

In the
Supreme Court of Ohio

STATE OF OHIO, :
 :
 Plaintiff-Appellee :
 :
 vs. : CASE NO. 07-2182
 : On Appeal from the Union
 : County Court of Appeals
 : Third Appellate District
 MICHAEL GOLDSBERRY, : C.A. Case No. 14-07-06
 :
 Defendant-Appellant. :

**MERIT BRIEF OF THE APPELLEE
THE STATE OF OHIO**

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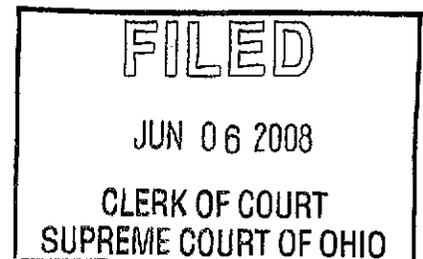


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STATEMENT OF FACTS

In January of 2005 appellant Michael E. Goldsberry was indicted by the Union County Grand Jury on five counts of nonsupport of dependents in violation of R.C. 2919.21(A)(2) and five counts of nonsupport of dependents in violation of R.C. 2919.21(B). (*See*, indictment, Trial Ct. Rec. 1)

Appellant was arraigned on January 21, 2005, at which time he entered a not guilty plea. A scheduling conference was set for March 2, 2005. The Union County Public Defender's Office was appointed as appellant's counsel on January 25, 2005. The State filed a bill of particulars and discovery three days later.

Because of a conflict in the trial court's calendar, the scheduling conference was continued until March 3, 2005. On that date, Goldsberry withdrew his previously entered plea of not guilty and entered a plea of guilty to the indictment. The trial court accepted the plea of guilty, convicted appellant and ordered a pre-sentence report. The matter was set for sentencing on March 23, 2005. (Trial Ct. Rec. 15)

On March 23, 2005, the appellant was sentenced to community control for a period of three years. At that time, appellant was orally advised that if he violated the terms of community control, he "would" receive 120 months in prison.(Tr. of proceedings, 5/23/2005 at p. 9). The journal entry of sentence, however, reflected that the appellant "could receive a maximum prison term of *up to* 120 months" if he violated the terms of his community control. (J.E. of sentence 5/23/05, Trial Ct. Rec. 18).

Appellant did, in fact, violate the terms of his community control sanction, and on November 3, 2005, the court resentenced the appellant. The court again imposed a community control sanction, ordering Goldsberry to perform an additional 100 hours of

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community service for violating the terms of community control. This time, the court's sentencing entry advised Goldsberry that he "will be sent to prison *for 120 months*" if he again violated the terms of his community control sentence. (J.E. 11/3/2005, Trial Ct. Rec. 29)

Despite this warning, appellant violated the terms of his community control sanction for a second time. Appellant failed to make payments on his child support, failed to make payments on his arrearage and failed to complete the community service as ordered by the court. Appellant, who was represented by counsel, admitted these violations in open court on January 5, 2007. As a result of this second violation of the community control sanctions, the court ordered appellant "confined to the Correction Reception Center in Orient, Ohio for a term of 6 months *on each* of ten (10) counts of Non-Support of Dependents * * * to be served consecutively to each other." (J.E. 1/5/06, Trial Ct. Rec. 42).

On February 5, 2007, appellant filed a notice of appeal from the January 5, 2007 judgment and entry of sentence to the Third District Court of Appeals. (Notice of Appeal, 2/5/06, Trial Ct. Rec. 50). Appellant was appointed counsel to prosecute his appeal. On appeal to the Third District, appellant claimed that his prison sentence was unlawful because the court had not advised him of the specific term he would receive if he violated his community control sanction.

