

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

:SCT: 2007-0052

Appellee

:

-vs-

:

CURTIS SIMPKINS

Appellant

:

:

On Appeal from the
Cuyahoga County Court
of Appeals, Eighth
Appellate District Court
of Appeals
CA: 87692

APPELLANT'S MERIT BRIEF

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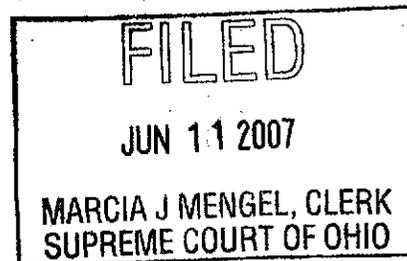


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STATEMENT OF THE CASE AND FACTS

On May 28, 1998, Defendant-Appellant, Curtis Simpkins, pled guilty to two counts of rape (post S.B. 2), which were first degree felonies punishable by terms of imprisonment of between three and ten years. He also pled guilty to one count of gross sexual imposition, a third-degree felony punishable by a term of imprisonment of between one and five years.

On June 11, 1998, in an action journalized on June 12, 1998, the Cuyahoga County Court of Common Pleas sentenced Mr. Simpkins to eight years on each of the rape counts and three years on the gross sexual imposition count. These sentences were ordered to be served concurrently, for an aggregate sentence of eight years. (Docket entry of June 12, 1998). At this sentencing hearing, the court failed to inform Mr. Simpkins that he was subject to post release control upon his release from prison.

More than seven years later, as Mr. Simpkins was close to leaving prison, the State of Ohio moved for resentencing. At that hearing, held on December 28, 2005, the trial court sentenced Mr. Simpkins to the same eight-year term but added the requirement that Mr. Simpkins would be subject to post release control upon release from prison. (Transcript of resentencing 12-28-05 p. 13-14).

The Eighth District rejected the defendant's arguments on appeal that the trial court's second sentencing was in error. *State v. Simpkins* (journalized November 27, 2006) Cuyahoga App. No. 87692, 2006 Ohio 6028, 2006 Ohio App. Lexis 5973.

On March 28, 2007, this Court accepted Mr. Simpkins' sole proposition of law for plenary consideration. Mr. Simpkin's merit brief now follows.

LAW AND ARGUMENT

Proposition of Law I:

A defendant who has been sentenced to a term of imprisonment that does not include post-release control may not be sentenced anew in order to add post-release control unless the State has challenged the failure to include post-release control in a timely direct appeal.

The trial court improperly sentenced Mr. Simpkins so as to include post-release control. In *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, this Court recognized that “after-the-fact” resentencing was an inappropriate means of imposing post-release control upon those whose sentences were no longer on appeal and for whom post-release control had not been originally included in the sentence:

Jordan notwithstanding, an after-the-fact notification of Hernandez, who has served his seven-year sentence, would circumvent the objective behind R.C. 2929.14(F) and 2967.28 to notify defendants of the imposition of postrelease control at the time of their sentencing.

Hernandez, at ¶ 28, citing *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6058.

Here, the trial court in 2005 did exactly what this Court recognized a trial court should not do—hold an “after-the-fact” resentencing. *Hernandez*, at par. 28. As this Court recognized, such a resentencing “would circumvent the objective behind R.C. 2929.14(F) and 2967.28 to notify defendants of the imposition of post-release control at the time of their sentencing.” While this Court noted that Mr. Hernandez had completed his prison term, nothing in the opinion limits the holding to that fact. *Id.*

Consistently with *Hernandez*, this Court should reverse the judgment imposing post-release control.

The State Of Ohio Is Barred By Res Judicata From Challenging The Original Failure To Include Post-Release Control In A Sentence That The State Did Not Timely Appeal.

Hernandez followed a line of cases in which this Court has limited the ability of trial courts to “correct” judgment entries except on direct appeal. When the trial court sentenced Mr. Simpkins in 1998, it had jurisdiction over the parties and the subject matter. The principle of res judicata required the State to timely appeal any sentencing issue that it wished to challenge and which could have been raised at that time; the failure to do so constitutes an irrevocable waiver by the State to later ask for the same relief, i.e., to ask for the imposition of post-release control. See generally, *State v. Perry* (1967), 10 Ohio St.2d 175, 180.

