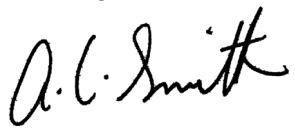




Department of
Rehabilitation & Correction

SUBJECT: Additional Term Hearing	PAGE <u> 1 </u> OF <u> 7 </u> NUMBER: 105-PBD-15
RULE/CODE REFERENCE: ORC 2967.271, 5120.01; OAC 5120-9-06	SUPERSEDES: New
RELATED ACA STANDARDS:	EFFECTIVE DATE: March 15, 2021
	APPROVED: 

I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

II. PURPOSE

The purpose of this policy is to establish a standard procedure for the Ohio Department of Rehabilitation and Correction (ODRC) to carry out its statutory duties efficiently and consistently concerning the Additional Term Hearing Process for persons sentenced under Senate Bill 201 (132nd Ohio General Assembly).

III. APPLICABILITY

This policy applies to all employees of the ODRC. This policy also applies to incarcerated adults sentenced pursuant to the provisions of SB201.

IV. DEFINITIONS

The definitions for the below listed terms can be found at the top of the ODRC policies page on the ODRC Intranet at the following:

[Definitions Link](#)

- **Additional Term Hearing**
- **Auto Referral Offenses**
- **Senate Bill 201 (SB201)**
- **Tier 1 Rule Violations**
- **Tier 2 Rule Violations**
- **Tier 3 Rule Violations**

V. POLICY

Pursuant to the authority granted to ODRC under ORC 2967.271, it is the policy of ODRC to establish an Additional Term Hearing process for conducting hearings to determine whether the presumption of release at the expiration of an incarcerated adult's minimum term is rebutted, and if so, to maintain incarceration of an incarcerated adult for an additional period of time, up to the maximum term. Incarcerated adults sentenced under ORC 2967.271 may be subject to an Additional Term Hearing following a finding of guilt of certain Inmate Rules of Conduct by the Rules Infraction Board (RIB) and affirmance of that finding after completion of any RIB appeals or following a recommendation from the Annual Security Review Team.

VI. PROCEDURES

The following procedures may be used more than once during an incarcerated adult's incarceration until the expiration of the maximum term.

A. Notification to Non-Life Felony Indefinite Prison Term Incarcerated Adults

During the reception process, the institution will make available a copy of the Non-Life Felony Indefinite Prison Term Notification (DRC3088) which shall include information regarding the possibility of reduction of the minimum term of incarceration for exceptional conduct or adjustment to incarceration, and information concerning the possibility of Additional Term Hearings to determine rebuttal of presumptive release at the minimum term.

B. Identification and Verification of SB201 Incarcerated Adults and Reporting Conduct

1. Upon a finding of guilt for violations of the Inmate Rules of Conduct by the RIB, the RIB chair will verify that the individual is serving a non-life felony indefinite sentence.
2. If the offense of which the individual is found guilty is a Tier 1 or Tier 2 Rule Violation, the RIB chair shall make an electronic referral of the disposition to the Parole Board on the SB201 Referral for Additional Term Hearing Review (DRC3196).
3. If an incarcerated adult serving a non-life felony indefinite sentence violates any of the Inmate Rules of Conduct less than sixty (60) days prior to the expiration of the individual's current sentence, then the referral of the disposition to the Parole Board will be expedited by the managing officer's administrative assistance (correction warden assistant 2). Referrals shall be made by routing the SB201 Referral for Additional Term Hearing Review (DRC3196) to the ODRC SB201 Additional Term Hearing (DRC.SB201AdditionalTermHearing@odrc.state.oh.us).

C. Annual Security Review Team

1. The Annual Security Review Team may use discretion to refer a case to the Parole Board for a possible Additional Term Hearing based upon concerns regarding any of the following:
 - a. The individual's overall behavior demonstrates a poor adjustment to incarceration,

- b. The individual has been involved in the conveyance of contraband and was not prosecuted,
 - c. The individual is an active or disruptive member of a security threat group (STG),
 - d. The individual has been found guilty of any STG-related offense,
 - e. The individual is currently classified at Security Level 3 or higher,
 - f. The individual has more than one (1) conduct report for refusal to attend mandatory programming (i.e., mandatory education or mandatory sex offender programming),
 - g. The individual's assessment from the Ohio Risk Assessment System (ORAS), if available, indicates they are moderate or high risk, or
 - h. The individual has been found guilty of a Tier 3 Rule Violation.
2. If the Annual Security Review Team refers an individual to the Parole Board, the Parole Board chair/designee shall review the request and determine if a hearing is warranted. If the Parole Board chair/designee determines that a hearing is warranted, then an Additional Term hearing shall be scheduled by the Parole Board chair/designee. The Parole Board chair's/designee's decision shall be documented on the SB201 Referral for Additional Term Hearing Review (DRC3196). Referrals shall be made by routing the SB201 Referral for Additional Term Hearing Review (DRC3196) to the ODRC SB201 Additional Term Hearing (DRC.SB201AdditionalTermHearing@odrc.state.oh.us).

