



OHIO

CRIMINAL SENTENCING COMMISSION

65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3431 • TELEPHONE: 614.387.9305 • FAX: 614.387.9309

Sentencing and Criminal Justice Committee

August 1, 2019

Agenda

- I. **Call to Order & Approval of Meeting Notes of May 2019 meeting**
- II. **Old Business**
 - A. **Substitute Senate Bill 3**
Discussion of amendments recently adopted into Sub SB3
 - B. **Drug Chapter Workgroup discussion**
Update on Drug Chapter Workgroup
 - C. **Regan Tokes Law Amendment Proposals**
Review of potential legislative fixes to 132 SB 201's indefinite sentencing provisions
- III. **New Business**
 - A. **Review of Felony Sentencing Quick Reference Guide**
Solicitation of feedback on draft update to reference material
 - B. **Bail Reform Task Force Update**
Review of recommendations of Supreme Court's Bail Task Force Report
 - C. **Legislative Update**
Discussion of newly introduced legislation

Upcoming Meetings

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| Ohio Criminal Sentencing Commission | September 19, 2019
Riffe Center,
South B&C Conference Rooms
31st Floor |
| Sentencing and Criminal Justice Committee | October 17, 2019
Ohio Judicial Center, Room 281 |

Sentencing and Criminal Justice Meeting May 16, 2019

Call to order and approval of February 21, 2019 minutes:

Judge Spanagel called the meeting to order and Scott Shumaker noted the members in attendance. The minutes of the Committee's February 2019 meeting were approved as read.

Old Business

Appellate Review Draft Discussion:

Scott Shumaker began the discussion with an explanation of the circumstances surrounding the draft. After lengthy debate at the February meeting, it was believed that a consensus could be reached, and the committee recommended that the work group members go back to their representative groups to discuss a compromise. However, when the workgroup next met, it became clear that both the OPAA and OPD were willing to adopt a "wait and see" approach with regard to pending Supreme Court cases like *State v. Gwynne*. It is not clear how soon a decision on the *Gwynne* case might come down, or that *Gwynne* would be decided on the merits, or even that a decision might solve the overarching problems with §2953.08's problematic provisions.

Judge Spanagel then posed the question to the Committee of whether the draft should be sent to the full Commission, and whether that should include the problematic (B)(4) provision dealing with the State's right to appeal. Members noted that it behooves the group to work to move proposals forward when there is consensus but not unanimity. Magistrate Boone moved to send the proposal to the full commission and accepted an amendment from Judge Spanagel that the proposal include a statement from OPD and OPAA detailing their positions on the draft. Lara Baker-Moorish seconded the motion. An oral vote was called and the motion received 9 affirmative votes and 2 abstentions. Scott Shumaker will prepare the draft for the full commission and obtain position statements to include with those materials.

Senate Bill 3 – Drug Reform update;

Members then discussed interested party meetings regarding Substitute Senate Bill 3, aimed at reforming Ohio's drug laws. Scott Shumaker informed the Committee that the sponsors had held 3 meetings with different groups of interested parties, and he detailed the areas discussed in the meeting that the Commission participated in. Sponsors of the bill have identified areas they believe could be addressed through amendment, like jurisdictional provisions. Those areas were discussed at length in all three meetings. Other areas, like the misdemeanor and felony possession offense distinction, were topics the sponsors felt should be discussed in testimony on the bill. Members then discussed jurisdictional issues that could be problematic.

Lara Baker-Moorish asked if anyone was aware of similar legislation being considered on the House side. Josh Williams noted that the Speaker has said that criminal justice reform bills are coming but they have not yet been introduced.

Drug Chapter Workgroup update:

The Drug Chapter Workgroup recently discussed expansion of record sealing opportunities, comparing the provisions of the Chief Justice's proposals on the subject to those in SB3. They have also discussed ILC expansion and the desire to reform the CQE process, particularly around misdemeanor requirements and the costs for filing a request for a CQE. Members discussed the efficacy of ILC programs in their jurisdictions and the difficulty in comparing success rates between programs.

Scott noted to the group that the Chief Justice's proposals on record sealing may be the basis of priority legislation on the House side. Judge Selvaggio discussed his belief that a 2 year waiting period is most appropriate, as it is shown to be the typical amount of time required for recovery from a substance abuse disorder.

New Business

Senate Bill 201 Reagan Tokes Amendments:

Mr. Shumaker then discussed a document detailing potential areas to address fixes to Senate Bill 201's indefinite sentencing procedures. Two bills have been introduced, HB215 and SB133, which represent the parts of the Reagan Tokes Law not passed in the last General Assembly. These deal with post release control supervision procedures and policies, and they may prove a vehicle for fixes to SB201. Scott detailed the areas he felt could benefit from additional statutory clarification, and asked members to review the document and report back to him with any additional changes they felt might be necessary.

Cindy Mausser asked about the issues surrounding maximum terms in consecutive cases. Under old law, these types of sentences were recalculated by DRC. Scott noted that there is no authority for reclassification in SB201 and no guidance on whether a defendant could have to serve a maximum term on one case before starting a minimum term on a consecutive case.

Legislative Update:

Scott then gave a brief update on legislation introduced in the 133rd general assembly. He and Tasha Ruth also updated the Committee on the work of the Supreme Court Bail Task Force. Potential changes to Criminal Rule 46 are being drafted for that group's consideration at their May meeting.

Adjourn:

With no further business before the Committee, a motion to adjourn was made and passed.



TO: Sentencing and Criminal Justice Committee

FROM: Scott Shumaker, Criminal Justice Counsel

DATE: August 1, 2019

RE: Sub. Senate Bill 3 Amendments

Several amendments were accepted to Substitute Senate Bill 3 at the June 27th meeting of the Senate Judiciary Committee. Several of these amendments had been discussed with interested parties in the weeks leading up to the hearing. A substitute bill is being drafted incorporating the amendments and will be introduced at a later date. Please reach out to Commission staff if you wish to see the actual text of any of the amendments.

Accepted amendments include:

- **AMENDMENT 0229X1** – Jurisdictional clarification. Extends concurrent jurisdiction over unclassified misdemeanor possession charges to both common pleas and municipal courts, and give the county prosecutor discretion in where to charge those possession offenses. The court in which the offense is charged then has discretion to assign the case to a specialized docket. Also includes clarification of definition of “reclassified misdemeanor drug possession offense.”
- **AMENDMENT 0230** – Makes provisions of the bill retroactive to any violation of 2925.03, 2925.031, 2925.032 (Trafficking) or 2925.11 and 2925.111 (Possession) offenses pending but not yet sentenced at the time of the bill’s effective date.
- **AMENDMENT 0232** – Modifies the provisions probation violator caps 2929.15(B) to make the 90 and 180 day caps a “new” term in addition to the term of community control, and changes the definition of “technical violation” to exclude refusal to participate demonstrating abandonment of community control sanctions:

(4) As used in divisions (B)(1) to (3) of this section, "technical violation" means a violation of the conditions of a community control sanction imposed for a felony of the fifth degree, or for a felony of the fourth degree that is not an offense of violence and is not a sexually oriented offense, and to

which neither of the following applies:

(a) The violation does not consist of a new criminal offense that is a felony or that is a misdemeanor other than a minor misdemeanor, and the violation is committed while under the community control sanction.