“Once a tribunal has jurisdiction over both the subject matter of an action and the parties to it, the right to hear and determine is perfect; and the decision of every questions thereafter arising is but the exercise of the jurisdiction thus conferred.” *Pratts v. Hurley*, 102 Ohio St.3d 81, 84 2004-Ohio-1980, at ¶ 12 (internal citations and punctuation removed). This distinction between subject matter jurisdiction (which can always be challenged) and the actions taken by a trial court that has subject matter jurisdiction (which can only be challenged in a manner permitted by the principle of res judicata) applies even when sentences are “void.” Thus, *Pratts* made this distinction in a case in which there was a violation of R.C. 2945.06 relating to jury waivers, even though this Court’s earlier caselaw established that violations of R.C. 2945.06 rendered the sentence

“void.” Compare *Pratts* with *State v. Green* (1998), 81 Ohio St.3d 100, 105 (violation of R.C. 2945.06 renders sentence void).

Because the trial court unquestionably had jurisdiction over the parties and the subject matter when it sentenced Mr. Simpkins in 1998, the questions of whether the trial court should have included post-release control in the sentence is one that is controlled by res judicata, and was thus required to have been raised on direct appeal. *Perry, Pratts* at ¶ 24. The State failed to take a direct appeal, and thus lost its chance to have post-release control included in the sentence. Final judgments are entitled to be final:

Our holding today underscores the importance of finality of judgments of conviction. Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled between the parties.

State v. Szefcyk (1996), 77 Ohio St.3d 93, 95 (internal citations and quotation marks omitted).

If the contention that the State used below -- that the prior sentencing is null and void because it did not include post-release control -- is taken to its logical conclusion, then, not only have hundreds of prisoners never been sentenced, they also have never been convicted, because an order of conviction is not entered until sentencing. Thus, the time for post-conviction relief and even for the taking of an initial appeal has never begun to run -- there never has been entered a final appealable order. In the end, the State's position opens a Pandora's box that could cause defendants to re-open cases dating back to 1996, the advent of S.B. 2 -- just as the State has done to Mr. Simpkins. However, if defendants can re-open these cases, the ramifications will be far greater than resentencing

– new issues can be raised on appeal, petitions for post-conviction relief claiming ineffective assistance of trial counsel can be timely filed, etc.

Mr. Simpkins' Due Process Rights Were Violated by His Resentencing

The after-the-fact imposition of post-release control, particularly years after the fact, violated Mr. Simpkins constitutional rights. Both the Double Jeopardy and Due Process Clauses of the United States Constitution protect a defendant's legitimate interest in the finality of his sentence. *United States v. Daddino* (C.A. 7 1993), 5 F.3d 262, 265; U.S. Const. Amend. XIV. A defendant's expectation in the finality of his sentence begins with the expiration of the State's time to appeal, *United States v. Difrancesco* (1980), 449 U.S. 117, 136-37, and increases as he or she approaches the expiration of the sentence, *Breest v. Helgemore* (C.A. 1 1978), 579 F.2d 95, 101. Due process notions of fundamental fairness place some "temporal limit" on later increases in sentences, even if such increases were made to correct an illegal sentence. *DeWitt v. Ventetoulo* (C.A. 1 1993), 6 F.3d 32, 35. Due process may be denied "when a sentence is enhanced after the defendant has served so much of his sentence that his expectations as to its finality have crystallized and it would be fundamentally unfair to defeat them." *United States v. Lundien* (C.A. 4 1985), 769 F.2d 981, 987. Here, Mr. Simpkins had an expectation of finality in a sentence that was more than 90% completed at the time of the second sentencing. See generally, *United States v. Difrancesco* (1980), 449 U.S. 117.

The Resentencing Constitutes Multiple Punishment in Violation of the Fifth Amendment

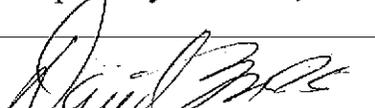
Finally, the Fifth Amendment also protected Mr. Simpkins from being subjected to multiple punishment for the same offense. *Hudson v. United States* (1997), 522 U.S. 93, 98-99. Here, the practical effect of the trial court's eleventh-hour imposition of post-

release control was to add more punishment to Mr. Simpkins. This violates the Fifth Amendment.