On June 13, 2007, during the pendency of the appeal, appellant filed with this court two *pro se* post-conviction motions titled "Petition to Vacate and Set aside the Sentence Pursuant to Section 2953.21 & 2953.23 of the Ohio Revised Code" and "Motion

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to Vacate and Set Aside Sentence Pursuant to Civil Rule 60 of the Ohio Rules of Court¹.” These motions generally addressed the issue which was pending before the Third District Court of Appeals, that is, whether the 60-month sentence imposed by the trial court was lawful. The motions and the appeal both asserted that there was a *Brooks* violation, claiming that appellant was not advised of the specific prison term that would be imposed for a violation of the community control sanction². See, *State v. Brooks*, 2004- Ohio-4746. This court dismissed the *pro se* filings on January 23, 2007.

Briefs were filed on behalf of the appellant and the State of Ohio in the appeal and oral arguments were scheduled to be held before the Third District Court of Appeals.

On October 15, 2007, the Third District Court of Appeals *sua sponte* raised the issue of whether it had jurisdiction to hear the appellant’s appeal. The Third District held that the *original sentencing entry* did not comply with Crim. R. 32(C) because that entry did not specify to which count or counts the community control sentence applied. The court of appeals found that the trial court’s original entry of sentence was interlocutory and not a final order because the trial court had sentenced the appellant to a “lump sum” of three years of community control. The court dismissed the appeal for want of jurisdiction. *State v. Goldsberry*, 2007-Ohio-4833. The decision was rendered by the appellate court on October 15, 2007.(App.Ct. Rec. 16,17)

On November 29, 2007, appellant filed an appeal of the Third District’s decision to this court. (App. Ct. Rec. 29). The State of Ohio filed a Memorandum in Support of

¹ See, *State ex. rel. Goldsberry v. Union County Court of Common Pleas*, Ohio Supreme Court, Case No. 07-2180, wherein appellant filed a *pro se* complaint for a writ of procedendo.

² The State does not concede that *Brooks* was violated. The trial court did advise the appellant both orally and by entry of the prison sentence he would receive if he again violated the terms of his community control.

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Jurisdiction. Upon consideration of the jurisdictional memoranda, this court accepted jurisdiction on March 12, 2008.

ARGUMENT

Proposition of Law No. 1. The imposition of a community control sanction by a trial court on an offender on a multiple count indictment disposes of all charges in compliance with Criminal Rule 32.

Proposition of Law No. 2. The imposition of a single community control sanction by a trial court on an offender charged in a multiple-count indictment does not violate the "sentencing package" doctrine. *State v. Saxon* 2006-Ohio-1245.

Proposition of Law No. 3. The imposition of a reserved prison sentence by a trial court upon an offender for a violation of a community control sanction is a final appealable order.

While the State of Ohio agrees with appellant that the appellate court below erred in dismissing Goldberry's appeal, the State offers a different analysis of the error committed.

In the instant case, the court of appeals dismissed appellant's appeal for a claimed lack of a final, appealable order. It is well settled that appellate court jurisdiction is limited to review of lower courts' final judgments. Section 3(B)(2), Article IV of the Ohio Constitution grants Ohio's appellate courts subject-matter jurisdiction over decisions of lower courts if, among other matters, those decisions are final orders or judgments. Thus, this court must determine if the order appealed from was a final appealable order.

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A.

Appellate courts have concluded that all charges pending against a criminal defendant in a single case must be disposed of before the trial court's judgment with respect to any charge is final. *State v. Goodwin*, 2007 Ohio 2343 at P13. In so holding, courts have explained that Crim.R. 32(C) requires that a trial court's judgment of conviction contain (1) the plea, (2) the verdict or findings, (3) the sentence, (4) the signature of the trial judge, and (5) the time stamp of the clerk to indicate journalization. Courts have interpreted these requirements as imposing 'a mandatory duty [on the trial court] to deal with each and every charge prosecuted against a defendant,' and '[t]he failure of a trial court to comply renders the judgment of the trial court substantively deficient under Crim.R. 32(C).' Therefore, the failure of an entry to dispose of the court's ruling as to each prosecuted charge renders the order of the trial court merely interlocutory." *State v. Brooks* (May 16, 1991), 8th Dist. No. 58548, 1991 Ohio App. LEXIS 2300.