(b) The violation consists of or includes the offender’s articulated refusal to participate, or repeated refusal to participate, in the community control sanction imposed on the offender of any of its conditions, and the refusal demonstrates to the court that the offender has abandoned the objects of the community control sanction or condition



- **AMENDMENT 0233X1** – Reduces the number of revivals from opioid antagonist from three to 1 to demonstrate a drug abuse problem for civil commitment purposes; instead of requiring half of the cost of treatment paid in advance, provides for evidence of intent to pay some of the cost of treatment; allows for professional examination rather than only a physician’s exam; and establishes provisions for an order to allow a 72-hour commitment for drug treatment.
- **AMENDMENT 0234X1** – Specifies that prior convictions for possession of marijuana or hashish do not exclude a person from having prosecution of a subsequent unclassified misdemeanor possession case held in abeyance under the provisions of SB3.
- **AMENDMENT 0235** – Modifies civil commitment language to make clear that provision are not limited to opioid abuse disorder sufferers.
- **AMENDMENT 0236X1** – Creates the minor misdemeanor offense of “possession of a controlled substance trace amount” for amounts less than .025g or ¼ of 1 unit dose.
- **AMENDMENT 0283** – Expands the definition of sexual assault enabling drug to include controlled substances possessed for the purpose of preventing resistance to sexual activity that is knowingly administered by force, stealth, or deception and the offender engaged in sexual activity with the victim.
- **AMENDMENT 0284** – Makes clear that the exemptions for possession and trafficking offenses are specific to medical professionals and are affirmative defenses.
- **AMENDMENT 0499** – Authorizes the Criminal Sentencing Commission to study and report on the implementation and effect of SB3, and designates the Commission as a criminal justice agency.
- **AMENDMENT 0752** – Makes petitions filed for civil commitment of a person with a substance abuse disorder confidential and provides that a physician can complete a certificate to admit that person to treatment.
- **AMENDMENT 0753** – Reinstates existing enhancement for trafficking in drugs in the vicinity of a school or juvenile.



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FELONY SENTENCING QUICK REFERENCE GUIDE

PURPOSES AND PRINCIPLES OF SENTENCING - R.C. § 2929.11(A)

OVERRIDING PURPOSES:

To protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender while “using the **minimum sanctions** that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.”

PRINCIPLES:

- Always consider the need for incapacitation, deterrence, rehabilitation of the offender, and restitution to the victim and/or the public [§2929.11(A)]
- Sentences should be commensurate with, and not demeaning to, the seriousness of offender’s conduct and its impact on the victim, and consistent with sentences for similar crimes by similar offenders [§2929.11(B)]
- Courts shall not sentence based on the offender’s race, ethnicity, gender, or religion [§2929.11(C)]

SERIOUSNESS AND RECIDIVISM FACTORS – CONSIDER IN EVERY CASE

The court must weigh the following factors, if present, as well as any other relevant factors.

OFFENDER’S CONDUCT MORE SERIOUS [§2929.12(B)]

- Injury exacerbated by victim’s physical or mental condition or age
- Victim suffered serious physical, psychological, or economic harm
- Offender held public office or position of trust related to the offense
- Offender’s occupation obliged the offender to prevent the offense or to bring those committing it to justice
- Offender’s reputation, occupation, or office facilitated the offense or is likely to influence others’ conduct
- Offender’s relationship with the victim facilitated the offense

- Offender acted for hire or as part of organized criminal activity
- Offender was motivated by prejudice based on race, ethnicity, gender, sexual orientation, or religion
- In a domestic violence or assault case, offender is parent or custodian, the victim was a family or household member and the offense was committed in the vicinity of one or more children other than the victim

OFFENDER’S CONDUCT LESS SERIOUS [§2929.12(C)]

- Victim induced and/or facilitated the offense
- Offender acted under strong provocation
- Offender did not cause or expect to cause physical harm to person or property
- Substantial grounds exist to mitigate the offender’s conduct, even if they do not constitute a defense

OFFENDER'S RECIDIVISM MORE LIKELY [§2929.12(D)]

- Offense was committed while on bail, awaiting sentencing, on community control or PRC, or after PRC unfavorably terminated
- Offender has a history of criminal convictions or juvenile delinquency adjudications
- Offender has not responded favorably to sanctions previously imposed in adult or juvenile court
- Offender shows pattern of alcohol/drug-use related to offense and doesn't acknowledge it or refuses treatment
- Offender shows no genuine remorse

OFFENDER'S RECIDIVISM LESS LIKELY [§2929.12(E)]

- Offender has no prior juvenile delinquency adjudication and/or no prior adult conviction
- Offender has led a law-abiding life for a significant number of years
- Offense was committed under circumstances unlikely to recur
- Offender shows genuine remorse

OFFENDER'S VETERAN STATUS [§2929.12(F)]

MANDATORY PRISON TERMS

Note: The General Assembly frequently changes this list and doesn't always include changes in [§2929.13(F)].

AGGRAVATED MURDER OR MURDER

The court must impose a prison term listed in [§2929.02] or [2929.03]. See [§2929.13(F)(1)]

ANY F-1 OR F-2

Sentence is mandatory when offender has a prior conviction for aggravated murder, murder, or any F-1 or F-2 offense [§2929.13(F)(6)]

ASSAULTS ON PEACE OFFICERS

Felonious, aggravated, or simple assault when victim is a peace officer or BCI investigator who suffered serious physical harm [§2929.13(F)(4) and (13)]

- 7 year specification if offender shot at peace or corrections officer while committing or attempting a homicide or assault offense [§2941.1412] [2929.14(B)(1)(f)(i)]
- 5 year specification for aggravated vehicular homicide (AVH) with peace officer victim [§2941.1414][§2929.14(B)(5)]

ASSAULTS ON PREGNANT WOMEN

Mandatory within felony range for Felonious, aggravated, or simple assault if offender knew of the pregnancy, with specification in [§2941.1423] [§2929.13(F)(18)] and [§2929.14(B)(8)]

- Mandatory 30 day jail term for misdemeanor violation with specification [§2929.24(G)]

REPEAT VIOLENT OFFENDER SPECIFICATION (RVO)

Defined as person who commits aggravated murder, murder, a violent F-1 or F-2, or an F-1 or F-2 attempt of violence, with a prior conviction for one or more of the same [§2929.01(CC)] [§2941.149]

- Discretionary RVO time: If court elects the maximum from range for underlying offense and LWOP is not imposed, it may add 1 to 10 more years if the court finds under [§2929.14(B)(2)(a)(i-v)] that the prison term for the underlying offense is:
 - Inadequate to punish the offender and protect the public – see recidivism factors in [§2929.12(D) and (E)] **and**
 - Demeaning to seriousness of offense – see seriousness factors in [§2929.12(B) and (C)]
 - For F-2 offenses the court also must find serious physical harm or attempt or threat to do so
- Under [§2929.14(B)(2)(b)] the Court **must** impose the maximum prison term authorized for the

offense **plus** an additional 1-10 years for:

- RVO with ≥ 3 RVO offenses in 20 years, including current, if LWOP not required or imposed

F-3 INVOLUNTARY. MANSLAUGHTER OR ATTEMPT TO COMMIT A VIOLENT F-2 INVOLVING ATTEMPTED OR ACTUAL SERIOUS PHYSICAL HARM

Where offender has prior aggravated murder, murder, involuntary manslaughter, rape, or other F-1 or F-2 that involved causing or attempting to cause serious physical harm [§2929.13(F)(4) and (7)]

CERTAIN SEX OFFENSES

Any offense with a sexually violent predator (SVP) specification under [§2929.13(F)(2), (11), and (15)]; and [§2971.03] – at least 2 years to life for specification, consecutive to underlying offense

Any rape – see [§2929.13(F)(2)] and [our Rape Penalty Chart](#) for range of sentences

- Attempted rape, if victim <13 and, if completed, would be a sexual predator [§2929.13(F)(2)]
- 5 to 25 years for attempted statutory rape if offender ≥16 and victim <13 [§2941.1418]; [§2971.03(A)(3)(e)(ii) or (B)(2)(a)]; and [§2929.14(E)]
- 10 to Life for attempted statutory rape if offender ≥16 and victim <10 [§2941.1419]; [§2971.03(A)(3)(e)(iii) or (B)(2)(b)]
- 15 to Life for attempted rape if offender has prior attempted statutory rape [§2941.1420]; [§2971.03(A)(3)(e)(iv) or (B)(2)(c)]

Sexual battery after 8/3/2006 if victim <13 [§2929.13(F)(3) (c)(ii)]; or

- Before 8/3/2006, if victim <13, with prior rape, FSP, GSI, or sexual battery [§2929.13(F)(3)(c)(i)]

Gross Sexual Imposition if victim <13 [§2929.13(F)(3)(a) and (b)]:

- with prior rape, FSP, GSI, or sexual battery; or
- On or after 8/3/2006, with corroboration of victim's testimony¹

Importuning, with victim <13, if offender has prior sex offense or child-victim-oriented offense

