

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

S.H., et al.,	:	Case No. 2:04 CV 1206
	:	
Plaintiffs,	:	JUDGE ALGENON L. MARBLEY
	:	
vs.	:	
	:	
TOM STICKRATH,	:	<u>JOINT PLAN FOR REFORMING</u>
	:	<u>RELEASE AUTHORITY PURSUANT TO</u>
	:	<u>STIPULATION FOR INJUNCTIVE</u>
Defendant.	:	<u>RELIEF (DOC. 118, PARA. 32)</u>

Pursuant to Para. 32 of the Stipulation for Injunctive Relief (Doc. 118), the parties hereby agree to the following Joint Plan for Reforming Release Authority:

**I. Generally.**

- A. Release decisions will be made consistent with the Guiding Principles as detailed in the Stipulation for Injunctive Relief. The Release Authority procedures must be based upon accurate and current information regarding a youth's risk and needs, provide adequate due process regarding decision making, allow timely and ongoing communication with treatment staff, parent, guardian and other responsible adults, comply with notifications as required by law, ensure that release decisions are fair, consistent and result in youth not being held longer than necessary for successful reentry, and provide for accountability and oversight of decision making regarding release.
- B. The Mission of the Ohio Department of Youth Services (DYS) is to encourage positive change in the lives of youthful offenders through collaborative partnerships and culturally relevant therapeutic and academic interventions that support public

safety and prepare youth to lead productive lives. As such, decision making regarding release should evaluate positive steps taken by the youth toward successful re-entry as well as factor in public safety. No term or portion of the changes to the Release Authority's procedures shall be interpreted as creating a right or protected liberty interest to release after a youth has served his or her minimum sentence.

- C. **Reentry Planning.** DYS will embrace the philosophy of Reentry acknowledging that a youth's plan for a smooth transition to his or her community begins at the time of commitment. DYS will develop a Reentry Plan for each youth while at reception that incorporates programming recommendations from both the committing court and the Release Authority. These recommendations will be used by the institutional Interdisciplinary Team in the development of a youth's initial Unified Case Plan.

**II. Changes to Policies and Procedures.** DYS shall revise its policies and procedures within sixty (60) days in consultation with the Monitor and class counsel in accordance with the provisions of this Proposal. It shall incorporate the following provisions:

- A. **Assessment and Unified Case Plans.** DYS will review and streamline the assessment process to determine the necessity of each instrument used, the validity of the instrument or its use as a best practice, the availability of similar current and accurate court assessments, and whether some assessment instruments may be completed at the youth's assigned institution. The Release Authority will work together with the Interdisciplinary Teams and youth to develop appropriate Unified Case Plan Goals and Objectives for each youth.
1. At the conclusion of the reception assessment process and prior to the youth's transfer to his or her home institution, the Release Authority will conduct a

review with the youth and establish Release Authority expectations as well as review court recommendations. These recommendations and scheduled initial review date would be forwarded to the Interdisciplinary Team at the youth's home institution and incorporated into the youth's Unified Case Plan.

2. An Interdisciplinary Team within the facility in conjunction with the youth will develop the Unified Case Plan Goals and Objectives within twenty-one (21) days of arrival at the home institution, and will ensure that each youth receives oral and written notice and that each youth's parent/guardian and the committing court shall be notified in writing or electronically of the Unified Case Plan Goals and Objectives by the Division of Parole and Community Services. The Unified Case Plan Goals and Objectives will describe the youth's responsibilities for completion of treatment, programming, or other rehabilitation requirements and address possible consequences if the youth fails to uphold his or her responsibilities. The Unified Case Plan Goals and Objectives also will give notice of DYS' responsibilities to provide such treatment, programming, education, or other rehabilitation requirements, including a safe environment in which the youth may fulfill his or her responsibilities without disruption. A copy of the Unified Case Plan Goals and Objectives and the youth's file shall be sent to the Release Authority as soon as completed and shall be made available electronically to parole staff.
3. All attempts shall be made to develop Unified Case Plan Goals and Objectives that can be successfully completed by the youth within the Minimum Sentence Expiration Date, in combination with re-entry services to be provided once the

youth is released. In the case of high-risk offenders, the Unified Case Plan Goals and Objectives shall include information about the length of existing treatment modalities and the likelihood that the youth can complete such program within the Minimum Sentence Expiration Date.

4. DYS will increase its efforts with local courts to improve the consistency of journal entries and to revise the Dispositional Investigative Report to improve the quality and consistency of information provided.