CONCLUSION

For all these reasons, this Court should reverse the decision of the Eighth District Court of Appeals, and vacate the Cuyahoga County Court of Common Pleas' imposition of post-release control.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Brief was hand-delivered upon William Mason, Cuyahoga County Prosecutor and or a member of his staff, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 this 8 day of June, 2007.



DAVID M. KING, ESQ.

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee

-vs-

CURTIS SIMPKINS

Appellant

07-0052

On Appeal from the
 Cuyahoga County Court
 of Appeals, Eighth
 Appellate District Court
 of Appeals
 CA: 87692

NOTICE OF APPEAL OF APPELLANT CURTIS SIMPKINS

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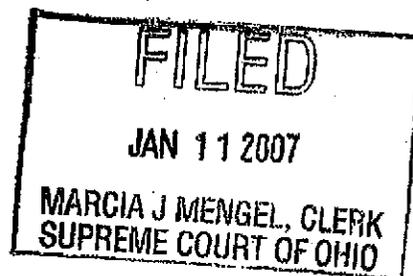
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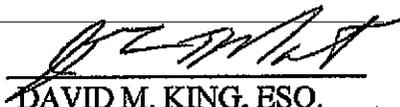


Notice of Appeal of Appellant Curtis Simpkins

Appellant Curtis Simpkins hereby gives notice of his appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, journalized in Court of Appeals case No. 87692 on November 27, 2006.

This felony case raises substantial constitutional questions and is one of public and great general interest.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appeal was sent U.S. mail to William Mason, Cuyahoga County Prosecutor and/or a member of his staff, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 this 11TH day of January, 2007.

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Cuyahoga County
COUNSEL FOR APPELLANT

State of Ohio

Case No. 2007-0052

v.

ENTRY

Curtis Simpkins

Upon consideration of the jurisdictional memoranda filed in this case, the Court accepts the appeal. The Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Cuyahoga County, and the parties shall brief this case in accordance with the Rules of Practice of the Supreme Court of Ohio.

(Cuyahoga County Court of Appeals; No. 87692)

THOMAS J. MOYER
Chief Justice

NOV 27 2006

Judge Mannen

Court of Appeals of Ohio

P

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 87692

FEE
3.
TAXED

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CURTIS SIMPKINS

DEFENDANT-APPELLANT

GERALD E. FINEST
CLERK OF COURTS
CUYAHOGA COUNTY
2006 DEC -11 A 10 05
R
FILED

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-358419

BEFORE: Celebrezze, J., Dyke, A.J., and Rocco, J.

RELEASED: November 16, 2006

JOURNALIZED: NOV 27 2006

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**FILED AND JOURNALIZED
PER APP. R. 22(E)**

NOV 27 2006

**GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY Jm DEP.**

**ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED**

NOV 16 2006

**GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY Jm DEP.**

CA06087692 42385698


N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

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FRANK D. CELEBREZZE, JR., J.:

Appellant, Curtis Simpkins, appeals the trial court's resentencing order, which added post-release control to his prison term. Upon review of the applicable law and for the reasons set forth below, we affirm.

On May 21, 1998, appellant pleaded guilty to two counts of rape, in violation of R.C. 2907.02, felonies of the first degree. He also pleaded guilty to one count of gross sexual imposition, in violation of R.C. 2907.05, a felony of the third degree. The record demonstrates that, at the time he entered his guilty pleas, appellant was informed and understood that he would be subjected to five years of post-release control.

On June 11, 1998, a sentencing hearing was held, and appellant was sentenced to eight years incarceration on each of the rape counts and three years on the single count of gross sexual imposition. Those terms of incarceration were ordered to run concurrent to one another for an aggregate sentence of eight years, with credit for time served. The trial court failed to mention at the hearing that appellant would be subjected to post-release control upon his release from prison. The journal entry of the June 11th hearing also did not mention post-release control. Appellant was ordered into the custody of the state to commence his prison sentence.

VOL 624 RB0952

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In December 2005, prior to appellant's scheduled release from prison, the state filed a motion for resentencing, asserting that appellant's original sentence was void for failure to impose a term of post-release control. A hearing on this motion was held, and the trial court agreed and resentenced appellant to the identical eight-year term it had previously ordered, but added a term of five years of post-release control. An entry was journalized reflecting the resentencing. Appellant's prison term had not yet expired prior to the trial court's resentencing.