¹ In State v. Bevely, 2015-Ohio-475, the Supreme Court held that a mandatory prison term based upon corroborating evidence is unconstitutional

[§2929.13(F)(4)]; and [§2907.07(A), (C), and (F)(2)]

SORN Registration: Repeat failure to register [§2950.99(A)(2)(b)] – mandatory sentence of at least 3 years

CERTAIN DRUG OFFENSES:

F-1, F-2, and F-3 Drug Offenses: generally mandatory from range when required by statute [§2929.13(F)(5)] and (Ch. 2925). [See our Drug Offense guide](#) for specific guidance

F-2 Marijuana/Hashish Trafficking, Possession, or Cultivation: [§2925.03, 2925.04, and 2925.11]

- 20 to <40k. marijuana, 1 to <2 k. solid hashish, or 200 to <400 g. liquid hashish: 5, 6, 7, or 8 years
- ≥40 k. marijuana, ≥2 k. solid hashish, or ≥400 g. liquid hashish: 8 years
- If in vicinity of school/juvenile: F-1 maximum

Major Drug Offenders (MDO): Defined in [§2929.01(W)]

- F-1 maximum for specified, high-quantity amounts, [§2941.1410(A)]
- Additional 3-8 year specification when drug involved is a fentanyl related compound [§2941.1410(B)]

CORRUPT ACTIVITY

Engaging in a pattern of corrupt activity in violation of [§2923.32] when the most serious predicate offense is an F-1 [§2929.13(F)(10)]

CERTAIN TRAFFIC OFFENSES

Felony OVI when local incarceration is not imposed and for 5 priors in 20 years specified [§4511.19] and [§2941.1413]

- At least 60 days or at least 120 days, as specified for felony OVI [§4511.19(G)]; and [§2929.13(G)(1) and (2)]
- 6 months or 1, 2, 3, 4, or 5 years on 6th OVI in 20 years [§2929.13(G)(1) and (2)], plus [§2941.1413]; [§2929.24(E)], plus [§2941.1416]

Any OVI-related aggravated vehicular homicide (AVH) and aggravated vehicular assault (AVA) [§2903.06, .08]

Certain other involuntary manslaughters, AVH's, vehicular homicides, AVA's when specified [§2929.13(F)(14)]; [§2903.04, 2903.06, and 2903.08]

- 3 years for AVH with 3 or more prior OVIs or

equivalent offenses [§2941.1415][§2929.14(B)(6)]

HUMAN TRAFFICKING

Violations of [§2905.32(E)] punishable by 10, 11, 12, 13, 14, or 15 years

- Specification for offenses committed in furtherance of Human Trafficking see [§2941.1422] and penalties in [§2929.14(B)(7)]

FELONY DOMESTIC VIOLENCE

Where offender knew the victim was pregnant or caused serious physical harm to unborn child [§2929.13(F)(17)]; and [§2919.25(D)(3) through (6)]

ILLEGAL CONVEYANCE

Where prison or detention employee brings weapons, ammunition, or drugs into the facility [§2929.13(F)(12)]; and [§2921.36]

OTHER SPECIFICATIONS LISTED IN [§2941]

See [§2929.13(F)(8), (9)] and [2929.14(B)(1), (5-7), (E), (G), and (H)] etc.;

NOTE: Time for specification is mandatory; Term for the underlying offense may or may not be.

- 6 years for automatic or muffled/silenced firearm [§2941.144] (9 years with prior) (cannot combine with 3 or 1 year gun spec)
- 3 years, if firearm used, displayed, brandished, or otherwise indicated [§2941.145] (54 months with prior)
- 1 year, if firearm possessed but not used, displayed, brandished, or otherwise indicated [§2941.141](18 months with prior)
- 5 years, if a drive-by shooting, in addition to gun specification above [§2941.146]
- 2 years, if wearing or carrying body armor [§2941.1411]
- 1, 2, or 3 years for participating in a criminal gang [§2941.142]; [§2929.14(G)]
- 2 years for aggravated murder, murder, or a violent F-1, F-2, or F-3 in a school zone [§2941.143], [§2929.14(H)(1)]
- 6 years for causing permanent, serious disfigurement or permanent, substantial incapacity when using an accelerant to commit felonious assault [§2941.1425][§2929.14(B)(9)]
- 6 years for causing permanent disabling harm to a victim <10 years old [§2941.1426][§2929.14(B)(10)]

DISCRETIONARY PRISON TERMS

For anyone not facing a mandatory prison term, judge has discretion to choose a prison term from [§2929.14(A)] ranges, or they may impose a term of community control of up to 5 years [§2929.13(A)], [§2929.15(A)], etc.

PRESUMPTIVE PRISON TERM

F-1s, F-2s, “In Favor” Drug Offenses, and certain F-3’s:
Presumption in favor of a prison term [§2929.13(D)(1)]
To rebut presumption, court must find that non-prison sanction(s) would **both** [§2929.13(D)(2)]:

- Adequately protect the public and punish the offender because the factors indicating recidivism is less likely to outweigh the factors indicating recidivism is more likely; and
- Not demean seriousness of the offense because less

serious factors outweigh more serious factors
If no prison term (or if judicial release is later granted), state has appeal of right [§2953.08(B)]
F-3 offenses are Theft of Firearm [§2913.02(B)(4)], Certain GSI offenses [§2907.05(A)(4) or (B)], or F-3 importuning [§2907.07(F)]

NO PRESUMPTIVE SENTENCE

Other F-3’s or “Div. C” Drug Offense: No guidance other than Purposes and Principles [§2929.13(C)]

COMMUNITY CONTROL

F-4’s & F-5’s or “Div. B” Drug Offenses: Mandatory* 1-year community control sanction(s) if [§2929.13(B)(1)(a)(i-iv):

Most serious charge is an F-4 or F-5 that is not an offense of violence or that is a qualifying assault offense and the offender:

- Did not have prior felony at any time or prior misdemeanor offense of violence within 2 years;
- Court made request of DRC and was provided with available community control sanctions under [§2929.13(B)(1)(c)]
 - Court may impose prison term if DRC does not name an appropriate sanction within 45 days [§2929.13(B)(1)(b)(iv) and (B)(1)(c)]

***However** - The court **may** impose a prison term if **any** of these 11 factors apply [§2929.13(B)(1)(b)]:

- Physical harm to a person
- Attempt or actual threat of physical harm to a person with a deadly weapon
- Attempt or actual threat of physical harm to a person, *plus* prior conviction for causing such harm
- Offense related to public office/position held; position obligated offender to prevent it or to bring others to justice; or offender’s reputation/position facilitated the crime or likely to influence others

- Offense was for-hire or part of organized criminal activity
- Offense was a sex offense
- Offender served a prior prison term or was in prison at time of offense
- Offense was committed while offender was under community control or on bail or bond
- Offender committed the offense while in possession of a firearm

If [§2929.13(B)(1)] does not apply, the court must comply with Purposes and Principles of sentencing.

If a prison term is imposed, defendant has appeal of right under [§2953.08(A)(2)].

- If a sentence is given with a prison term for a F-4 or F-5 or a “Div. B” Drug Offense and the court specifies one or more factor found in [§2929.13(B)(1)(b)], then defendant is not entitled to an appeal as a matter of right

INDEFINITE AND DEFINITE SENTENCES

Ohio now operates under a system of both definite and indefinite sentencing. Felony offenses may be subject to a life sentence, a non–life indefinite sentence, or a definite sentence

LIFE SENTENCE OFFENSES

Offender is sentenced to a term of years to life with release determinations by Parole Board.