**B. Notice of Approaching Minimum Sentence Expiration.** Prior to the expiration of a youth's Minimum Sentence, DYS shall ensure that a Notice of Approaching Minimum Sentence Expiration is sent to the committing court, within 30 days if possible, to provide an opportunity for the court to review the youth's progress prior to the Minimum Sentence Expiration.

**C. Types of Reviews**

1. **Expedited Release Reviews.** During the initial meeting with the youth, each youth will be considered for an expedited release review and approval based on the circumstances of the offense, court requests, MSED, assessments, and expected services available on parole. Those youth determined to be appropriate for an immediate panel review will be so advised. Within one week, the youth will receive the written decision of the release review completed by a panel.
2. **Special Release Reviews.** (Prior to regularly scheduled release review) Throughout a youth's stay in DYS, the Release Authority shall promote opportunities to be released earlier than their set release date for appropriate

youth, and shall consider positive behavior and documented security classification as the basis for recommending youth to be released earlier than their set release date. Institution Superintendents, Regional Administrators, and/or the court of original jurisdiction may request a special review. Institutions and regional staff will be encouraged to use this process to recognize youth meeting release expectations prior to the next scheduled release review. The Release Authority will provide training to the institutions and regional staff on the Special Release Review Process and the need for requests to be timely. If the Release Authority denies (or rescinds approval of) release under this category, a panel will be held with the youth present.

3. **Release Reviews.** No fewer than thirty (30) days, or when possible, prior to the expiration of a youth's Minimum Sentence Expiration, the Release Authority shall conduct a release review. Youth shall receive credit for time served in local detention facilities and in DYS reception. When possible, notice is to be provided no fewer than thirty (30) days prior to the release review to the youth, the youth's parent/guardian, the court, and the prosecutor. Notification to any registered victim will be made as required by ORC §5139.56. A panel that is comprised of at least two members of the Release Authority, one of which may be a hearing officer and one of which must be a member, with decision making authority shall review the case with the youth being present—in person, by teleconference, or by videoconference. In the event members of the panel cannot agree, a decision by the Chair of the Release Authority or designee will be made in order to determine the matter.

a. **Review at Minimum Sentence Expiration Date.** A youth shall be reviewed no fewer than 30 days, whenever possible, prior to the expiration of his or her Minimum Sentence Expiration Date unless the registered victim cannot be notified within thirty (30) days, as required by section 5139.56 of the Ohio Revised Code (ORC). The youth shall be released unless the panel makes written findings concluding that one of the following conditions exists:

- i. A youth has engaged in a serious incident involving physical harm to another, conduct that creates substantial risk to the safety and security of the institution, or significant property damage while in DYS custody;
- ii. The Interdisciplinary Team administering the youth's Unified Case Plan reports in writing either of the following:
  - ii.a. The youth is in need of continued treatment or rehabilitative services, as determined by a research-based assessment tool, administered and interpreted by trained personnel, or other instrument accepted as best practice, and that DYS has acted expeditiously to make treatment or service available. The team must find that effective treatment cannot be safely provided in the community and that effective treatment is available within DYS; or
  - ii.b. The youth poses a significant public safety concern, as measured by the likelihood of re-offending and as determined

by a research-based risk assessment tool combined with independent clinical judgment.

- iii. In the rare circumstance in which a recommendation to extend a youth's stay is made where the youth has not been found to have engaged in a serious incident nor has the youth been determined to have additional treatment needs nor pose a risk to public safety, the Release Authority may exercise an override by convening the full board. This extension shall be for no more than ninety (90) days, upon which time the Release Authority may renew the extension. Upon extension for this reason, written justification will be forwarded to the Deputy Director of Parole, Courts and Community Services with notification made to the Director.
  - iv. Any such extension may be reviewed by the Monitor or his designee.
- b. **Determination of Serious Incident.** The panel conducting the release review shall not determine that a youth has engaged in a serious incident under subsection (C)(3)(a)(1) unless:
- i. There is a formal finding that the youth has engaged in a serious incident following a hearing affording the youth due process; and
  - ii. Notice has been provided to the youth and youth's parent or guardian of any recommendation by an institution disciplinary committee for added time as a sanction for the serious incident which must have occurred within a prescribed timeline set out in the discipline policy; and

iii. There is an accounting for any institutional factors regarding conditions beyond a youth's control.

c. **Documentation of Ongoing Treatment Needs.** In the event the Interdisciplinary Team reports in writing that one of the conditions set forth in subsection (C)(3)(a)(2) exists, that report shall be incorporated into the youth's updated Unified Case Plan and shall contain the following:

i. A detailed description of the additional treatment or rehabilitative services the team proposes, assurance that such treatment is available at DYS, and the likelihood of its effectiveness;

ii. An estimate of the length of time the team believes is reasonably required for the youth to complete the additional treatment or rehabilitative services, and measurable goals for the youth;

iii. Any oral or written statement the youth wishes to make to the team regarding the team's recommendation that he or she be extended beyond the expiration of his or her Minimum Sentence Expiration Date. Pursuant to this provision, a youth and the youth's parent/guardian must be given the opportunity to address the team's recommendation through oral, written or electronic communication with members of the team.

