



Ohio Revised Code

Section 5139.20 Emergency overcrowding conditions.

Effective: September 30, 2011

Legislation: House Bill 86 - 129th General Assembly

(A) Notwithstanding any other provision of the Revised Code that sets forth the minimum periods or period for which a child committed to the department of youth services is to be institutionalized or institutionalized in a secure facility or the procedures for the judicial release to court supervision or judicial release to department of youth services supervision, the department may grant emergency releases to children confined in state juvenile institutions if the governor, upon request of the director of the department authorizes the director, in writing, to issue a declaration that an emergency overcrowding condition exists in all of the institutions in which males are confined, or in all of the institutions in which females are confined, that are under the control of the department. If the governor authorizes the issuance of a declaration, the director may issue the declaration. If the director issues the declaration, the director shall file a copy of it with the secretary of state, which copy shall be a public record. Upon the filing of the copy, the department is authorized to grant emergency releases to children within its custody subject to division (B) of this section. The authority to grant the emergency releases shall continue until the expiration of thirty days from the day on which the declaration was filed. The director shall not issue a declaration that an emergency overcrowding condition exists unless the director determines that no other method of alleviating the overcrowding condition is available.

(B)(1) If the department is authorized under division (A) of this section to grant emergency releases to children within its custody, the department shall determine which, if any, children to release under that authority only in accordance with this division and divisions (C), (D), and (E) of this section. The department, in determining which, if any, children to release, initially shall classify each child within its custody according to the degree of offense that the act for which the child is serving the period of institutionalization would have been if committed by an adult. The department then shall scrutinize individual children for emergency release, based upon their degree of offense, in accordance with the categories and the order of consideration set forth in division (B)(2) of this section. After scrutiny of all children within the particular category under consideration, the department shall designate individual children within that category to whom it wishes to grant an emergency release.



(2) The categories of children in the custody of the department that may be considered for emergency release under this section, and the order in which the categories shall be considered, are as follows:

(a) Initially, only children who are not serving a period of institutionalization for an act that would have been aggravated murder, murder, or a felony of the first, second, third, or fourth degree if committed by an adult or for an act that was committed before July 1, 1996, and that would have been an aggravated felony of the first, second, or third degree if committed by an adult may be considered.

(b) When all children in the category described in division (B)(2)(a) of this section have been scrutinized and all children in that category who have been designated for emergency release under division (B)(1) of this section have been so released, then all children who are not serving a period of institutionalization for an act that would have been aggravated murder, murder, or a felony of the first or second degree if committed by an adult or for an act that was committed before July 1, 1996, and that would have been an aggravated felony of the first or second degree if committed by an adult may be considered.

(c) When all children in the categories described in divisions (B)(2)(a) and (b) of this section have been scrutinized and all children in those categories who have been designated for emergency release under division (B)(1) of this section have been released, then all children who are not serving a term of institutionalization for an act that would have been aggravated murder, murder, or a felony of the first degree if committed by an adult or for an act that was committed before July 1, 1996, and that would have been an aggravated felony of the first or second degree if committed by an adult may be considered.

(d) In no case shall the department consider for emergency release any child who is serving a term of institutionalization for an act that would have been aggravated murder, murder, or a felony of the first degree if committed by an adult or for an act that was committed before July 1, 1996, and that would have been an aggravated felony of the first degree if committed by an adult, and in no case shall the department grant an emergency release to any such child pursuant to this section.



(C) An emergency release granted pursuant to this section shall consist of one of the following:

(1) A supervised release under terms and conditions that the department believes conducive to law-abiding conduct;

(2) A discharge of the child from the custody and control of the department if the department is satisfied that the discharge is consistent with the welfare of the individual and protection of the public;

(3) An assignment to a family home, a group care facility, or other place maintained under public or private auspices, within or without this state, for necessary treatment or rehabilitation, the costs of which may be paid by the department.

(D) If a child is granted an emergency release pursuant to this section, the child thereafter shall be considered to have been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time under division (A)(1)(b), (c), (d), or (e) of section 2152.16 of the Revised Code, or all definite periods of commitment imposed under division (A), (B), (C), or (D) of section 2152.17 of the Revised Code plus the prescribed minimum period of time imposed under division (A)(1)(b), (c), (d), or (e) of section 2152.16 of the Revised Code, whichever is applicable. The department shall retain legal custody of a child so released until it discharges the child or until its custody is terminated as otherwise provided by law.

(E)(1) If a child is granted an emergency release so that the child is released on supervised release or assigned to a family home, group care facility, or other place for treatment or rehabilitation, the department shall prepare a written treatment and rehabilitation plan for the child in accordance with division (F) of section 2152.22 of the Revised Code, which shall include the conditions of the child's release or assignment, and shall send the committing court and the juvenile court of the county in which the child is placed a copy of the plan and the conditions that it fixed. The court of the county in which the child is placed may adopt the conditions as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is released on supervised release or is assigned subject to specified conditions and the court of the county in which the child is placed has reason to believe that the child's department is not in accordance with any post-release conditions established by the court in its journal entry, the court of the county in which the child is



placed, in its discretion, may schedule a time for a hearing on whether the child violated any of the post-release conditions. If that court conducts a hearing and determines at the hearing that the child violated any of the post-release conditions established in its journal entry, the court, if it determines that the violation of the conditions was a serious violation, may order the child to be returned to the department of youth services for institutionalization or, in any case, may make any other disposition of the child authorized by law that the court considers proper. If the court of the county in which the child is placed orders the child to be returned to a department of youth services institution, the child shall remain institutionalized for a minimum period of three months.

(2) The department also shall file a written progress report with the committing court regarding each child granted an emergency release pursuant to this section at least once every thirty days unless specifically directed otherwise by the court. The report shall include the information required of reports described in division (G) of section 2152.22 of the Revised Code.