In the instant case, appellant was charged in a single indictment with ten counts of criminal non-support. At the first sentencing in May of 2005, the trial judge sentenced appellant to what the Third District described as a "lump-sum" of three years of community control. The entry did not specify to which count or counts the community control sanction applied. (App. decision at p.9)

While it is true that the trial court sentenced appellant to three-years of community control, it does not follow that such a sentence did not dispose of all of the charges against the appellant. This is true due to the unique nature of a community control sanction.

Felony sentencing reform as enacted by Senate bill 2 requires the trial court to undergo a analytic process to impose a sentence. *State v. Comer* 2003-Ohio-4165,

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abrogated by *State v. Foster*, 109 Ohio St. 3d 1. As part of this process, the court must first determine whether to give the defendant a community control sanction *or* a penitentiary sentence, taking into account the need for incapacitation, deterrence, rehabilitation, and the likelihood of recidivism³. *See generally*, Griffin & Katz, Ohio Felony Sentencing Law (2007 Ed.) 748-749 § T2.10.

A community control sanction is defined as a sanction that is not a prison term and that is described in sections 2929.15, 2929.16, 2929.17 or 2929.18 of the Revised Code. R.C. §2929.01. Community control sanctions essentially replace the concept of "probation" in Ohio's criminal justice system. Griffin & Katz at 978-981, §§ T6.1 – T6.4. After the judge determines that a community control sanction would be appropriate, the judge must then decide what community control sanction to impose. Once a prison sentence is determined not to be necessary, the judge must decide the least burdensome local sanctions that will adequately protect the public and punish the offender. *Id.* at p. 757, §2.13.

This sentence initially imposed by the trial court disposed of each of the ten counts of non-support – the defendant was placed on community control. It elevates form over substance to require a trial court to sentence the defendant to the same community control sanction ten times.

The imposition of a single period of community control on multiple count offenders by trial courts is not unusual. *See*, for example, *State v. McClure* 2005-Ohio-777 where the defendant was sentenced to five years of community control on two counts of felonious assault.

³ This does not appear to be the case for OVI's, where the legislature has specifically authorized a community control sanction to follow the imposition of a mandatory prison term. *See*, R.C. 2929.15(A)(1).

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In *State v. Talty*, 2004-Ohio-4888, this Court addressed the issue of whether a court could impose a condition of community control that ordered appellant to make "all reasonable efforts to avoid conceiving another child" during his five-year community control period. In that case, the trial court had sentenced the defendant to a five year community control sanction on two counts of nonsupport.

In *State v. Barnhouse*, 2004-Ohio-2492, this Court held that a trial court may not impose consecutive jail sentences under R.C. 2929.16(A)(2) as part of a community control sanction. In that case, the defendant had pleaded guilty to two counts of nonsupport of a dependent and was sentenced to a single term of five years community control. The defendant also was sentenced to five years of community control on two fourth degree felony non-support cases. When Barnhouse violated his community control sanction, the trial court imposed consecutive six-month sentences. This court found that consecutive sentences were not permitted, even though Barnhouse had multiple felony convictions.

Under the reasoning of the court below, neither *Talty* nor *Barnhouse* should have been decided by this court. In both instances, the trial courts had imposed a "lump sum" community control sanction which the Third District has found objectionable. Under the logic of appellate court's decision below, each of those cases should have been dismissed for want of jurisdiction.

It is true that other appellate courts have ruled that a trial court must impose a community control sentence on each and every count. *State v. Garner*, 2003-Ohio-5222.

These rulings appear to be, at least in part, based upon confusion as to whether community control sanctions can be imposed consecutively. Despite the express language of the R.C.