4. **Release Reviews for Revoked Youth:** For youth admitted to DYS as a result of a parole revocation, the Release Authority shall conduct its Release Review

within the first 90 (ninety) days of the youth's re-admission. All other provisions herein apply to the youth's release reviews.

**D. Extending the Review Date.**

1. In the event two members of the panel conducting the review make written findings and determine one or more of the conditions set forth in subsection (C)(3)(a)(i), (ii), or (iii) exists, the panel may take the following actions:
  - a. Release the youth at the expiration of his or her Minimum Sentence Expiration Date;
  - b. Extend the youth's release date for a specified period of days not to exceed sixty (60) days, or 90 days in limited circumstances where statutory notice as required by the Ohio Revised Code has not been achieved and where DYS has made a good faith effort to achieve such notice:
    - 1) If the youth's release date is extended by fewer than sixty (60) days, no further review is necessary.
    - 2) However, if the youth's release date is extended by more than thirty (30) days, the youth retains the right to appeal the panel's decision; or
  - c. Reset the youth's review date for a specified period of days not less than sixty-one (61) nor more than one hundred and eighty (180) days. In the event the panel elects to extend the review date for a period of sixty-one (61) to one hundred and eighty (180) days, the following provisions apply:

- 1) The Release Authority shall conduct a subsequent review in accordance with subsection (C); and
  - 2) The panel member(s) shall explain to the youth the reason for the extension and their expectations for him or her during the extension period. These expectations shall be incorporated into the youth's Unified Case Plan by the Interdisciplinary Team.
  - 3) The youth shall have the right to appeal the panel's decision to the DYS Division of Legal Services for review by an attorney in accordance with the appeal procedures set forth in Section E.
  - 4) In cases where the youth's review date is extended for more than sixty (60) days, the Interdisciplinary Team will be directed to review the Unified Case Plan to determine its appropriateness in moving the youth toward steps necessary for successful re-entry and to make changes as appropriate. The Interdisciplinary Team may request a Special Release Review prior to the youth's new review date if the youth's behavior warrants such consideration.
2. Within ten (10) business days of the review, the Release Authority shall issue written notice of its decision and written findings to the youth, the Interdisciplinary Team, the court, the prosecutor, and law enforcement when required. The youth's parent/guardian shall be notified by the Division of Community Services, and any registered victim shall receive notification. In the event the panel elects to extend the youth's release date in accordance with subsection (D)(1)(b) or (c), the written notice shall also contain:

- a. The youth's new review date as extended by the specified number of days;
  - b. Detailed findings specifying upon which criterion the panel based its decision;
  - c. A detailed description of any additional treatment or rehabilitative services the youth is required to complete; and
  - d. Expectations of the youth regarding behavior and compliance with programming requirements.
3. Only under exceptional circumstances shall a youth's release date be extended for more than thirty (30) days for treatment or rehabilitative services that DYS has failed to make available by the release date. Any such extension shall be approved in advance by the Chair of the Release Authority who shall be responsible for ongoing review of any such cases. The external Monitor shall receive a report on any decision made pursuant to this section.

**E. Appeals.**

1. In the event the panel extends a youth's release review date for a period of thirty-one (31) to one hundred and eighty (180) days from the expiration of his or her original Minimum Sentence Expiration Date, the youth has a right to appeal the panel's decision to the Division of Legal Services. To assist the youth in the appeals process, the youth may choose a neutral, trained DYS advocate who is willing and available to assist the youth. DYS' system for the use of advocates must be incorporated into the policies and procedures after consultation with the Monitor and class counsel.