Appellant now appeals the resentence imposed by the trial court asserting one assignment of error:

"I. The trial court erred when it resentenced Mr. Simpkins so as to add post-release control to a sentence that had nearly been completely served."

Appellant's argument centers on the Ohio Supreme Court's ruling in *Hernandez v. Kelley*, 108 Ohio St.3d 395, 2006-Ohio-126; however, this appeal is directly in line with *State v. Rutherford*, Champaign App. No. 06CA13, 2006-Ohio-5132, a recent case decided by the Second Appellate District, which distinguished this issue from *Hernandez* as follows:

"In *Hernandez*, the defendant sought a writ of habeas corpus requiring his release from a term of imprisonment ordered by the Adult Parole Authority ('APA') upon its finding that the defendant had violated a post-release control

-3-

sanction ordered by the APA. The defendant contended that his detention was illegal because the trial court that imposed his sentence had not included the potential of a post-release control sanction in its sentence. ***

“Unlike *Hernandez*, the present case is before us not on a petition for a writ of habeas corpus, but on a direct appeal from a judgment in which the court attempted to correct its prior failure to impose a post-release control sanction by resentencing Defendant-Appellant to the same punishments, but including the sanction.” *Rutherford*, supra at 1-2.

As was the case in *Rutherford*, the trial court here similarly attempted to correct its failure to impose post-release control at sentencing by resentencing appellant. Appellant argues that such resentencing amounts to an “after-the-fact” sanction and is not permitted under *Hernandez*. This same argument was rejected by the court in *Rutherford*. We concur with the analysis and ruling in *Rutherford* and reject appellant’s argument.

The trial court retained its jurisdiction to resentence appellant. R.C. 2967.28 mandates that a trial court impose a term of post-release control for the offenses to which appellant pleaded guilty; therefore, the trial court must impose post-release control orally at the sentencing hearing and transcribe such imposition in the court’s journal entry. Failure to do so renders the sentence void. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864.

Because appellant's 1998 sentence was void, resentencing was a proper remedy to correct the trial court's original error of omission. *Id.*; *State v. Beasley* (1984), 14 Ohio St.3d 74, 471 N.E.2d 774.

Furthermore, the trial court did not err in resentencing appellant when it did. As the court in *Rutherford* explained, "[i]n *Hernandez*, the Supreme Court emphasized that an 'after-the-fact' sanction, one imposed after the offender has completed his term of imprisonment, 'would totally frustrate the purpose behind [statutory] notification, which is to make the offender aware before a violation of the specific prison term that he or she will face for a violation.' *Id.* at 306. The court drew an analogy to a community control sanction to make its point, but as to both, it found a like requirement: the offender cannot be resentenced if he has completed his prison term because the omission in the sentence the court imposed is then no longer subject to correction. The correction must be made *while the term of imprisonment continues and post-release sanctions are yet available.*" *Rutherford*, *supra* at 5-6. (Emphasis added.)

Since the trial court resentenced appellant prior to his release from prison, the correction was clearly made while the term of his imprisonment continued and post-release sanctions were still available. Appellant's assignment of error is without merit and this appeal fails.

Judgment affirmed.

-5-

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to

Rule 27 of the Rules of Appellate Procedure.


FRANK D. CELEBREZZE, JR., JUDGE

ANN DYKE, A.J., and
KENNETH A. ROCCO, J., CONCUR

2929.14 Definite prison terms.

(A) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(4), (D)(5), (D)(6), (G), or (L) of this section 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 definite prison term that shall be one of the following:

(1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, or ten years.

(2) For a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years.

(3) For a felony of the third degree, the prison term shall be one, two, three, four, or five years.

(4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

(B) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(5), (D)(6), (G), or (L) of this section, in section 2907.02 or 2907.05 of the Revised Code, or in Chapter 2925. of the Revised Code, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender, the court shall impose the shortest prison term authorized for the offense pursuant to division (A) of this section, unless one or more of the following applies:

(1) The offender was serving a prison term at the time of the offense, or the offender previously had served a prison term.

(2) The court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others.

(C) Except as provided in division (G) or (L) of this section or in Chapter 2925. of the Revised Code, the court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of the offense, upon offenders who pose the greatest likelihood of committing future crimes, upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section.