D. Determination of Available Additional Time

For each non-life felony indefinite sentence that the individual is serving, the Bureau of Sentence Computation (BOSC) shall determine whether the maximum term has been exhausted, and if not, the additional time available for each case. Additional time shall be determined pursuant to ORC 2967.271, Presumptions related to sentence to non-life felony indefinite prison term.

E. Parole Board

1. The Parole Board chair/designee shall review all referrals, confirm that the individual is serving a non-life felony indefinite sentence, and determine whether an Additional Term Hearing is warranted based upon the information presented in the SB201 Referral for Additional Term Hearing Review (DRC3196). The review decision shall be documented, and if warranted, a hearing will be scheduled. The Parole Board chair/designee shall determine the amount of available additional time that may potentially be imposed. If there is no available additional time, then no further action is required.
2. After verifying that additional time is available to be imposed, a hearing shall be scheduled as follows:
 - a. Tier 1 Rule Violation Referral – If the individual has been found guilty of a Tier 1 Rule Violation, then a hearing will be scheduled approximately ninety (90) calendar days after the determination that a hearing is warranted.
 - b. Other Referrals – If the individual has been referred for an Additional Term Hearing for any reason other than a Tier 1 Rule Violation, the hearing schedule will depend on the time remaining to be served on the current sentence.

- i. If more than 270 calendar days remain on the current sentence, the hearing will be scheduled no earlier than the mid-point of the current sentence and no later than 270 calendar days prior to the expiration of the current sentence.
 - ii. If less than 270 calendar days remain on the current sentence, the hearing will be scheduled within approximately ninety (90) calendar days if sufficient time remains.
 - c. Before any hearing, notices must be provided as mandated by Ohio law and outlined in ODRC Policy 105-PBD-13, Statutory Notice.
 - d. Designated Parole Board staff shall provide written notice to the individual of the scheduled hearing (DRC3210) at least thirty (30) calendar days prior to the month in which the hearing is scheduled unless the Parole Board chair/designee gives prior approval for notice to be provided less than thirty (30) calendar days prior to that month.
 - e. A hearing may be delayed for good cause, including without limitation a determination that the conduct forming the basis of the rule violation has been referred to law enforcement for prosecution as a criminal offense or is the basis for pending criminal charges.
3. Written input received from victims shall be uploaded to OnBase by designated Office of Victim Services staff and/or Parole Board staff.
 4. Written input received from any other stakeholders (e.g., from a judge or prosecutor) shall be uploaded to OnBase by designated Parole Board staff.

F. Conducting an Additional Term Hearing

1. Parole Board staff shall not participate in any stage of the hearing process for a particular case when a conflict of interest exists. When there is a potential conflict of interest, the Parole Board chair/designee shall be informed, and the Parole Board chair/designee will decide as to the validity of the conflict of interest and how to proceed.
2. All Additional Term Hearings shall be conducted at the individual's institution in a setting which shall be private, secure, comfortable, and dignified.
3. Before the individual is brought into the hearing room, or prior to the initiation of the video conference hearing, the Parole Board hearing officer/designee conducting the Additional Term Hearing shall review all relevant RIB documents to which they have access and any other information including but not limited to the Annual Security Review Team referral, written input received pursuant to statutory notification, and the result of any specified risk instrument when available, along with the result of any supplemental risk tool specific to the particular type of offense or incarcerated adult. The Parole Board hearing officer cannot consider any conduct that was a violation of law that was prosecuted.

4. The hearing shall be conducted in person or via video conference on the scheduled hearing date. If the hearing cannot be held on the scheduled hearing date, then after the decision to reschedule has been finalized and processed to the Parole Board minutes, the individual will be notified in writing of the new scheduled hearing date using the Additional Term Hearing and Minutes (DRC3272)
5. Attendance at the Additional Term Hearing is limited to Parole Board staff, the incarcerated adult, and if required, special needs facilitators (i.e., an interpreter, translator, or other persons authorized by the Parole Board chair/designee to observe the hearing process). When deemed appropriate or necessary by the Parole Board staff, mental health staff or security personnel may also be present in the hearing room. The sole purpose of the presence of mental health staff shall be to assist an incarcerated adult with understanding the hearing process when the incarcerated adult has such diminished capacity that it renders the individual incapable or substantially unable to understand the process without assistance.
6. Each institutional hearing or interview shall be conducted with the incarcerated adult present in person or via video conference unless the Parole Board chair/designee determines, for good cause shown, that attendance by the incarcerated adult is inappropriate or unwarranted. The reasons for conducting a hearing without the incarcerated adult's attendance shall be documented in the Additional Term Hearing Decision and Minutes (DRC3272). The first instance of an incarcerated adult's refusal to appear does not by itself constitute good cause to conduct a hearing without the incarcerated adult's attendance. Incarcerated adults refusing to appear at an institutional hearing cannot receive an additional term based solely on that refusal. For the first such refusal to appear, the hearing shall be rescheduled to approximately ninety (90) calendar days later. Unit staff shall interview the individual to determine the reasons for the refusal and attempt to resolve the problem. A subsequent refusal to appear may be considered good cause to hold the re-scheduled hearing without the individual present.
 - a. If there is not enough time remaining prior to the incarcerated adult's scheduled release date to allow for a ninety (90) day continuance, the hearing will be set for an appropriate date to allow a decision to be made prior to the existing scheduled release date.
7. The Parole Board hearing officer/designee is responsible for completing all required paper or electronic forms. The Parole Board hearing officer should use the Additional Term Hearing Decision and Minutes (DRC3272) as a guide to conducting the hearing and ensuring that all relevant information is reviewed during the Additional Term Hearing. The Parole Board hearing officer should inform the incarcerated adult of the reason(s) for holding the Additional Term Hearing and the potential consequence of a finding that the presumption of release has been rebutted.
8. During the hearing, using the Additional Term Hearing Decision and Minutes (DRC3272), the Parole Board hearing officer should inform the incarcerated adult that they may provide mitigating information, and should briefly explain what information may be mitigating. The individual shall be given an opportunity to provide any mitigating information.

