

OPINION NO. 76-045**Syllabus:**

A person sentenced to the reformatory who is subsequently convicted and resentenced to a consecutive term in the penitentiary becomes eligible for parole, as specified by R.C. 2967.25, at the expiration of the aggregate of the minimum terms of both sentences, diminished as provided by R.C. 2967.19.

**To: George F. Denton, Director, Dept. of Rehabilitation and Corrections,
Columbus, Ohio**
By: William J. Brown, Attorney General, June 11, 1976

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

"When is a person, legally sentenced to the Ohio State Reformatory for a first degree felony, or for a narcotics offense containing a long minimum sentence, eligible for a parole consideration when a new sentence is received under one of the following circumstances:

"1. Before becoming eligible for parole consideration on his reformatory sentence, he is removed from the reformatory, pursuant to Section 2941.40 or Section 2941.401 R.C., and subsequently resentenced to a consecutive term to the Chillicothe Reception Center for an offense committed prior to his original sentence, would it make any difference if he had already been heard by the Parole Board as a parole eligible under reformatory rules, and continued for a period of time?

"2. Before becoming eligible for parole consideration on his reformatory sentence, he escapes and is resentenced for a felony of lesser degree committed while on escape, or is convicted of the crime of escape, does it make any difference if he has already seen the Board as a reformatory parole eligible case?"

I note at the outset that R.C. 5143.03 sets forth criteria which must be met if a convict is to be eligible for sentencing to a reformatory rather than to a penal institution. R.C. 5143.03 provides, in pertinent part:

"Male persons between the ages of sixteen and twenty-one years convicted of a felony shall be sentenced to a reformatory instead of the penitentiary, if such males have not been known previously to have served a sentence in a federal, state or other prison or correctional institution for conviction of a felony.

"Male persons between the ages of twenty-one and thirty years may be sentenced to the reformatory instead of the penitentiary, if such males have not been known previously to have served a sentence in a federal, state or other prison or correctional institution and if the court passing sentence deems them amenable to reformatory methods.

"No male person convicted of murder in the first degree shall be sentenced or transferred to the reformatory."
(Emphasis added.)

As expressed in State, ex rel McKee v. Cooper, 40 Ohio St. 2d 65 (1974), it is the purpose of reformatories to separate those prisoners from older prisoners and multiple offenders who could exert harmful influences on a youth committed for the first time. "Typically, reformatories place greater emphasis on rehabilitation than do penitentiaries, and less emphasis on discipline and punishment. Further, in order to give the Department of Rehabilitation and Correction the best chance of maintaining an atmosphere of rehabilitation, the department is given authority under R.C. 5143.09 to transfer an apparently incorrigible prisoner whose presence appears to be seriously detrimental to the well-being of the reformatory." Id. at 71.

In the situations you present, a convict serving a reformatory sentence and subsequently convicted and sentenced to a consecutive term would, under the guidelines of R.C. Chapter 5143, properly be sentenced to a penal institution after the second conviction. R.C. 2967.21 provides that a prisoner sentenced or committed to a penal or reformatory institution may be transferred to another institution but shall continue to be subject to the original term of sentence provisions for diminution of sentence and parole eligibility. In the situations you present, however, the individuals have been resentenced, under R.C. 2929.42, to a consecutive term to be served in a penal institution. The transfer provisions of R.C. 2967.21 thus are not applicable to the situations you present, as it is a resentencing which has been imposed and the prisoners in question will serve consecutive terms in the penitentiary. An analysis of the statutory provisions for consecutive sentences and parole eligibility results in the conclusion that an individual, presently serving a sentence in the reformatory, and subsequently resentenced to a consecutive term in the penitentiary becomes eligible for parole upon the expiration of the aggregate of the minimum terms of both sentences, diminished as provided by R.C. 2967.19. For further discussion of the diminution provisions of R.C. 2967.19, see 1975 Op. Att'y Gen. No. 75-097.

It is established under Ohio law that a person convicted of a felony and sentenced to the Ohio State Reformatory becomes legally eligible for parole in accordance with the criteria established by the Ohio Adult Parole Authority. State, ex rel. McKee v. Cooper, *supra*; 1970 Op. Att'y Gen. No. 556. However, it is the statutory provisions for diminution of sentence under R.C. 2967.19 that are applicable to persons confined in state penal institutions.

R.C. 2967.13 provides for parole eligibility in the following terms:

"(A) A prisoner serving a sentence of imprisonment for felony becomes eligible for parole at the expiration of his minimum term, diminished as provided in Section 2967.19 of the Revised Code.

"(B) A prisoner serving a sentence of imprisonment for life for a capital offense becomes eligible for parole after serving a term of fifteen full years.

"(C) A prisoner serving a sentence of imprisonment for life for a noncapital offense, imposed under any former law of this state,

or serving a minimum term or terms, whether consecutive or otherwise, of imprisonment longer than fifteen years, imposed under any former law of this state, becomes eligible for parole after serving a term of ten full years' imprisonment."

R.C. 2967.25 provides for parole eligibility when serving consecutive terms as follows:

"A person serving several indeterminate sentences consecutively becomes eligible for parole upon the expiration of the aggregate of the minimum terms of his several sentences diminished as provided in section 2967.19 of the Revised Code."

I find no limitations placed upon this provision with regard to what consecutive sentences it applies to, or where these sentences may be served. Thus, I must conclude that this provision of R.C. 2967.25 applies to all consecutive sentences, whether imposed at one time or at different times; I must also conclude that the provision applies to all consecutive sentences, regardless of where they are to be served.

R.C. 2967.25 provides for diminution of sentence of consecutive terms for good behavior as provided by R.C. 2967.19. Thus, while the provisions of R.C. 2967.19 have been held not applicable to prisoners in a reformatory, in the situations you describe (where a reformatory prisoner is subsequently resentenced to a consecutive term in the penitentiary) R.C. 2967.25 operates to specifically apply the provisions of R.C. 2967.19 where consecutive sentences have been imposed. These provisions would apply to a reformatory prisoner subsequently resentenced to a consecutive term in the penitentiary whether or not he had already had a hearing, which was continued by the Parole Board, as a parole eligible prior to the time of the subsequent conviction. This is because the applicability of R.C. 2967.25 is triggered by the imposition of the consecutive sentence.

It is, therefore, my opinion and you are so advised that a person sentenced to the reformatory who is subsequently convicted and resentenced to a consecutive term in the penitentiary becomes eligible for parole, as specified by R.C. 2967.25, at the expiration of the aggregate of the minimum terms of both sentences, diminished as provided by R.C. 2967.19.