- Aggravated murder (if death sentence not imposed) and murder (LWOP or X years – Life) [§2903.01 and .02]; [2929.02 and .03]
- Rape of a person <13 (LWOP); other rape or sexual battery; or GSI of a person <13, with an SVP spec (2 to Life) [§2907.02], [§2971.03(A)]; and [§2941.147spec]
- Aggravated murder, murder, involuntary manslaughter in felony, felonious assault, and kidnapping with SVP and sexual motive (SM) specs (LWOP for murders, 2 years – Life for others) [§2971.03(A)]; [§2941.147 (SM spec) and §2941.148 (SVP spec)]
- Certain attempted rapes, sex offenses near school, human trafficking, assaults on pregnant women (Terms vary, see above)

NON-LIFE FELONY INDEFINITE PRISON TERMS – 132 GA SB 201

F-1 and F2 offenses committed on or after 3/22/19 which are not subject to life imprisonment. Judges impose both a minimum and maximum term. Release is presumed at the expiration of the minimum term. [See the SB201 Resources](#) for further guidance

- **Minimum Term:** Judges will select a minimum term from the [§2929.14(A)] range
 - For offenses that specify a different term, that term is considered the minimum term
 - For offenses that carry a mandatory term, the minimum term is a mandatory term
- **Maximum Term:** Generally calculated as the minimum term plus 50% of itself [§2929.144(B)(1)]
 - **Concurrent Sentences:** The maximum term is equal to the longest minimum term imposed plus 50% of the longest minimum term for the most serious qualifying felony being sentenced [§2929.144(B)(3)]
 - **Consecutive Sentences:** The maximum term is the sum of ALL indefinite minimum terms imposed PLUS any definite terms imposed PLUS any specifications PLUS an additional 50% of the

longest minimum term OR definite term for the most serious felony being sentenced [§2929.144(B)(2)]

DEFINITE PRISON TERMS

Offender is sentenced to a definite term of years, with a prison term selected from the ranges in [§2929.14(A)],

unless the offense specifies a different term. Release occurs at the expiration of the definite term. Offenses subject to definite sentencing:

- **Non-life F-1 and F-2 offenses committed before 3/22/19**
- **F-3, F-4, and F-5 offenses**

COMMUNITY CONTROL SANCTIONS

RESIDENTIAL SANCTIONS

Include, but not limited to [§2929.16]; (See [§2929.01] for definitions):

- Community-based correctional facility (CBCF) for up to 6 months
- Jail or minimum-security jail for up to 6 months (or up to 1 year for certain F-4 OVIs)
- Halfway house: no stated time limit, depends on program
- Alternative residential facility: Another place for employment, training, education, treatment, etc.

NON-RESIDENTIAL SANCTIONS

Include, but not limited to [§2929.17]; (See [§2929.01] for definitions):

- Day reporting: Report to an approved location to participate in work, training, treatment, etc.
- House arrest and/or electronic monitoring and/ or continuous alcohol monitoring
- Community service for up to 500 hours for felonies, which may be imposed on indigent and non-indigent persons; the 40-hour/month cap is no longer the law; how community service is credited is judge's discretion
- Drug treatment: Inpatient, outpatient, or both; court determines level of security
- Drug- and alcohol-use monitoring, including random drug testing
- Intensive probation supervision: Frequent contact with supervising officer, etc.
- Basic probation supervision: Contact with a supervising officer subject to conditions set by the court
- Monitored time: Under court control, subject to no conditions other than leading a law-abiding life

- Curfew:
- Employment: Obtain or retain a job
- Education or training
- Victim-offender mediation, with the victim's prior consent
- License violation report: Inform an agency granting a business or professional license of the violation
- Counseling generally. In particular, if a parent or custodian sentenced for domestic violence or assault involving a family or household member committed in the vicinity of a child other than the victim

SEX OFFENDER REGISTRATION AND REPORTING:

- Tier 3 Offender: Must report every 90 days for life
- Tier 2 Offender: Must report every 180 days for 25 years (Juveniles report for 20 years, unless modified)
- Tier 1 Offender: Must report every 12 months for 15 years (Juveniles report for 10 years, unless modified)

FINANCIAL SANCTIONS GENERALLY

Include, but not limited to [§2929.18(A)] (See [§2929.01] for definitions):

- Restitution: For any economic loss (*Plus* up to 5% collection charge), but not "non-economic" loss [§2929.18(A)(1)]
 - Also see provisions specific to human trafficking in [§2929.18(B)(8)]
- Fines, including [§2929.18(A)(2) through (4)]:
 - Conventional fine from ranges in [§2929.18(A)(3)] (See Felony Sentencing Table)

- If the offender is an organization, see [§2929.31]
- “State fine” or costs: Imposed by statute for victims, public defense, law libraries [§2929.31(A)(4)]
- “Day fine”: Standard percentage of offender’s daily income over time, based on offense seriousness [§2929.31(A)(2)]
- Reimbursement of costs to administer any sanction [§2929.18(A)(5)] and monitoring devices, including:
 - Pay-for-stay in jail, prison, etc. up to actual costs (Jail repayment must be authorized by local government)

FINANCIAL SANCTIONS FOR PARTICULAR OFFENSES

Drug offense fines (Ch. 2925) and [§2929.18(B)]:

- F-1, F-2, F-3 drug offenses: Mandatory fine at least 50% of the maximum conventional fine [§2929.18(B)(1)]
- F-1, F-2, F-3 drug trafficking “additional” fine equals

value of offender’s property involved in or realized from the offense, or, if no property or undetermined value, additional fine under the [§2929.18(A) (3)] ranges; capped at conventional fine maximum [§2929.18(B)(4) through (7)]; (Also see million-dollar fine below)

Up to \$1 million for aggravated murder, murder, or F-1, or for F-1, F-2, or F-3 drug offense, if 3 or more victims in instant or all such past crimes [§2929.32]

Felony OVI, mandatory fine specified by offense level [§2929.18(B)(3)]; and [§4511.19(G)(1)(d) or (e)]

Arson: Mandatory investigation- and prosecution-costs reimbursement [§2929.71]

Forfeitures (Ch. 2981 and Title 45):

- Asset forfeiture, particularly in corrupt activity, drug, gang, and Medicaid fraud cases (Ch. 2981)
- Motor vehicle forfeiture for certain OVIs, DUSs, and wrongful entrustments [§4510.11, .19, .203], etc.

SENTENCING AND HEARING NOTICE REQUIREMENTS

PRESENTENCE INVESTIGATION (PSI)

No offender may be placed on a term of community control without a written PSI being considered by the court unless the state waives the requirement [§2951.03(A)(1)]

RISK ASSESSMENT

The court and its probation officers must use the risk-assessment tool selected by DRC if the court orders an assessment of an offender for sentencing or other purposes [§5120.114(A)].

SENTENCING HEARING

Required before imposing sentence for a felony [§2929.19(A)]

When Imposing a Prison Term [§2929.19(B)(2)]:

- **Prison Term(s):** State a prison term *plus* any gun specification, RVO, MDO, consecutives, etc.
 - For **SB201 qualified offenses** subject to

indefinite sentencing impose minimum terms on each qualifying count **and** the maximum term on the record

- **Post-Release Control:** Notify that, as part of sentence, PRC is mandatory (for F-1, F-2, violent F-3, or sex offense) or optional (for all others) for up to 5 years (for F-1 or sex offense) or up to 3 years (for all others).
 - Notify that violator could be sent to prison for up to 9 months, with maximum for repeated violations equal to 50% of stated prison term.
 - For a new felony, offender may be sent to prison for the remaining PRC period, or 12 months – whichever is greater, *plus* a prison term for the new crime [§2929.141]
- **Drugs:** Require offender to remain free of illegal drugs and that offender is subject to random drug testing
- **Earned Credit Notice:** Notify that the offender may be eligible to earn credit while in prison and that the credit isn’t automatic [§2929.14(D)(3) and §2929.19(B)(2)(g)]

- **SORN Notice:** Provide notices required by SORN Law (Ch. 2950), including duty to register [§2929.19(B)(3)]
- **Arson Registry Notice:** Provide notice of duty to register to arson offender who has not been sentenced to confinement in any institution [§2909.15]
- **Violent Offender Database (VOD) Notice:** See [SB231 VOD Database guide](#) for details. Court must provide notice of VOD procedures and duties **before** sentencing hearing for all offenders found or pleading guilty to the following offenses:
 - Aggravated Murder [§2903.01]
 - Murder [§2903.02]
 - Voluntary Manslaughter [§2903.03]
 - Kidnapping [§2905.01]
 - Abduction (as F-2) [§2905.02]
 - Any attempt, conspiracy, or complicity conviction for any of the above offenses
- **IPP Recommendation:** Optional – recommend for or against boot camp or intensive program prison [§2929.19(D) and §2929.14(I)]
- **Risk Reduction Sentence:** Option to impose such on eligible, non-mandatory prison sentences, under which the inmate may be released by DRC after serving 80% of the term (See [§2929.143] and [§5120.036]) must notify subject of post-release control after release from prison. DRC must adopt rules. (See [§2929.19(B)(2)(c) and (d)]; and [2967.28(A)(4), and (B) through (E)]). DRC required to provide relates assessment, programs, treatment

When Not Imposing a Prison Term [§2929.19(B)(4)]:

Directly sentence to community-controlsanction(s) and:

- Notify that, if violated, court may impose longer time, more restrictive sanction, or a specified prison term
- Before imposing financial sanction(s), consider offender’s present and future ability to pay [§2929.19(B)(5)]
- If local incarceration imposed, specify, if appropriate, offender must reimburse costs of confinement [§2929.19(B)(6)]
- **LEADS Notification:** court must submit certain information to LEADS if either:
 - Court orders mental health evaluation or treatment for mental illness upon conviction of offense of violence
 - Court approves conditional release

TARGETED COMMUNITY ALTERNATIVE TO PRISON (TCAP)

Felony 5 Offenders who are sentenced to a prison term ≤12 months cannot be sent to prison unless:

- The offense was an offense of violence, a sex offense, a trafficking offense, or other mandatory prison term
- The offender has a prior conviction for a sex offense or felony offense of violence
- The sentence is to be served concurrently to a prison-eligible felony offense

TCAP is a voluntary program statewide following the passage of 133 HB 166.

MERGER DOCTRINE

If merger doctrine applies, allied offenses of similar import must be merged (a separate decision from consecutive/concurrent sentencing). See [§2941.25]

CONSECUTIVE PRISON TERMS

General Rule: Presumption of concurrent terms [§2929.41(A)] with court discretion to impose consecutive sentences if necessary to protect/punish, not disproportionate, and find [§2929.14(C)(4)]:

- Crimes committed while awaiting trial/ sentencing, under sanction, or under post- release control;
- Two or more of the multiple offenses committed as a single course of conduct; and harm so great or unusual that a single term does not adequately reflect seriousness of the conduct; or
- Offender’s criminal history shows that consecutive terms are needed to protect the public

NOTE: The findings above are allowed under *State v. Hodge* (2010), which modified *State v. Foster* (2006).

- Defendant may appeal consecutives exceeding the maximum for the worst offense involved [§2953.08(C)]

Consecutive Prison Terms Required:[§2929.14(C)(1), (2), and (3)]:

- **Specifications:** Gun and other specifications carry consecutive terms, served before underlying [§2929.14(C)(1)(a) through (c)];
 - Specified time must be served prior to the term on the underlying offense

- Underlying offense may not be mandatory for judicial release and other purposes
- Certain crimes committed by a prison, jail, etc. inmate or escapee (e.g., riot, many escapes, etc.) [§2929.14(C)(2)]
- Aggravated robbery or theft if take (or attempt to) a deadly weapon from a law enforcement officer [§2911.01(B)]; and [§2913.02(A) through (C)(3)]
- **Sexually Violent Predators** [§2971.03(E)]
- **Felony Failure to Comply:** Fleeing in a vehicle from an officer, causing substantial injury or risk of it [§2921.331(C) and (D)]

their minimum term for “exceptional conduct or adjustment to incarceration” at the request of ODRC and with approval of the sentencing court [§2967.271(F)(7)]

- [See the SB201 Resources](#) for further guidance

REVERSE BINDOVERS

Under certain circumstances, the court sentencing an offender who was transferred from a juvenile court where the ultimate conviction is for an offense that would not be subject to mandatory or discretionary bindover, the court must transfer the case back to juvenile court for disposition. See [§2152.122(B)]

CONCURRENT SUPERVISION

For the rules governing the supervision of offenders subject to community control by more than one court, see [§2951.022].

JUDICIAL RELEASE

Eligibility: Any non-mandatory term, except certain offenses by public office holders [§2929.20(A)(1)(b)]

- If serving eligible non-mandatory term consecutive to a mandatory term, eligible after serving mandatory
- A PSI is not necessary to grant judicial release

Filing Deadlines: Based on aggregate non-mandatory terms [§2929.20(C)]:

- If < 2 years, can file 30 days after entering prison or 30 days after mandatory term(s) expires
- If 2 to < 5 years, can file 180 days after entering prison or 180 days after mandatory term(s) expires
- If 5 years, can file 4 years after entering prison or 4

EARNED REDUCTION OF MINIMUM TERM

Offenders sentenced to an indefinite term for an SB201 qualifying F-1 or F-2 may receive a 5 to 15% reduction of

FELONY SENTENCING TABLE - JULY 2019

Felony Level	Sentencing Guidance [§2929.13(B) through (E)]	Prison Terms [§2929.14(A)]	Maximum Fines ^a [§2929.18(A)(2) and (3)]	Repeat Violent Offender Enhancement [§2929.14(B)(2)] [§2941.149]	Is Post-Release Control (PRC) Required? [§2967.28(B) and (C)]	PRC Period [§2967.28(B)]
F-1	Presumption for prison (Also applies to “in favor” drug offenses)	3, 4, 5, 6, 7, 8, 9, 10, or 11 years	\$20,000	1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years	Yes	5 years
F-2		2, 3, 4, 5, 6, 7, or 8 years	\$15,000			3 years 5 years, if sex offense
F-3	No guidance, other than PURPOSES AND PRINCIPLES (Also applies to “Div.(C)” drug offenses)	9, 12, 18, 24, 30, or 36 months or ^b 12, 18, 24, 30, 36, 42, 48, 54, or 60 months	\$10,000	For F-2 involving att. serious harm or for involuntary manslaughter: 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years; otherwise none	Yes, if sex or violent offense; otherwise optional	3 years
F-4	Mandatory 1- year community control for non- violent, no prior felony, etc. ^c	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months	\$5,000			
F-5	Otherwise: If any of 11 [§2929.13(B)(2)] factors and not amenable to other sanction(s), guidance in favor of prison term. ^c If none of 11 factors, guidance against prison term (Also applies to “Div.(B)” drug offenses)	6, 7, 8, 9, 10, 11, or 12 months	\$2,500	None	Yes, if sex offense; otherwise optional	5 years, if sex offense

SENTENCING TABLE NOTES

Exceptions: Indeterminate (Life) sentences for aggravated murder, murder, human trafficking, and certain sex offenses and crimes with sexual motivation.

Indefinite Sentences – Non-life F-1 and F-2 offenses committed after 3/22/19 receive both a minimum and maximum term

Drug Offenses – Note penalties track degree of offense, but the sentencing guidance may be different than for other offenses at that felony level.

Repeat Violent Offenders [§2929.01(CC)]: Aggravated murder, murder, a violent F-1 or F-2 that is an offense of violence, or an attempt to commit any of these offenses if the attempt is an F-1 or F-2, with a prior conviction for one or more of the same offenses or their equivalents.

Post-Release Control [§2967.28D(3)]: The board or court shall review the releasee’s behavior and may reduce the duration. The reduction shall not be a period less than the length of the original stated prison term, and in no case shall the board or court permit the releasee to leave the state without permission of the court or the parole or probation officer.

^a **Maximum Fines:** Cover conventional and day fines. There are exceptions in drug trafficking cases [§2929.18(B)(4) through (7)]. Some offenses call for a superfine of up to \$1 million [§2929.32]. For organizational offenders see [§2929.31].

In addition to any other fine that is or may be imposed under this section, the court imposing sentence for a felony that is a sexually oriented offense or a child-victim oriented offense as defined in [§2950.01] may impose a fine of \$50-\$500 [§2929.18(B)(9)]

^b **Higher F-3s:** The longer-sentence range applies to aggravated vehicular homicides and assaults, sexual battery, GSI, sex with minor, and robbery or burglary with 2 or more separate aggravated or non-aggravated robberies or burglaries (See [§2929.14(A)(3)(a)]).

^c **F-4s & F-5s:** See Certain F-4s & F-5s [§2929.13(B)(1)(a) through (c)] and Other F-4s, F-5s, or “Div. B” Drug Offenses [§2929.13(B)(2) and (3)].

