



Department of
Rehabilitation & Correction

Mike DeWine, Governor
Annette Chambers-Smith, Director

March 8, 2021

Ohio Association of Criminal Defense Lawyers
713 South Front Street
Columbus, Ohio 43206

Dear Ohio Association of Criminal Defense Lawyers:

The letter is to inform you of DRC's intent to amend Ohio Administrative Rule 5120-2-04, which addresses the application of jail time credit towards an incarcerated individual's sentence. The changes were made to make it easier to understand the rule, to include the nomenclature of the Regan Tokes law and to update this rule to be consistent with recent Ohio Supreme Court decisions.

When this rule was promulgated in 1975, many sentencing courts delegated the responsibility of jail time credit calculation to the county sheriff. The sheriff would determine how many days of credit the inmate was entitled to receive, share that information with DRC, and then those days would be applied to the sentence. Over the years, Ohio law has developed and it is now clear that only the sentencing court can determine the amount of jail time credit an inmate is entitled to receive.

Recent Ohio Supreme Court decisions have emphasized that DRC must strictly follow the sentencing entry. DRC is cognizant that the jail time credit listed in an entry is the result of both a factual determination and a legal analysis from many factors such as bond terms, house arrest, treatment programs, dismissed charges, detainers, probation/parole holders, and plea bargain negotiations. Only the sentencing court can determine what the appropriate jail time credit is. Our amendments to the rule conform to the Ohio Supreme Court's recent decisions in *State ex rel. Fraley v. Ohio Dep't of Rehab. & Corr.*, Slip Opinion No. 2020-Ohio-4410 and *State v. Henderson*, Slip Opinion No. 2020-Ohio-4784.

DRC will apply the jail time credit as it is provided in the latest sentencing entry. *See* R.C. 2929.19(B)(2)(g)(v).

- We will apply jail time credit for the days between the date of the sentencing entry and the date of transfer to DRC custody and for any days previously spent in DRC custody in the same case. *See* R.C. 2967.191(A).
- We will assume that the sentencing entry complies with R.C. 2929.19(B)(2)(g)(i) and does **not** include days in DRC custody. Therefore, we will **not** deduct jail time credit for days that the individual appears to have been in DRC custody.



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- We will assume that jail time credit has not been duplicated on consecutive sentences. Thus, if an individual receives 100 days of jail credit on Case A and 100 days of jail time credit on Case B, DRC will apply 200 days of jail time credit to the aggregate sentence.
- If an incarcerated person informs our staff that their jail time credit is incorrect, they will be instructed that they should file a motion with the court.

Over the past year, we have worked with many of you concerning a myriad of issues including COVID-19, video hearings, *Fraley* recalculations and transportation matters. We are grateful for your assistance, professionalism and flexibility as we all adapt to this changing environment. As always, please contact us if you have any questions.

Sincerely,

Tyler Brown
Staff Counsel