(D)(1)(a) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.141, 2941.144, or 2941.145 of the Revised Code, the court shall impose on the offender one of the following prison terms:

(i) A prison term of six years if the specification is of the type described in section 2941.144 of the Revised Code that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony;

(ii) A prison term of three years if the specification is of the type described in section 2941.145 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(iii) A prison term of one year if the specification is of the type described in section 2941.141 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

(b) If a court imposes a prison term on an offender under division (D)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(1)(a) of this section for felonies committed as part of the same act or transaction.

(c) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of section 2923.161 of the Revised Code or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in section 2941.146 of the Revised Code that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of section 2923.161 of the Revised Code or for the other felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of five years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (D)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (D)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (D)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.1411 of the Revised Code that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a prison term of two years. The prison term so imposed shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(1)(d) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term under division (D)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (D)(1)(d) of this section.

(e) The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.12 or 2923.123 of the Revised Code. The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.13 of the Revised Code unless all of the following apply:

(i) The offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree.

(ii) Less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(f) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in section 2941.1412 of the Revised Code that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in section 2935.01 of the Revised Code or a corrections officer as defined in section 2941.1412 of the Revised Code, the court, after imposing a prison term on the offender for the felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (D)(1)(f) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (D)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (D)(1)(a) or (c) of this section relative to the same offense.

(2)(a) If division (D)(2)(b) of this section does not apply, the court may impose on an offender, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 of the Revised Code that the offender is a repeat violent offender.

(ii) The offense of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(iii) The court imposes the longest prison term for the offense that is not life imprisonment without parole.

(iv) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are inadequate to punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism.

(v) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are demeaning to the seriousness of the offense, because one or more of the factors under section 2929.12 of the Revised Code indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that section indicating that the offender's conduct is less serious than conduct normally constituting the offense.

(b) The court shall impose on an offender the longest prison term authorized or required for the offense and shall impose on the offender an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

- (i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 of the Revised Code that the offender is a repeat violent offender.
- (ii) The offender within the preceding twenty years has been convicted of or pleaded guilty to three or more offenses described in division (DD)(1) of section 2929.01 of the Revised Code, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.
- (iii) The offense or offenses of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.
- (c) For purposes of division (D)(2)(b) of this section, two or more offenses committed at the same time or as part of the same act or event shall be considered one offense, and that one offense shall be the offense with the greatest penalty.
- (d) A sentence imposed under division (D)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20 or section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.
- (e) When imposing a sentence pursuant to division (D)(2)(a) or (b) of this section, the court shall state its findings explaining the imposed sentence.
- (3)(a) Except when an offender commits a violation of section 2903.01 or 2907.02 of the Revised Code and the penalty imposed for the violation is life imprisonment or commits a violation of section 2903.02 of the Revised Code, if the offender commits a violation of section 2925.03 or 2925.11 of the Revised Code and that section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, if the offender commits a felony violation of section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161, 4729.37, or 4729.61, division (C) or (D) of section 3719.172, division (C) of section 4729.51, or division (J) of section 4729.54 of the Revised Code that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in section 2941.1410 of the Revised Code charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of section 2907.02 of the Revised Code and, had the offender completed the violation of section 2907.02 of the Revised Code that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of section 2907.02 of the Revised Code, the court shall impose upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant to section 2929.20 or Chapter 2967. or 5120. of the Revised Code.

(b) The court imposing a prison term on an offender under division (D)(3)(a) of this section may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to the term imposed under division (D)(3)(a) of this section and, if applicable, divisions (D)(1) and (2) of this section, makes both of the findings set forth in divisions (D)(2)(a)(iv) and (v) of this section.

(4) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the sentencing court shall impose upon the offender a mandatory prison term in accordance with that division. In addition to the mandatory prison term, if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced for a third degree felony OVI offense, the sentencing court may sentence the offender to an additional prison term of any duration specified in division (A)(3) of this section. In either case, the additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the mandatory prison term. The total of the additional prison term imposed under division (D)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense. If the court imposes an additional prison term under division (D)(4) of this section, the offender shall serve the additional prison term after the offender has served the mandatory prison term required for the offense. In addition to the mandatory prison term or mandatory and additional prison term imposed as described in division (D)(4) of this section, the court also may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code and the court imposes a mandatory term of local incarceration, the court may impose a prison term as described in division (A)(1) of that section.