REAGAN TOKES LAW

SB 201 IMPLEMENTATION CONCERNS

- **DEFINITIONS OF TERMINOLOGY** – SB201 introduces several terms that would benefit from clear and concise definition, and existing defined terms could also benefit from additional clarification in light of the new indefinite sentencing provisions. Definitions of the following terms would ease practitioner implementation of the new sentencing structure and aiding understanding of the interplay of specifications, definite terms, and indefinite minimum and maximum terms. The work of the Criminal Justice Recodification committee, upon which portions of SB201 were based, could provide some clarity with regard to definitional terms.
 - **Most serious felony** – not currently defined – should be objective and not subjective decisions to avoid disparate impact
 - **Minimum term**
 - **Maximum term**
 - **Stated Prison Term** – clarify definition vs prison term – include “stated minimum” and “stated maximum”
 - **Exceptional conduct or adjustment to incarceration**
- **FIX TO SENTENCING FORMULAS** – Remove “or definite term” from consecutive sentence formula in RC 2929.144(B)(2) and place it in concurrent sentencing formula in RC 2929.144(B)(3) to solve consecutive sentence issues(below)
- **ORDER OF SERVICE OF SENTENCE ISSUES** – Existing 2929.14(C)(9) addresses how definite terms previously or subsequently imposed interact with indefinite terms – however, this provision needs to be expanded to allow practitioners to properly advise defendants of the impact of their sentences. Areas that need to be addressed include:
 - **Concurrent sentences w/in same case** – Potential for a longer definite term to be run concurrent to an indefinite term, no guidance from statute as to what happens to the potential maximum term.
 - **Concurrent sentences between multiple files** – A defendant could have sufficient jail time credit to cause expiration of a minimum term on one file but a maximum term that exceeds the minimum and maximum on another file. What then becomes of the maximum term?
 - **Consecutive sentences between multiple files** – Can ODRC extend incarceration of one indefinite sentence before a defendant would begin serving a consecutive indefinite minimum term?
 - **Consecutive indefinite sentences and life sentences** – Similarly, can ODRC extend incarceration beyond the minimum term before the defendant begins serving the mandatory portion of a life sentence?
 - **Contemporaneous sentencing of multiple files** – two issues
 - 2929.14 says previous or subsequent – not contemporaneous sentencing.
 - Depending on answers above, can a judge structure the order of indefinite sentences at the sentencing hearing?
- **EARNED REDUCTION OF MINIMUM PRISON TERM (ERMPT)** – Incentivizing good behavior in prison is a laudable goal, but several concerns have arisen amongst stakeholders with regard to ERMPT hearings.

- **Is the defendant entitled to counsel** – unlike judicial release, this process is started administratively by DRC – In some counties full time public defenders may be available to represent these defendants but many jurisdictions may lack the resources to provide counsel.
- **Are mandatory sentences eligible** – generally mandatory sentences include a provision exempting them from reduction by RC 2967 – As with sexually oriented offenses, a provision specifically excluding mandatory sentences would be beneficial (as would a definition of “mandatory sentence”)
- **Subpoenaing of DRC staff to testify** – Clarification of what “information” the sentencing court is to consider at an ERMPT, particularly from prosecutor and victim. Can prosecutor subpoena DRC staff to testify at these hearings?
- **Concerns about timeframe** – some courts worried that 90 days is not sufficient time to schedule a hearing, have defendant transported, review information, etc.
 - **Feasibility of conducting hearings via videoconference?**
 - **Must a court schedule a hearing?** What if they wish to agree to the reduction?
- **Appellate review of denial of ERMPT** – Is a denial by the sentencing court of a reduction subject to review under 2953.08? Can DRC appeal that decision, or just the defendant?
- **Still eligible for earned credit** – These defendants are still eligible for some form of earned credit – does that count towards a presumed early release date?
- **Removal of judicial veto** – Should the release decision be purely administrative and determined by DRC – judges have expressed concern about the lack of meaningful discretion in reviewing ERMPT.
- **COMPETENCY RESTORATION PERIOD** – How long can a defendant be held to restore competency – up to the minimum term or the maximum term?
- **JUDICIAL RELEASE ISSUES** – can a defendant still apply for judicial release after the expiration of the minimum term? Does the judge then have authority to return them to prison if they violate community control?
- **EXTENDING INCARCERATION BEYOND MINIMUM TERM** – is this administrative decision subject to appellate review? A provisions providing for appellate review could be inserted into 2953.08.
 - **Is defendant entitled to counsel at the hearing?**

JUDGE SEAN GALLAGHER- SB 201 ORDER OF SENTENCE CLARIFICATION

2929.01 (BB) and (FF)

(BB)

- (1) "Prison term" includes either of the following sanctions for an offender:
 - (a) **A definite or a minimum prison term imposed under section 2929.14 of the Revised Code or any other provision of law, a maximum prison term as part of a non-life felony indefinite prison term imposed under section 2929.144 of the Revised Code, or a term of life imprisonment except to the extent that the use of that definition in a section of the Revised Code clearly is not intended to include a term of life imprisonment;**
 - (b) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.143, 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073 of the Revised Code.
- (2) ~~With respect to a non-life felony indefinite prison term, references in any provision of law to a reduction of, or deduction from, the prison term mean a reduction in, or deduction from, the minimum term imposed as part of the indefinite term. With respect to an offender sentenced to a non-life felony indefinite prison term, references in section 2967.191 or 2967.193 of the Revised Code or any other provision of law to a reduction of, or deduction from, the offender's stated prison term or to release of the offender before the expiration of the offender's stated prison term mean a reduction in, or deduction from, the minimum term imposed as part of the indefinite term or a release of the offender before the expiration of that minimum term, references in section 2929.19 or 2967.28 of the Revised Code to a stated prison term with respect to a prison term imposed for a violation of a post-release control sanction mean the minimum term so imposed, and references in any provision of law to an offender's service of the offender's stated prison term or the expiration of the offender's stated prison term mean service or expiration of the minimum term so imposed plus any additional period of incarceration under the sentence that is required under section 2967.271 of the Revised Code.~~

(FF)

- (1) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142, or 2971.03 of the Revised Code or under section 2919.25 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 of the Revised Code. If an offender is serving a prison term as a risk reduction sentence under sections 2929.143 and 5120.036 of the Revised Code, "stated prison term" includes any period of time by which the prison term imposed upon the offender is shortened by the offender's successful completion of all assessment and treatment or programming pursuant to those sections.
- ~~(2) As used in the definition of "stated prison term" set forth in division (FF)(1) of this section, a prison term is a definite prison term imposed under section 2929.14 of the Revised Code or any other provision of law, is the minimum and maximum prison terms under a non-life felony indefinite prison term, or is a term of life imprisonment except to the extent that the use of that definition in a section of the Revised Code clearly is not intended to include a term of life~~

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~~imprisonment. With respect to an offender sentenced to a non-life felony indefinite prison term, references in section 2967.191 or 2967.193 of the Revised Code or any other provision of law to a reduction of, or deduction from, the offender's stated prison term or to release of the offender before the expiration of the offender's stated prison term mean a reduction in, or deduction from, the minimum term imposed as part of the indefinite term or a release of the offender before the expiration of that minimum term, references in section 2929.19 or 2967.28 of the Revised Code to a stated prison term with respect to a prison term imposed for a violation of a post-release control sanction mean the minimum term so imposed, and references in any provision of law to an offender's service of the offender's stated prison term or the expiration of the offender's stated prison term mean service or expiration of the minimum term so imposed plus any additional period of incarceration under the sentence that is required under section 2967.271 of the Revised Code.~~

Reason for the change: Divisions (BB) and (FF) contained the definitions of "prison term" but they conflicted — for instance, under the current version of (FF)(2), a stated prison term is both a definite prison term and under (FF)(1) a combination of all terms. This proposal uses (FF)(2)'s language and moves some of that to be included in the definition of "prison term" in (BB). This creates a "prison term" separate and apart from a "state prison term" but picks up all the new sentencing language.