2. A youth may initiate an appeal by providing written notice to the Division of Legal Services within seven (7) business days of his or her receipt of the written notice required by subsection (D)(2). Grounds for appeal are limited to the following, and youth will be required to explain reasons for his or her appeal request.
  - a. The availability of relevant additional or missing information that was not previously considered;
  - b. Challenges to the required treatment or rehabilitative services forming the basis of the extension;
  - c. Failure to follow applicable administrative procedures; or
  - d. Other significant factor which would render the result manifestly unjust.
  - e. Youth shall not be permitted to appeal disciplinary time imposed by the Institutional Disciplinary Hearing procedure under this proposal.
3. Within ten (10) business days (if possible) of the receipt of a youth's written notice of appeal, the Division of Legal Services shall conduct an appellate review in accordance with subsection (C). Written notice of the decision regarding the appeal shall be provided to the youth and the youth's parent/guardian and the Release Authority.
4. If the Division of Legal Services grants the youth's appeal, the youth shall be entitled to a Special Review for Reconsideration. This Special Review decision will be binding and cannot be appealed except for a claim that administrative procedures were not followed within the Special Review itself. Unless the

Release Authority will be releasing the youth, the review must be conducted in person or via video or teleconference.

- F. Youth with Extended Minimum Sentence Expiration Dates.** For those youth whose Minimum Sentence Expiration Date is more than twelve (12) months, the Release Authority shall schedule reviews after twelve (12) months and every six (6) months thereafter to review the youth's progress with the goals and objectives of the Unified Case Plan as well as to ensure the Unified Case Plan is being implemented, that steps are being taken to ensure successful reentry, and to consider other positive incentives for the youth. Such reviews are not for the purpose of considering release and should not be used to extend any release dates. As such, any decisions made are non-appealable.
- G. Quality Control and Monitoring.** DYS shall develop a process and timeline, in consultation with the Monitor, for implementation of quality control procedures, which shall include a mechanism for external monitoring to be followed by the Monitor and class counsel, to evaluate compliance with these procedures and criteria for release. DYS shall develop a process and timeline for review of current information systems related to release decision-making in order to create a unified information system to store accurate data that is entered in a timely fashion and is amenable to interrogation for analysis of aggregate decision-making patterns.
- H. Statistical Information.** DYS shall maintain statistical information on the number of youth whose release dates are extended, whose discharge dates are extended, and the average length of the extensions. These statistics shall be maintained and categorized by institution and/or region, by the youth's age, gender, race, and security

classification, number of reviews, and by the criteria upon which the release is granted or extended. Appropriate computerized databases may be developed based upon information from the Unified Case Plans, with information available at various decision-making points, which can be accessed by central office, facility, and parole staff.

**I. Notice of Release Authority Standards and Procedures.** DYS shall ensure that Release Authority standards and procedures are clearly explained to youth at reception, and explained to the youth's parent or guardian as soon thereafter as practicable. To promote greater understanding of Release Authority practices and procedures, DYS will endeavor to:

1. Conduct periodic parent/guardian orientation via video conference on the Release Authority process, including creation of a DVD for court use, as well as family viewing;
2. Expand information about the Release Authority process on the DYS website;
3. Incorporate information about the Release Authority process into each institution's Youth Handbook;
4. Provide training for judges on the Release Authority process, in particular judges new to juvenile court; and
5. Make training by the Release Authority available to prosecutors, defense attorneys, and officers of the court.

**J. Modifications to this Agreement**

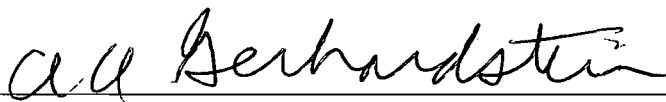
The parties recognize that this Agreement may need modification once the DYS regionalization plan is completed and other areas of the Stipulation are implemented.

As such, the Monitor or his designee shall conduct an evaluation within one year after this plan is implemented, with input from the parties, and shall make any recommendations to the parties regarding necessary or otherwise appropriate changes. Modifications may be made by agreement of the parties, in consultation with the Monitor, after this evaluation is completed. DYS will therefore not proceed to change the Ohio Administrative Regulations until after this evaluation period has passed and the parties have reviewed the Monitor's recommendations (if any) and agreed upon appropriate changes. DYS shall, however, suspend any administrative regulations that conflict with these provisions immediately upon the filing of this agreement.

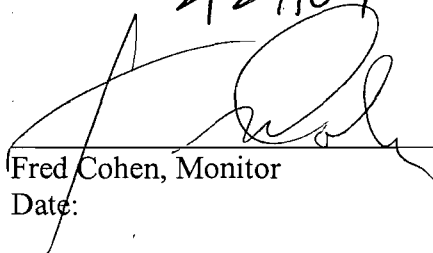
Approved:



Tom Stickrath, Director Ohio Department of Youth Services  
Date:



Alphonse A. Gerhardstein, Lead Counsel, Plaintiff Class  
Date: 2/24/09



Fred Cohen, Monitor  
Date: