

**OPINION NO. 75-097****Syllabus:**

Pursuant to R.C. 2929.41(C)(2), the aggregate of consecutive minimum terms imposed under R.C. 2929.41(B)(2) or R.C. 2929.41(B)(3) is to be reduced by the time already served on the first of the sentences imposed, to the extent that such time does not exceed the minimum term of that first sentence. If additional sentences are later imposed the same process applies so as to reduce the new aggregate minimum term by the time already served, to the extent such time was in satisfaction of any minimum term previously imposed.

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**To: George F. Denton, Director, Dept. of Rehabilitation and Correction, Columbus, Ohio**

**By: William J. Brown, Attorney General, December 31, 1975**

I have before me your request for my opinion which reads as follows:

"Section 2929.41(B)(2) and (3), R.C. provide for sentences to be served consecutively when imposed for the conviction of certain offenses where a previous

sentence is already being served. Paragraph (C)(2) of that same section of the Revised Code provides, in part, that in such cases 'the minimum term to be served is the aggregate of the consecutive minimum terms imposed reduced by the time already served on any such minimum term, and the maximum term imposed is the aggregate of the consecutive maximum terms imposed.'

"Sections 2967.13 and 2967.19, R.C., predicate parole eligibility formulae on the minimum sentence of a prisoner in a state penal institution.

"The question is, what is the meaning of the underlined language in Section 2929.41(C)(2), supra?

"Giving literal effect to this language seems to lead to absurd results. For example: A - serves ten (10) years in prison or on parole and is either paroled or escapes and is convicted of a new felony for which the minimum sentence is ten (10) years. His aggregate minimum sentence is now twenty (20) years but if credit for the original sentence is applied, he is immediately again eligible for parole upon admission to the Reception Center, whereas if he were not a repeat offender he would have to serve six (6) years and four (4) months before becoming eligible for parole consideration."

R.C. 2929.41(C)(2) provides:

"When consecutive sentences of imprisonment are imposed for felony under division(B)(2) or (3) of this section, the minimum term to be served is the aggregate of the consecutive minimum terms imposed reduced by the time already served on any such minimum term, and the maximum term imposed is the aggregate of the consecutive maximum term imposed."

It is apparent from initial analysis of R.C. 2929.41(C)(2) that no problem arises if two sentences to be served consecutively are imposed at the same time. In that case there would be one aggregate minimum term existing from the outset and any time then served would properly be applied to satisfy that aggregate minimum.

The problem you have raised, however, involves a situation where time has already been served on one sentence at the point in time when a second sentence, to run consecutively with the first, is imposed. For example, a person convicted of a new felony while on parole must be given a sentence to be served consecutive with the first. R.C. 2929.41(B)(2). The issue is how to reduce the aggregate minimum sentences in computing the new minimum term to be served so as to determine parole eligibility. More specifically, where time in excess of the minimum term on the first sentence has already been served on the first sentence, is any of that "excess" to be applied in reduction of the aggregate minimum so as to compute the new minimum term to be served.

The issue is resolved by determining whether "any such minimum term" contained in the clause:

"reduced by the time already served on  
any such minimum term . . . ."

refers to the minimum of the first sentence imposed or to the new minimum to be computed as a result of a second sentence having been imposed.

In construing statutory language it is necessary to consider words and phrases in context presuming the legislature intended a result feasible of execution. R.C. 1.42 and R.C. 1.47(D). With these principles of construction in mind, I note that the critical phrase (any such minimum term) is only employed with reference to "time already served" in the one clause which establishes the reduction formula. Since, then, the critical phrase is itself a part of the formula by which the new minimum term will be computed, the phrase can only have reference to the minimum of the first sentence. Time previously served cannot be deemed "already served" on a sentence which has just been imposed.

The result of this analysis is that any time served on a first sentence, which is in excess of the minimum term of that sentence, is not to be included as "time already served" when computing a new minimum term after imposition of a second (consecutive) sentence.

Legislative intent also supports this conclusion. Parole is a matter of grace, a second chance given by the State to a person thought to be rehabilitated. R.C. 2967.01(E); Horrisey v. Brewer, 408 U.S. 471 (1972). By committing a new crime, the parolee has demonstrated that rehabilitation has not been achieved. Zerbst v. Kidwell, 304 U.S. 359 (1938). To construe R.C. 2929.41 (C)(2), therefore, in such a manner that a parolee convicted of a new crime would be immediately eligible for parole, would be contrary to legislative intent. Such a construction would be inconsistent with the fact that a parolee convicted of a new crime must be given consecutive sentences. R.C. 2929.41(E)(3). It further would be inconsistent with the concept of minimum term being an express limitation on the discretion of the Adult Parole Authority. R.C. 2967.13 and R.C. 2967.25. Accordingly, any other conclusion than that reached herein is unacceptable because it does not facilitate the object sought to be attained (R.C. 1.49(A)) and, instead of yielding a reasonable result, yields inconsistencies (R.C. 1.49(E)).

In specific answer to your request it is my opinion, and you are so advised that pursuant to R.C. 2929.41(C)(2), the aggregate of consecutive minimum terms imposed under R.C. 2929.41 (B)(2) or R.C. 2929.41(B)(3) is to be reduced by the time already served on the first of the sentences imposed, to the extent that such time does not exceed the minimum term of that first sentence. If additional sentences are later imposed the same process applies so as to reduce the new aggregate minimum term by the time already served, to the extent such time was in satisfaction of any minimum term previously imposed.