2929.14 Basic prison terms.

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(9), (B)(10), (E), (G), (H), (J), or (K) of this section or in division (D)(6) of section 2919.25 of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a prison term that shall be one of the following:

(1)

(a) For a felony of the first degree committed on or after the effective date of this amendment, the prison term shall be ~~an indefinite prison term with a stated~~ minimum term selected by the court of three, four, five, six, seven, eight, nine, ten, or eleven years. **There shall also be** a maximum term that is determined pursuant to section 2929.144 of the Revised Code **for all qualifying felonies of the first or second degree**, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.

(b) For a felony of the first degree committed prior to the effective date of this amendment, the prison term shall be a definite prison term of three, four, five, six, seven, eight, nine, ten, or eleven years.

(2)

(a) For a felony of the second degree committed on or after the effective date of this amendment, the prison term shall be ~~an indefinite prison term with a stated~~ minimum

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term selected by the court of two, three, four, five, six, seven, or eight years. **There shall also be** a maximum term that is determined pursuant to section 2929.144 of the Revised Code **for all qualifying felonies of the first or second degree**, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.

(b) For a felony of the second degree committed prior to the effective date of this amendment, the prison term shall be a definite term of two, three, four, five, six, seven, or eight years.

* * *

(C)(9) When a court sentences an offender to a non-life felony indefinite prison term, any definite prison term or mandatory definite prison term previously, **contemporaneously** or subsequently imposed on the offender ~~in addition to that indefinite sentence that is required to be served consecutively to that indefinite sentence~~ shall be served prior to the **non-life felony indefinite prison term**. **When a court sentences an offender to a non-life felony indefinite prison term to be served consecutive to any other non-life felony indefinite prison term, such a sentence shall be served upon the offender's completion of the non-life felony indefinite prison term first imposed.**

Reason for the changes: under division (A)(1) and (2), each felony offense was to include a minimum and maximum term. Under *State v. Baker*, that would require the trial court to include both sentences for each offense and under *State v. Saxon*, the sentences so imposed were separate. Thus, it was possible that the trial court would impose maximum indefinite prison terms for each offense, but if one count were reversed, only that count would be affected and however the maximum term was calculated would remain intact following the remand. This could result in a maximum term being calculated off a reversed sentence. The intent is to separate out the minimum term from the maximum term, which would be imposed for multiple qualifying felonies.

The term "stated" was also deleted as a modifier to "minimum term" because R.C. 2929.144 as it exists discusses minimum terms and not "stated minimum terms." It was unclear why the modifier was necessary. A minimum term is a "prison term" for the purposes of 2929.14(C)(4) and concurrent sentencing. Without the change, the trial court imposes a "stated minimum term" on each felony offense but when implementing R.C. 2929.144 there is no discussion of imposing the "minimum term." That created a sense that there are stated minimum terms for each offense, and an all-encompassing "a minimum term" for all qualifying offenses. By deleting the "stated minimum term" phrasing in 2929.14, now the minimum term is imposed on each felony offense and that gets rid of the overall minimum term problem created by the first version.

Under division (C)(9), added the word "contemporaneously" to cover all sentencing situations to make clear that definite or mandatory terms shall be served first in time. The language "in addition to that indefinite sentence that is required to be served consecutively to that indefinite sentence" was unclear, but it appears that the import was that if you stack non-life felony indefinite terms, one gets served first and then when released, the sentence to be served consecutively begins. The additional language is intended to reflect that intention to direct courts how to impose consecutive non-life indefinite

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sentences. Without that, courts will be left to interpret the result leading to disparate interpretations and unnecessary reversals, which will be costly in terms of transporting defendants to new sentencing hearings)

2929.144 Maximum-prison terms.

- (A) As used in this section, “qualifying felony of the first or second degree” means a felony of the first or second degree committed on or after the effective date of this section.
- (B) The court imposing an indefinite prison term on an offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code **for all** qualifying **felonies** of the first or second degree **that are contained in the same indictment, information or complaint** shall determine the maximum prison term that is part of the sentence in accordance with the following:
- (1) If the offender is being sentenced for one felony and the felony is a qualifying felony of the first or second degree, the maximum prison term shall be equal to the minimum term imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code plus fifty per cent of that term.
 - (2) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that some or all of the prison terms imposed are to be served consecutively, the court shall add all of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree that are to be served consecutively and all of the definite terms of the felonies that are not qualifying felonies of the first or second degree that are to be served consecutively, and the maximum term shall be equal to the total of those terms so added by the court plus fifty per cent of the longest minimum term or definite term for the most serious felony being sentenced.
 - (3) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that all of the prison terms imposed are to run concurrently, the maximum term shall be equal to the longest of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree for which the sentence is being imposed plus fifty per cent of the longest minimum term for the most serious qualifying felony being sentenced.
 - (4) Any mandatory prison term, or portion of a mandatory prison term, that is imposed or to be imposed on the offender under division (B), (G), or (H) of section 2929.14 of the Revised Code or under any other provision of the Revised Code, with respect to a conviction of or plea of guilty to a specification, and that is in addition to the sentence imposed for the underlying offense is separate from **the non-life felony indefinite** sentence being imposed for the qualifying first or second degree felony committed on or after the effective date of this section and shall not be considered or included in determining a maximum prison term for the offender under divisions

JUDGE SEAN GALLAGHER- SB 201 ORDER OF SENTENCE CLARIFICATION

(B)(1) to (3) of this section **and is to be imposed separately from the non-life felony indefinite sentence being imposed under this section.**

- (C) The court imposing a prison term on an offender pursuant to division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree shall sentence the offender, as part of the sentence, to the maximum prison term determined under division (B) of this section. The court shall impose this maximum term at sentencing as part of the sentence it imposes under section 2929.14 of the Revised Code, and shall state the minimum term it imposes under division (A)(1)(a) or (2)(a) of that section **for each qualifying felony of the first and second degree**, and this maximum term, in the sentencing entry.
- (D) If a court imposes a prison term on an offender pursuant to division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree, section 2967.271 of the Revised Code applies with respect to the offender's service of the prison term.

Reasons for the changes: Division (B) was silent as to whether the maximum prison term was for all qualifying felonies as between multiple files or just on individual files. Courts will sentence offenders on multiple files and the current version of R.C. 2929.144 is silent as to whether there is one maximum term for all files if contemporaneously sentenced or separate maximum terms for each file. The additional language clarifies that each case must include its own maximum term and under the proposed language of R.C. 2929.14(C)(9), that explains how to determine the sentence if consecutively imposed. Concurrent service between files should be self-evident and in-line with current sentencing application so we did not include a separate provision for concurrent non-life felony indefinite sentences. The language for the indictment came from the Crim.R. 8 to introduce uniformity to that new language.

The additional language for (B)(4) was to clarify that sentences on specifications is to be served first and will not affect the maximum term so that courts won't confuse the practical ramifications with the preclusion of (B)(4).

The additional language for division (C) is meant to clarify that the minimum term is imposed for each qualifying felony but that there is one maximum term for each case number.

2953.08 Appeal as a matter of right - grounds.

(A) In addition to any other right to appeal and except as provided in division (D) of this section, a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant on one of the following grounds:

(1) The sentence consisted of or included the maximum definite prison term allowed for the offense by division (A) of section 2929.14 or section 2929.142 of the Revised Code or, with respect to a non-life felony indefinite prison term, the longest minimum prison term allowed for the offense by division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code, the maximum definite prison term or longest minimum prison term was not required for the offense pursuant to Chapter 2925, or any other provision of the Revised Code, and the court imposed the sentence under one of the following circumstances:

(a) The sentence was imposed for only one offense.

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(b) The sentence was imposed for two or more offenses arising out of a single incident, and the court imposed the maximum definite prison term or longest minimum prison term for the offense of the highest degree.

(2) The sentence consisted of or included a prison term and the offense for which it was imposed is a felony of the fourth or fifth degree or is a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to division (B) of section 2929.13 of the Revised Code for purposes of sentencing. If the court specifies that it found one or more of the factors in division (B)(1)(b) of section 2929.13 of the Revised Code to apply relative to the defendant, the defendant is not entitled under this division to appeal as a matter of right the sentence imposed upon the offender.