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2929.15 that all community control sanctions imposed upon an offender by the court may not exceed five years, the Court in *Garner* stated:

Nowhere in R.C. 2929.15, which governs community control sanctions, does it state that if a court chooses to sentence a person to something other than a prison term the court may only impose a single term, regardless of the number of charges. In fact, at least one court has held that a court may impose consecutive sentences of community control on a criminal defendant who has been found guilty of multiple felony offenses. *State v. Culgan*, 147 Ohio App.3d 19, 2001 Ohio 1944, at P28, 768 NE2d 712. But, see, *State v. Lehman* (Feb. 4, 2000), 6th App. No. L-99-1140, 2000 Ohio App. LEXIS 307, 2000 WL 125795, at 1-2 (holding that community control sanctions for different offenses cannot be ordered to be served consecutively).

Judge McMonagle in her dissent in *State v. Waters*, 2005-Ohio-5137, disagrees with this analysis, finding the reasoning in *Garner* to be “flawed and wholly unpersuasive.”

I find that the court appropriately rendered and journalized a verdict as to all three counts of the indictment and I further find no legal authority requiring the court to journalize a separate, identical order of community control sanctions as to each and every count. This is a final appealable order and I would proceed to the merits of the appeal.

Nonetheless, appellate courts throughout Ohio have adopted the rationale of *Garner* to dismiss appeals. See, *State v. Phillis*, 2007-Ohio-6893; *State v. Moore*, 2007-Ohio 4941; *State v. Goodwin*, 2007-Ohio-2343.

The adoption of this rationale has not been universally accepted. As reasoned by Judge Abele in his dissent in *State v. Phillis*, *supra*:

The case at bar, however, is a criminal case. A defendant has been convicted, sentenced and anxiously awaits, many times while incarcerated, the resolution of his appeal. Instead, the appeal must be dismissed until a dangling procedural issue (for example, the lack of a written judgment entry that dismisses a criminal charge, even though the transcript may reflect that the state orally requested a dismissal and the trial court clearly granted the

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state's request), not of the defendant's making, is resolved. Unfortunately, this action results in a case dragging on for an extended, and unnecessary, length of time. To me, this approach conflicts with the spirit of the United States Constitution and the Ohio Constitution, both of which mandate the speedy resolution of criminal cases. In sum, absent clear direction from the Ohio Supreme Court, I believe we should consider the merits of this appeal.

This case gives this court the opportunity to provide such clear direction to the intermediate Courts of Appeal.

B.

The trial court's imposition of a single term of community control does not violate the sentencing package doctrine. In *State v. Saxon*, 2006-Ohio 1245 the "sentencing package" doctrine was rejected by this court when it held that the doctrine has no applicability to Ohio sentencing laws. This court advised that a sentencing court may not employ the doctrine when sentencing a defendant and appellate courts may not utilize the doctrine when reviewing a sentence or sentences. This court reasoned: "the rationale for "sentence packaging" fails in Ohio where there is no potential for an error in the sentence for one offense to permeate the entire multicount group of sentences. Ohio's felony-sentencing scheme is clearly designed to focus the judge's attention on one offense at a time. Under R.C. 2929.14(A), the range of available penalties depends on the degree of each offense." So reasoning, the court concluded: "In a case in which a defendant is convicted of two first-degree felonies and one second-degree felony, the statute leaves the sentencing judge no option but to assign a particular sentence to each of the three offenses, separately. The statute makes no provision for grouping offenses together and imposing a single "lump" sentence for multiple felonies." *Id* at P8.

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In this case, the trial court did consider and separately dispose of each of the ten counts of criminal non-support. The trial court noted that "The Court finds that the Defendant has been convicted of Five Counts of Nonsupport of Dependents in violation of Ohio Revised Code Section 2919.21(A)(2) and Five counts of Non-Support of Dependents in violation of R.C. 2919.21(B)." The Court placed the defendant on three years of community control, and advised the defendant that "he could be sentenced to 120 months" in prison for a violation of his community control. The underlying charges of criminal non-support are fifth degree felonies which carry a maximum penalty of 12 months in prison. R.C.2919.21(G)(1); 2929.14(A)(5). Mathematically then, the trial court necessarily disposed of all ten counts by placing the defendant on community control.

