have any other place to reside at a fixed residence address.



(5) If the court pursuant to division (F)(4) of this section finds that the presumption that the recommended reduction in the offender's minimum prison term has been rebutted and disapproves the recommended reduction, the court shall notify the department of the disapproval not later than sixty days after receipt of the notice from the director. The court shall specify in the notification the reason or reasons for which it found that the presumption was rebutted and disapproved the recommended reduction. The court shall not reduce the offender's minimum prison term, and the department shall not credit the amount of the disapproved reduction toward satisfaction of the offender's minimum prison term.

If the court pursuant to division (F)(4) of this section grants the recommended reduction of the offender's minimum prison term, the court shall notify the department of the grant of the reduction not later than sixty days after receipt of the notice from the director, the court shall reduce the offender's minimum prison term in accordance with the recommendation submitted by the director, and the department shall credit the amount of the reduction toward satisfaction of the offender's minimum prison term.

Upon deciding whether to disapprove or grant the recommended reduction of the offender's minimum prison term, the court shall notify the prosecuting attorney of the decision and the prosecuting attorney shall notify the victim or victim's representative of the court's decision.

(6) If the court under division (F)(5) of this section grants the reduction in the minimum prison term imposed on an offender that was recommended by the director and reduces the offender's minimum prison term, the date determined by the department's crediting of the reduction toward satisfaction of the offender's minimum prison term is the offender's presumptive earned early release date.

(7) The department of rehabilitation and correction by rule shall specify both of the following for offenders serving a non-life felony indefinite prison term:

(a) The type of exceptional conduct while incarcerated and the type of adjustment to incarceration that will qualify an offender serving such a prison term for a reduction under divisions (F)(1) to (6) of this section of the minimum prison term imposed on the offender under the non-life felony indefinite prison term.



(b) The per cent of reduction that it may recommend for, and that may be granted to, an offender serving such a prison term under divisions (F)(1) to (6) of this section, based on the offense level of the offense for which the prison term was imposed, with the department specifying the offense levels used for purposes of this division and assigning a specific percentage reduction within the range of five to fifteen per cent for each such offense level.

(8) Divisions (F)(1) to (6) of this section do not apply with respect to an offender serving a non-life felony indefinite prison term for a sexually oriented offense, and no offender serving such a prison term for a sexually oriented offense is eligible to be recommended for or granted, or may be recommended for or granted, a reduction under those divisions in the offender's minimum prison term imposed under that non-life felony indefinite prison term.

(G) If an offender is sentenced to a non-life felony indefinite prison term, any reference in a section of the Revised Code to a definite prison term shall be construed as referring to the offender's minimum term under that sentence plus any additional period of time of incarceration specified by the department under division (D)(1) or (2) of this section, except to the extent otherwise specified in the section or to the extent that that construction clearly would be inappropriate.