

## TO BE RESCINDED

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, 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:
- (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.
- (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:

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Certification

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Date

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