Even so, the court's prohibition against multiple offense sentences as set forth in *Saxon* has no application to a community control sanction. This is because of this Court's holding in *State v. Fraley*, 2004-Ohio-7110, that "(f)ollowing a community control violation, the trial court conducts a second sentencing hearing. At this second hearing, the court sentences the offender anew and must comply with the relevant sentencing statutes."

Prior to the imposition of a prison sentence by the trial court, the potential period of imprisonment is not appealable. *State v. Greer* (Dec. 1, 1999), 3rd Dist. No. 14-99-26, 1999-Ohio-940, unreported; *State v. Poppe*, 2007-Ohio-688; *State v. Ogle*, 2002-Ohio-860. "A sentence reserved in the event of a violation of community control sanctions is not ripe for review until the trial court has imposed the sentence for the violation of a defendant's community control." *State v. Smith*, Defiance App. No. 4-06-18, 2006 Ohio 5149, citing *State v. Ogle*, Wood App. No. WD-01-040, 2002 Ohio 860; see, also, *State v.*

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Brown (Mar. 22, 2001), Cuyahoga App. No. 77875, 2001 Ohio App. LEXIS 1370. This is because:

"The basic principle of ripeness may be derived from the conclusion that "judicial machinery should be conserved for problems which are real or present and imminent, not squandered on problems which are abstract or hypothetical or remote." *** The prerequisite of ripeness is a limitation on jurisdiction that is nevertheless basically optimistic as regards the prospects of a day in court: the time for judicial relief is simply not yet arrived, even though the alleged action of the defendant foretells legal injury to the plaintiff.' (Citation omitted.)" *Id.*

In *State v. Miller*, (Dec. 30, 1999) 1999 Ohio App. LEXIS 6543, Tuscarawas App.No. 1999 AP 02 0010, unreported, the state argued that the defendant should have appealed an alleged error in regard to the notice of sentence for violation of community control at the time of the entry sentencing him to community control. In rejecting this argument, the Fifth Appellate District stated:

"When an individual such as appellant is placed on community control, the sentencing is merely postponed until it is determined whether or not the individual has violated the terms and conditions of his or her community control. Appellant, therefore, could not have appealed his sentence from the court's (entry sentencing him to community control.)"

Thus, the court below should have considered the final, not the first, sentencing entry when considering whether the court had jurisdiction over the appeal. The court of appeals relied upon its own decision in *State v. Moore*, 2007-Ohio-4941, which in turn relied upon *State v. Hayes*, 2000 Ohio App. Lexis 2198. However, that case is distinguishable from the case at bar.

In *Hayes*, the Ninth District found that "Defendant was never sentenced for (two) specifications * * * . Such an omission renders the judgment entry not final and appealable." *Id.* at 3. In the instant case, however, the trial court disposed of all of the ten

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counts by placing the appellant on community control. Similarly, in *State v. Hoelsher*, 2006-Ohio-3531, another case relied upon by the court below, the appeal was dismissed because two guilty pleas were still pending in the trial court. Such is not the case here.

While other appellate courts have reached similar conclusions concerning the imposition of one community control sanction, those cases are distinguishable as they did not address a situation where, as here, the defendant had been resentenced for a community control violation. See, *State v. Waters*, 2005-Ohio-5137; *State v. Garner*, 2003-Ohio 5222.

C.

The decision dismissing the appeal implicates the defendant's fundamental right to appellate review. *State v. Nickles*, 159 Ohio St. 353, 50 Ohio Op. 322, 112 N.E.2d 531, 1953 Ohio LEXIS 583 (1953), "A reading of Article IV of the Constitution of Ohio is convincing that it is the spirit of our fundamental law that a litigant shall be entitled not only to a fair and impartial trial but shall have at least one review if he so desires." This is so because, no matter what error the trial court may or may not have committed in its initial sentencing entry of March 23, 2005, the defendant was sentenced anew on January 5, 2007 after he violated his community control for the second time. Appellant Goldsberry was sentenced to prison at that time. It is from that final entry of sentence that the appellant took his appeal.