(5) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1414 of the Revised Code that charges that the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, or an investigator of the bureau of criminal identification and investigation, as defined in section 2903.11 of the Revised Code, the court shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (D)(5) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(5) of this section for felonies committed as part of the same act.

(6) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1415 of the Revised Code that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 of the Revised Code, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on

an offender under division (D)(6) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(6) of this section for felonies committed as part of the same act.

(E)(1)(a) Subject to division (E)(1)(b) of this section, if a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony, if a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(c) of this section for committing a felony specified in that division by discharging a firearm from a motor vehicle, or if both types of mandatory prison terms are imposed, the offender shall serve any mandatory prison term imposed under either division consecutively to any other mandatory prison term imposed under either division or under division (D)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (D)(2), or (D)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(b) If a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(d) of this section for wearing or carrying body armor while committing an offense of violence that is a felony, the offender shall serve the mandatory term so imposed consecutively to any other mandatory prison term imposed under that division or under division (D)(1)(a) or (c) of this section, consecutively to and prior to any prison term imposed for the underlying felony under division (A), (D)(2), or (D)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(c) If a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(f) of this section, the offender shall serve the mandatory prison term so imposed consecutively to and prior to any prison term imposed for the underlying felony under division (A), (D)(2), or (D)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(2) If an offender who is an inmate in a jail, prison, or other residential detention facility violates section 2917.02, 2917.03, 2921.34, or 2921.35 of the Revised Code, if an offender who is under detention at a detention facility commits a felony violation of section 2923.131 of the Revised Code, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of section 2921.34 of the Revised Code, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.

(3) If a prison term is imposed for a violation of division (B) of section 2911.01 of the Revised Code, a violation of division (A) of section 2913.02 of the Revised Code in which the stolen property is a firearm or dangerous ordnance, or a felony violation of division (B) of section 2921.331 of the Revised Code, the offender shall serve that prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender

and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

(5) If a mandatory prison term is imposed upon an offender pursuant to division (D)(5) or (6) of this section, the offender shall serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 of the Revised Code. If a mandatory prison term is imposed upon an offender pursuant to division (D)(5) of this section, and if a mandatory prison term also is imposed upon the offender pursuant to division (D)(6) of this section in relation to the same violation, the offender shall serve the mandatory prison term imposed pursuant to division (D)(5) of this section consecutively to and prior to the mandatory prison term imposed pursuant to division (D)(6) of this section and consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 of the Revised Code.

(6) When consecutive prison terms are imposed pursuant to division (E)(1), (2), (3), (4), or (5) of this section, the term to be served is the aggregate of all of the terms so imposed.

(F)(1) If a court imposes a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division. If a court imposes a sentence including a prison term of a type described in this division on or after July 11, 2006, the failure of a court to include a post-release control requirement in the sentence pursuant to this division does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(2) If a court imposes a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (F)(1) of this section, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division, if the parole board determines that a period of post-release control is necessary. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(G) If a person is convicted of or pleads guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense and, in relation to that offense, the offender is adjudicated a sexually

violent predator, if a person is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after the effective date of this amendment and either the court does not impose a sentence of life without parole when authorized pursuant to division (B) of section 2907.02 of the Revised Code or division (B) of section 2907.02 of the Revised Code provides that the court shall not sentence the offender pursuant to section 2971.03 of the Revised Code, or if a person is convicted of or pleads guilty to attempted rape committed on or after the effective date of this amendment and a specification of the type described in section 2941.1418, 2941.1419, or 2941.1420 of the Revised Code, the court shall impose sentence upon the offender in accordance with section 2971.03 of the Revised Code, and Chapter 2971. of the Revised Code applies regarding the prison term or term of life imprisonment without parole imposed upon the offender and the service of that term of imprisonment.

(H) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a prison term or term of imprisonment under this section, sections 2929.02 to 2929.06 of the Revised Code, section 2929.142 of the Revised Code, section 2971.03 of the Revised Code, or any other provision of law, section 5120.163 of the Revised Code applies regarding the person while the person is confined in a state correctional institution.

(I) If an offender who is convicted of or pleads guilty to a felony that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.142 of the Revised Code that charges the offender with having committed the felony while participating in a criminal gang, the court shall impose upon the offender an additional prison term of one, two, or three years.