(3) The person was convicted of or pleaded guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense, was adjudicated a sexually violent predator in relation to that offense, and was sentenced pursuant to division (A)(3) of section 2971.03 of the Revised Code, if the minimum term of the indefinite term imposed pursuant to division (A)(3) of section 2971.03 of the Revised Code is the longest term available for the offense from among the range of definite terms listed in section 2929.14 of the Revised Code or, with respect to a non-life felony indefinite prison term, the longest minimum prison term allowed for the offense by division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code. As used in this division, "designated homicide, assault, or kidnapping offense" and "violent sex offense" have the same meanings as in section 2971.01 of the Revised Code. As used in this division, "adjudicated a sexually violent predator" has the same meaning as in section 2929.01 of the Revised Code, and a person is "adjudicated a sexually violent predator" in the same manner and the same circumstances as are described in that section.

(4) The sentence is contrary to law. **For the purposes of this section, "contrary to law" is defined to mean that the sentence fails to comport with all mandatory, definite or indefinite sentencing provisions or is not otherwise within the statutory range of prison terms for the applicable degree of felony as provided by section 2929.14 (A) of the Revised Code.**

(5) The sentence consisted of an additional prison term of ten years imposed pursuant to division (B)(2)(a) of section 2929.14 of the Revised Code.

(B) In addition to any other right to appeal and except as provided in division (D) of this section, a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony or, in the circumstances described in division (B)(3) of this section the modification of a sentence imposed upon such a defendant, on any of the following grounds:

(1) The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed, as set forth in section 2929.13 or Chapter 2925. of the Revised Code.

(2) The sentence is contrary to law **as contemplated in division (A)(4) of this section.**

(3) The sentence is a modification under section 2929.20 of the Revised Code of a sentence that was imposed for a felony of the first or second degree.

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(C)

(1) In addition to the right to appeal a sentence granted under division (A) or (B) of this section, a defendant who is convicted of or pleads guilty to a felony may ~~seek leave to~~ appeal a sentence imposed upon the defendant on the basis that the sentencing judge has imposed consecutive sentences under division (C)(3) of section 2929.14 of the Revised Code and that the consecutive sentences exceed the maximum definite prison term allowed by division (A) of that section for the most serious offense of which the defendant was convicted or, with respect to a non-life felony indefinite prison term, exceed the longest minimum prison term allowed by division (A)(1)(a) or (2)(a) of that section for the most serious such offense. Upon the filing of a motion under this division, the court of appeals may grant leave to appeal the sentence if the court determines that the allegation included as the basis of the motion is true.

(2) A defendant may ~~seek leave to~~ appeal an additional sentence imposed upon the defendant pursuant to division (B)(2)(a) or (b) of section 2929.14 of the Revised Code if the additional sentence is for a definite prison term that is longer than five years.

(D)

(1) A sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, **and if the sentence, a sentencing range, a minimum aggregate term of imprisonment or a maximum aggregate term of imprisonment** has been recommended jointly by the defendant and the prosecution in the case **and the sentencing court imposes a sentence consistent with that recommendation.** ~~and is imposed by a sentencing judge.~~

(2) Except as provided in division (C)(2) of this section, a sentence imposed upon a defendant is not subject to review under this section if the sentence is imposed pursuant to division (B)(2)(b) of section 2929.14 of the Revised Code. Except as otherwise provided in this division, a defendant retains all rights to appeal as provided under this chapter or any other provision of the Revised Code. A defendant has the right to appeal under this chapter or any other provision of the Revised Code the court's application of division (B)(2)(c) of section 2929.14 of the Revised Code.

(3) A sentence imposed for aggravated murder or murder pursuant to sections 2929.02 to 2929.06 of the Revised Code is not subject to review under this section.

(E) A defendant, prosecuting attorney, city director of law, village solicitor, or chief municipal legal officer shall file an appeal of a sentence under this section to a court of appeals within the time limits specified in Rule 4(B) of the Rules of Appellate Procedure, provided that if the appeal is pursuant to division (B)(3) of this section, the time limits specified in that rule shall not commence running until the court grants the motion that makes the sentence modification in question. A sentence appeal under this section shall be consolidated with any other appeal in the case. If no other appeal is filed, the court of appeals may review only the portions of the trial record that pertain to sentencing.

(F) On the appeal of a sentence under this section, the record to be reviewed shall include all of the following, as applicable:

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(1) Any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed. An appellate court that reviews a presentence investigation report prepared pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 in connection with the appeal of a sentence under this section shall comply with division (D)(3) of section 2951.03 of the Revised Code when the appellate court is not using the presentence investigation report, and the appellate court's use of a presentence investigation report of that nature in connection with the appeal of a sentence under this section does not affect the otherwise confidential character of the contents of that report as described in division (D)(1) of section 2951.03 of the Revised Code and does not cause that report to become a public record, as defined in section 149.43 of the Revised Code, following the appellate court's use of the report.

(2) The trial record in the case in which the sentence was imposed;

(3) Any oral or written statements made to or by the court at the sentencing hearing at which the sentence was imposed;

(4) Any written findings that the court was required to make in connection with the modification of the sentence pursuant to a judicial release under division (I) of section 2929.20 of the Revised Code.

(G)

(1) If the sentencing court was required to make the findings required by division (B) or (D) of section 2929.13 or division (I) of section 2929.20 of the Revised Code, or to state the findings of the trier of fact required by division (B)(2)(e) of section 2929.14 of the Revised Code, relative to the imposition or modification of the sentence, and if the sentencing court failed to state the required findings on the record, the court hearing an appeal under division (A), (B), or (C) of this section shall remand the case to the sentencing court and instruct the sentencing court to state, on the record, the required findings.

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court **and**:

~~The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or~~ may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division **only** if it clearly and convincingly finds **either any** of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is contrary to law **as defined under subdivision (A)(4) of this section.**

(c) that the maximum definite or minimum prison term being reviewed under division (A)(1), which was imposed solely after consideration of principles of sentencing and the sentencing factors in R.C. 2929.11 and 2929.12, is not supported by the record.

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(3) If a conviction for a qualifying felony of the first or second degree as defined under section 2929.144(A) of the Revised Code is reversed pursuant to division (G) of this section, the maximum prison term as determined under division (B) of section 2929.144 shall be vacated and the matter remanded for the imposition of a new maximum prison term in accordance with all applicable laws, unless the maximum prison term is unaffected by the appeal.

(H) A judgment or final order of a court of appeals under this section may be appealed, by leave of court, to the supreme court.

(I) As used in this section, "non-life felony indefinite prison term" has the same meaning as in section 2929.01 of the Revised Code.

Reasons for changes: (A)(4) — “contrary to law” is undefined by statute and needs a working definition for the purposes of appellate review, especially with the new sentencing scheme.

Division (C) removed all the references to seeking leave to file an appeal. There is no practical reason for requiring leave.

Division (D), included language clarifying that a jointly recommended sentence includes ranges and aggregate minimum and maximum terms because there is confusion in the appellate courts as to what constitutes a sentencing range that will only be amplified by the new non-life indefinite sentencing scheme. The new sentencing inherently includes ranges which some courts refuse to recognize under the current version. This is intended to obtain a uniform approach to sentencing appeals.

Division (G): (1) Removed the language authorizing an appellate court to modify, reduce or increase a sentence in light of the recent victim’s rights constitutional amendment (necessary given the current constitutional amendment); (2) clarified that contrary to law is a reference to the definition provided in this section; (3) the most important proposed change, under division (A) of 2929.14, a maximum definite or minimum term of prison may be appealed, but division (G) currently does not provide a mechanism to reverse the sentence. Under the current version of division (G), appellate courts can only review the findings, which are not necessary for individual felony sentences. We added language in subdivision (G)(2)(c) that permits review of such sentences under language provided by the State v. Marcum Ohio Supreme Court decision; and (4) we also included language noting that if any qualifying felony of the first or second degree is reversed, and the maximum indefinite prison term under R.C. 2929.144 is affected by the reversal, that must be vacated as well and the matter remanded for resentencing. If the maximum indefinite prison term is unaffected by the reversal, the court does not reverse the maximum term. The intent is to preclude reversals when the error is harmless so that there aren’t perfunctory resentencings being order so we don’t ship defendants back and forth from prison to court.