After appellant violated the terms of his community control sanction for the second time, the court held a sentencing hearing and imposed a sentence of 6 months on *each* of the ten counts to run consecutively to each other. This entry from the third

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sentencing hearing imposing a prison sentence upon appellant was a final, appealable order. See, *State v. Greer, supra*; *State v. Ogle*, 2002-Ohio-860.

In *State v. Fraley*, 2004-Ohio-7110, this court considered whether a trial court may impose a prison sentence on an offender for violation of his community control, when the trial court failed to advise the defendant at his initial sentencing hearing of the specific prison term to be imposed, but did so at a subsequent sentencing hearing. The court held:

The notification requirement in R.C. 2929.19(B)(5) is meant to put the offender on notice of the specific prison term he or she faces if a violation of the conditions occurs. Following a community control violation, the trial court conducts a second sentencing hearing. At this second hearing, the court sentences the offender anew and must comply with the relevant sentencing statutes. *State v. Martin*, 8th Dist. No. 82140, 2003 Ohio 3381, at P35. The trial court could therefore comply with both the sentencing statutes and our holding in *Brooks* if, at this second hearing, the court notifies the offender of the specific prison term that may be imposed for a subsequent violation occurring after this second hearing. We believe that this process complies with the letter and spirit of R.C. 2929.19(B)(5) and 2929.15(B).

In dismissing the appeal below, the Third District ignored the holding in *Fraley, supra*, that the court sentences the offender “anew.” The State respectfully suggests that the Third District Court of Appeals erred; the entry filed on January 5, 2007 sentencing appellant to prison as a result of multiple community control violations was a final, appealable order.

In this case, a sentencing hearing was held following appellant’s second community control violation. At that hearing, the trial court imposed a prison sanction on *each* of the ten counts. This entry imposing the prison term thus fully complied with Crim. R. 32 and was a final appealable order. Appellant challenged the sentence imposed by the trial court upon the violation of his community control sanctions.

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Therefore, even if the original sentencing entry violated Crim. R. 32, said error has been corrected and the time for appellant to assert his appeal is now ripe. Any other result will allow Goldsberry to sit in prison while, in the words of Judge Abele, this case “drag[s] on for an extended, and unnecessary, length of time.”

CONCLUSION

For the foregoing reasons, the State of Ohio respectfully requests this court to reverse the judgment of the Third District Court of Appeals and remand the matter to that court for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and accurate copy of the foregoing Merit Brief of the State of Ohio to Alison Boggs, 240 West Fifth Street, Suite A, Marysville, Ohio 43040 by ordinary U.S. Mail this 5th day of June, 2008.

Respectfully submitted,



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Oh. Const. Art. IV, § 3 Court of appeals

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B) (1) The courts of appeals shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B) (2) of this article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

(Amended November 8, 1994)

Rule 32. Sentence

(A) Imposition of sentence.

Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

(1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

(2) Afford the prosecuting attorney an opportunity to speak;

(3) Afford the victim the rights provided by law;

(4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

(B) Notification of right to appeal.

(1) After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant that the defendant has a right to appeal the conviction.

(2) After imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right, where applicable, to appeal or to seek leave to appeal the sentence imposed.

(3) If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule, the court shall also advise the defendant of all of the following:

(a) That if the defendant is unable to pay the cost of an appeal, the defendant has the right to appeal without payment;

(b) That if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost;

(c) That if the defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost;

(d) That the defendant has a right to have a notice of appeal timely filed on his or her behalf.

Upon defendant's request, the court shall forthwith appoint counsel for appeal.

(C) Judgment.