9. After the hearing has concluded, the Parole Board hearing officer shall determine whether the presumption of release has been rebutted, and whether to maintain incarceration for an additional period of time.
10. The Parole Board hearing officer may determine that the presumption has been rebutted only if the Parole Board hearing officer determines that one or more of the following applies:
 - a. Regardless of the security level in which the incarcerated adult is classified at the time of the hearing, both of the following apply:
 - i. During the individual's incarceration, the individual committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff or member of the incarcerated population of a state correctional institution, or physical harm or the threat of physical harm to the staff or member of the incarcerated population of a state correctional institution, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the individual has not been rehabilitated; and
 - ii. The individual's behavior while incarcerated, including but not limited to the infractions and violations described in the paragraph above, demonstrate that the individual continues to pose a threat to society.
 - b. Regardless of the security level in which the incarcerated adult is classified at the time of the hearing, the individual has been placed in extended restrictive housing at any time within the year preceding the date of the hearing.
 - c. At the time of the hearing, the individual is classified by the department at security level 3 or higher.
11. If the Parole Board hearing officer determines that an additional term is warranted, they will verify the amount of remaining time available as identified in the SENTN screen of DOTS Portal and issue a reasonable additional term of specific days, in day-long increments, of up to 365 days. If the Parole Board hearing officer determines that a term of more than 365 additional days is warranted, the Parole Board hearing officer shall staff the matter with a Chief Hearing Officer for review and approval. The Parole Board hearing officer shall utilize the Additional Term Hearing Grid (DRC3106) when determining the amount of additional time to impose.
12. The Parole Board hearing officer will review the Additional Term Hearing Decision and Minutes (DRC3272) with the incarcerated adult and inform the individual whether the presumption of release at the minimum has been rebutted, and if so, the additional period of incarceration that will be imposed.
13. The decision to impose an additional period of incarceration shall be noted on the Additional Term Hearing Decision and Minutes (DRC3272). Decisions rendered by the Parole Board hearing officer/designee shall be processed and noted in the Parole Board

Minutes within five (5) business days. Parole Board Minutes are considered public record after they are certified by the Parole Board chair.

14. A completed copy of the Additional Term Hearing Decision and Minutes (DRC3272) shall be provided to the incarcerated adult after the decision has been finalized and processed to the Parole Board Minutes.
15. The decision is final and non-appealable. The incarcerated adult shall be notified that the decision is final and non-appealable and shall be notified that future Additional Term Hearings may be held as long as they remain incarcerated and until the expiration of their maximum term.

G. Application of Additional Time by the Bureau of Sentence Computation

1. Once a decision is rendered, the hearing officer shall provide a copy of the Additional Term Hearing Decision and Minutes (DRC3272) to the BOSC Parole Board Section.
2. BOSC shall verify that the individual’s non-life felony indefinite maximum prison term allows for application of an additional period of incarceration. If there is sufficient time remaining, BOSC shall apply the additional period noted on the Additional Term Hearing Decision and Minutes (DRC3272) and determine the new expiration date of the incarcerated adult’s minimum term. If there is not sufficient time remaining to be served, BOSC shall immediately notify the Parole Board hearing officer/designee.
3. BOSC shall notify the unit management chief at the incarcerated adult’s institution, the ODRC Notifications (drc.notifications@odrc.state.oh.us), and the Office of Victim Services of the additional period imposed and the new expected release date.
4. BOSC shall notify the incarcerated adult of the new expected release date.

Referenced ODRC Policies

105-PBD-13 Statutory Notice

Referenced Forms:

Non-Life Felony Indefinite Prison Term Notification Form	DRC3088
Additional Term Hearing Grid	DRC3106
SB201 Referral for Additional Term Hearing Review	DRC3196
Notice to Incarcerated Adult of Additional Term Hearing	DRC3210
Additional Term Hearing Decision and Minutes	DRC3272