(J) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.143 of the Revised Code that charges the offender with having committed the offense in a school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years consecutively to and prior to the prison term imposed for the underlying offense.

(K) At the time of sentencing, the court may recommend the offender for placement in a program of shock incarceration under section 5120.031 of the Revised Code or for placement in an intensive program prison under section 5120.032 of the Revised Code, disapprove placement of the offender in a program of shock incarceration or an intensive program prison of that nature, or make no recommendation on placement of the offender. In no case shall the department of rehabilitation and correction place the offender in a program or prison of that nature unless the department determines as specified in section 5120.031 or 5120.032 of the Revised Code, whichever is applicable, that the offender is eligible for the placement.

If the court disapproves placement of the offender in a program or prison of that nature, the department of rehabilitation and correction shall not place the offender in any program of shock incarceration or intensive program prison.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison, and if the offender is subsequently placed in the recommended program or prison, the department shall notify the court of the placement and shall include with the notice a brief description of the placement.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison and the department does not subsequently place the offender in the

recommended program or prison, the department shall send a notice to the court indicating why the offender was not placed in the recommended program or prison.

If the court does not make a recommendation under this division with respect to an offender and if the department determines as specified in section 5120.031 or 5120.032 of the Revised Code, whichever is applicable, that the offender is eligible for placement in a program or prison of that nature, the department shall screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If there is an available program of shock incarceration or an intensive program prison for which the offender is suited, the department shall notify the court of the proposed placement of the offender as specified in section 5120.031 or 5120.032 of the Revised Code and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

(L) If a person is convicted of or pleads guilty to aggravated vehicular homicide in violation of division (A)(1) of section 2903.06 of the Revised Code and division (B)(2)(c) of that section applies, the person shall be sentenced pursuant to section 2929.142 of the Revised Code.

Effective Date: 04-08-2004; 06-01-2004; 09-23-2004; 04-29-2005; 07-11-06; 08-03-2006; 01-02-2007; 01-04-2007; 04-04-2007

2945.06 Procedure for trial by court.

In any case in which a defendant waives his right to trial by jury and elects to be tried by the court under section 2945.05 of the Revised Code, any judge of the court in which the cause is pending shall proceed to hear, try, and determine the cause in accordance with the rules and in like manner as if the cause were being tried before a jury. If the accused is charged with an offense punishable with death, he shall be tried by a court to be composed of three judges, consisting of the judge presiding at the time in the trial of criminal cases and two other judges to be designated by the presiding judge or chief justice of that court, and in case there is neither a presiding judge nor a chief justice, by the chief justice of the supreme court. The judges or a majority of them may decide all questions of fact and law arising upon the trial; however the accused shall not be found guilty or not guilty of any offense unless the judges unanimously find the accused guilty or not guilty. If the accused pleads guilty of aggravated murder, a court composed of three judges shall examine the witnesses, determine whether the accused is guilty of aggravated murder or any other offense, and pronounce sentence accordingly. The court shall follow the procedures contained in sections 2929.03 and 2929.04 of the Revised Code in all cases in which the accused is charged with an offense punishable by death. If in the composition of the court it is necessary that a judge from another county be assigned by the chief justice, the judge from another county shall be compensated for his services as provided by section 141.07 of the Revised Code.

Effective Date: 10-19-1981

2967.28 Post-release controls - failure to notify offender.

(A) As used in this section:

(1) "Monitored time" means the monitored time sanction specified in section 2929.17 of the Revised Code.

(2) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

(3) "Felony sex offense" means a violation of a section contained in Chapter 2907. of the Revised Code that is a felony.

(B) Each sentence to a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person shall include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender's release from imprisonment. If a court imposes a sentence including a prison term of a type described in this division on or after the effective date of this amendment, the failure of a sentencing court to notify the offender pursuant to division (B)(3)(c) of section 2929.19 of the Revised Code of this requirement or to include in the judgment of conviction entered on the journal a statement that the offender's sentence includes this requirement does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under this division. Section 2929.191 of the Revised Code applies if, prior to the effective date of this amendment, a court imposed a sentence including a prison term of a type described in this division and failed to notify the offender pursuant to division (B)(3)(c) of section 2929.19 of the Revised Code regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence pursuant to division (F)(1) of section 2929.14 of the Revised Code a statement regarding post-release control. Unless reduced by the parole board pursuant to division (D) of this section when authorized under that division, a period of post-release control required by this division for an offender shall be of one of the following periods:

(1) For a felony of the first degree or for a felony sex offense, five years;

(2) For a felony of the second degree that is not a felony sex offense, three years;

(3) For a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened physical harm to a person, three years.

