

**OPINION NO. 70-068****Syllabus:**

A person convicted of a felony and sentenced to the Ohio State Reformatory becomes legally eligible for parole in accordance with criteria established by the Ohio Adult Parole Authority.

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**To: Vincent E. Gilmartin, Mahoning County Pros. Atty., Youngstown, Ohio**  
**By: Paul W. Brown, Attorney General, June 17, 1970**

I have before me your request for my opinion which asks the following question:

"When does a person, convicted of a felony and sentenced to the Ohio State Reformatory, become legally eligible for parole?"

Section 2967.01, Revised Code, sets forth certain definitions applicable to a determination of this question. It provides in pertinent part as follows:

"(A) 'State penal or reformatory institution' includes the penitentiary, the London correctional institution, the Ohio state reformatory, the Marion correctional institution, the Lebanon correctional institution, the Ohio reformatory for women, or any other unit within the division of correction which is used for the custody, care, or treatment of criminal, delinquent, or psychopathic offenders.

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"(E) 'Parole' means the release from confinement in any state penal or reformatory institution by the adult parole authority created by section 5149.02 of the Revised Code and under such terms and for such period of time as shall be prescribed by the authority in its published rules and official minutes. A parolee so released shall be supervised by the authority. Legal custody of a parolee shall remain in the department of mental hygiene and correction until a final release is granted by the authority."

It is noted that the legislature has seen fit to distinguish between a penal and a reformatory institution. While the adult parole authority is granted the power to release from confinement in any state penal or reformatory institution under such terms and for such period of time as it shall prescribe in its published rules, the legislature limited this authority to diminish the minimum sentence of persons confined to penal institutions for purposes of parole by spelling out such diminution in Section 2967.19, Revised Code.

The legislature has provided in Section 5143.03, Revised Code, for the sentencing of all male first offense criminals between the ages of sixteen and thirty years, except for those convicted of murder in the first or second degree, to the reformatory.

Although the legislature specifically has not set forth diminution credits for reformatory inmates, by implication it is clear that it intended to distinguish between classes of inmates so as to provide the adult parole authority certain leeway in carrying out its rehabilitation function. In consonance with this implied power, the authority has established separate criteria for parole eligibility. The eligibility for persons sentenced to the Ohio Penitentiary, its transferees, and women sentenced to the Ohio Reformatory for Women under rules of the penitentiary are based strictly upon the normal diminution credits set forth in Section 5143.02, supra.

The minimum sentences for parole eligibility to be served by inmates of the Ohio State Reformatory, Lebanon Correctional Institution, and women sentenced to the Ohio Reformatory for Women, as reformatory cases, have been established by the adult parole authority as follows:

<u>MINIMUM SENTENCE</u>	<u>PAROLE HEARING</u>
1 Year	10 Months
2 Years	13 Months
3 Years	16 Months
4 Years	19 Months
5 Years	22 Months
6 Years	26 Months
7 Years	29 Months
8 Years	32 Months
9 Years	35 Months
10 Years	
Or Over	38 Months
LIFE	38 Months

It is apparent that one of my predecessors recognized the

difference in the two classes of prisoners, the reasoning behind the need for such a distinction, and an approval thereof in a well-considered opinion, Opinion No. 33-106, Opinions of the Attorney General for 1933. That opinion held that "The Board of Parole has authority to allow an inmate of the Ohio State Reformatory to go out on parole before he has served the minimum term fixed by law for the felony of which the prisoner was convicted." I concur in that pertinent part of the opinion.

It is accordingly my opinion and you are advised that a person convicted of a felony and sentenced to the Ohio State Reformatory becomes legally eligible for parole in accordance with criteria established by the Ohio Adult Parole Authority.