

5120-11-03

Intensive program prison eligibility and selection criteria.

- (A) A purpose of the intensive program prison is to provide the means of early release on parole or post-release control to a prisoner. Selection for the program is open to any eligible prisoner in accordance with this rule, regardless of race, sex, religion, or national origin.
- (B) A prisoner is not eligible for selection to the intensive program prison pursuant to this rule if the sentencing entry states that the prisoner is not eligible for placement in an intensive program prison or disapproves such placement. 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, or such entry is silent on such placement, then a prisoner shall be initially screened during reception processing for intensive program eligibility based on requirements in paragraph (C)(1) or (C)(2) or (C)(3) of this rule. If eligible reception prisoners are inadequate in numbers to fully occupy program beds, then prisoners from minimum and or medium security, correctional institutions may be screened to determine their eligibility for intensive program prison. Prisoners meeting all of the eligibility criteria shall be interviewed by the reception coordinator or designee and, if applicable, the warden's designee of a minimum and or medium security institution, to receive an explanation of the intensive program prison and to determine if the prisoner desires to be considered for the program.
- (C) A prisoner may apply to the intensive program prison selection committee for permission to participate in the program, if he meets the applicable 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 division (C) of 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 division (A) of 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 penal or reformatory 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 defined in section 2929.01 of the Revised Code; or
 - (c) 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) 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) The warden of each designated reception center shall appoint a intensive program prison selection committee which shall meet at least once weekly to review applications for the program.
- If an applicant is eligible pursuant to paragraph (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 committee 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 committee, within ten days after the mail receipt, that the judge does not approve intensive program prison for the prisoner, then the committee shall notify, in writing, the prisoner of the disapproved placement. If the sentencing judge does not notify the committee 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 selection committee shall examine each prisoner's record. No prisoner shall be selected unless the prisoner:
- (1) Has consented in writing to participation in the program and has agreed to adhere to the terms and conditions of the program;

- (2) 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;
 - (3) Has a sentence or stated prison term with sufficient time to serve the ninety-day imprisonment phase of the program;
 - (4) Has no outstanding felony detainers, felony warrants or pending felony charges;
 - (5) Has no conviction for an escape, or a felony offense of violence as defined in section 2901.01 of the Revised Code, or any comparable offense under the laws of any other state or the United States;
 - (6) Has been classified as minimum or medium security;
 - (7) Is amenable to the regimented nature of and the rehabilitative benefits of the program, and his placement in the program is in the best interest of the department and the prisoner;
 - (8) Has identified a suitable Ohio residence for the parole supervision phase of the program or, if applicable, for post-release control sanction; and
 - (9) Has demonstrated an acceptable institutional adjustment.
- (F) If the screening committee determines that a prisoner is not barred from participation in the program by any of the requirements specified in paragraph (E) of this rule, then the prisoner applicant shall be referred to health professionals to undergo thorough medical and mental health 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 program.

In the event the prisoner is found to have some physical or mental impairment, the health professional shall describe it. 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 screening committee's recommendation, and the health professionals' recommendations, 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 within seventy-two hours of 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.
- (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. The selection process in this rule is to be applied in a non-discriminatory manner based upon age and/or disability.
- (K) Prisoners not accepted by the department for placement in the program shall be assigned to a correctional institution to serve the sentence, or, if applicable, the stated prison term, imposed by the sentencing court.

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Certification

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Date

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