(C) Any sentence to a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (B)(1) or (3) of this section shall include a requirement that the offender be subject to a period of post-release control of up to three years after the offender's release from imprisonment, if the parole board, in accordance with division (D) of this section, determines that a period of post-release control is necessary for that offender. Section 2929.191 of the Revised Code applies if, prior to the effective date of this amendment, a court imposed a sentence including a prison term of a type described in this division and failed to notify the offender pursuant to division (B)(3)(d) of section 2929.19 of the Revised Code regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence pursuant to division (F)(2) of section 2929.14 of the Revised Code a statement regarding post-release control.

(D)(1) Before the prisoner is released from imprisonment, the parole board shall impose upon a prisoner described in division (B) of this section, may impose upon a prisoner described in division (C) of this section, and shall impose upon a prisoner described in division (B)(2)(b) of section 5120.031 or in division (B)(1) of section 5120.032 of the Revised Code, one or more post-release

control sanctions to apply during the prisoner's period of post-release control. Whenever the board imposes one or more post-release control sanctions upon a prisoner, the board, in addition to imposing the sanctions, also shall include as a condition of the post-release control that the individual or felon not leave the state without permission of the court or the individual's or felon's parole or probation officer and that the individual or felon abide by the law. The board may impose any other conditions of release under a post-release control sanction that the board considers appropriate, and the conditions of release may include any community residential sanction, community nonresidential sanction, or financial sanction that the sentencing court was authorized to impose pursuant to sections 2929.16, 2929.17, and 2929.18 of the Revised Code. Prior to the release of a prisoner for whom it will impose one or more post-release control sanctions under this division, the parole board shall review the prisoner's criminal history, all juvenile court adjudications finding the prisoner, while a juvenile, to be a delinquent child, and the record of the prisoner's conduct while imprisoned. The parole board shall consider any recommendation regarding post-release control sanctions for the prisoner made by the office of victims' services. After considering those materials, the board shall determine, for a prisoner described in division (B) of this section, division (B)(2)(b) of section 5120.031, or division (B)(1) of section 5120.032 of the Revised Code, which post-release control sanction or combination of post-release control sanctions is reasonable under the circumstances or, for a prisoner described in division (C) of this section, whether a post-release control sanction is necessary and, if so, which post-release control sanction or combination of post-release control sanctions is reasonable under the circumstances. In the case of a prisoner convicted of a felony of the fourth or fifth degree other than a felony sex offense, the board shall presume that monitored time is the appropriate post-release control sanction unless the board determines that a more restrictive sanction is warranted. A post-release control sanction imposed under this division takes effect upon the prisoner's release from imprisonment.

Regardless of whether the prisoner was sentenced to the prison term prior to, on, or after the effective date of this amendment, prior to the release of a prisoner for whom it will impose one or more post-release control sanctions under this division, the parole board shall notify the prisoner that, if the prisoner violates any sanction so imposed or any condition of post-release control described in division (B) of section 2967.131 of the Revised Code that is imposed on the prisoner, the parole board may impose a prison term of up to one-half of the stated prison term originally imposed upon the prisoner.

(2) At any time after a prisoner is released from imprisonment and during the period of post-release control applicable to the releasee, the adult parole authority may review the releasee's behavior under the post-release control sanctions imposed upon the releasee under this section. The authority may determine, based upon the review and in accordance with the standards established under division (E) of this section, that a more restrictive or a less restrictive sanction is appropriate and may impose a different sanction. Unless the period of post-release control was imposed for an offense described in division (B)(1) of this section, the authority also may recommend that the parole board reduce the duration of the period of post-release control imposed by the court. If the authority recommends that the board reduce the duration of control for an offense described in division (B)(2), (B)(3), or (C) of this section, the board shall review the releasee's behavior and may reduce the duration of the period of control imposed by the court. In no case shall the board reduce the duration of the period of control imposed by the court for an offense described in division (B)(1) of this section, and in no case shall the board permit the releasee to leave the state without permission of the court or the releasee's parole or probation officer.