A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

§ 2929.14. Basic 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 [2941.14.1], 2941.144 [2941.14.4], or 2941.145 [2941.14.5] 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 [2941.14.4] 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 [2941.14.5] 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 [2941.14.1] 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 [2967.19.3], 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 [2923.16.1] 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 [2941.14.6] 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 [2923.16.1] 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 [2967.19.3], 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 [2941.14.11] 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 [2967.19.3], 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 [2923.12.3] 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 [2941.14.12] 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 [2941.14.12] 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 [2967.19.3], 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 [2941.14.9] 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 [2941.14.9] 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 [2967.19.3], 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 [3719.16.1], 4729.37, or 4729.61, division (C) or (D) of section 3719.172 [3719.17.2], 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 [2941.14.10] 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 [2941.14.14] 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 [2967.19.3], 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 [2941.14.15] 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 [2941.14.15] 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 [2967.19.3], 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 [2923.13.1] 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 [2921.33.1] 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 [2929.14.2] 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 [2929.14.2] 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 [2929.19.1] 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 [2929.19.1] 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) 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 if any of the following apply:

(1) 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.

(2) 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 January 2, 2007, 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.

(3) A person is convicted of or pleads guilty to attempted rape committed on or after January 2, 2007, and a specification of the type described in section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code.

(4) A person is convicted of or pleads guilty to a violation of section 2905.01 of the Revised Code committed on or after the effective date of this amendment, and that section requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(5) A person is convicted of or pleads guilty to aggravated murder committed on or after the effective date of this amendment, and division (A)(2)(b)(ii) of section 2929.022 [2929.02.2], division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d) of section 2929.03, or division (A) or (B) of section 2929.06 of the Revised Code requires the court to sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(6) A person is convicted of or pleads guilty to murder committed on or after the effective date of this amendment, and division (B)(2) of section 2929.02 of the Revised Code requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(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 [2929.14.2] of the Revised Code, or section 2971.03 of the Revised Code, or any other provision of law, section 5120.163 [5120.16.3] 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 [2941.14.2] 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 [2941.14.3] 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 [5120.03.1] of the Revised Code or for placement in an intensive program prison under section 5120.032 [5120.03.2] 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 [5120.03.1] or 5120.032 [5120.03.2] 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 [5120.03.1] or 5120.032 [5120.03.2] 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 [5120.03.1] or 5120.032 [5120.03.2] 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 [2929.14.2] of the Revised Code.

§ 2929.15. Community control sanctions

(A) (1) If in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code. If the court is sentencing an offender for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code, in addition to the mandatory term of local incarceration imposed under that division and the mandatory fine required by division (B)(3) of section 2929.18 of the Revised Code, the court may impose upon the offender a community control sanction or combination of community control sanctions in accordance with sections 2929.16 and 2929.17 of the Revised Code. If the court is sentencing an offender for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, in addition to the mandatory prison term or mandatory prison term and additional prison term imposed under that division, the court also may impose upon the offender a community control sanction or combination of community control sanctions 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.

The duration of all community control sanctions imposed upon an offender under this division shall not exceed five years. If the offender absconds or otherwise leaves the jurisdiction of the court in which the offender resides without obtaining permission from the court or the offender's probation officer to leave the jurisdiction of the court, or if the offender is confined in any institution for the commission of any offense while under a community control sanction, the period of the community control sanction ceases to run until the offender is brought before the court for its further action. If the court sentences the offender to one or more nonresidential sanctions under section 2929.17 of the Revised Code, the court shall impose as a condition of the nonresidential sanctions that, during the period of the sanctions, the offender must abide by the law and must not leave the state without the permission of the court or the offender's probation officer. The court may impose any other conditions of release under a community control sanction that the court considers appropriate, including, but not limited to, requiring that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in division (D) of this section to determine whether the offender ingested or was injected with a drug of abuse and requiring that the results of the drug test indicate that the offender did not ingest or was not injected with a drug of abuse.

(2) (a) If a court sentences an offender to any community control sanction or combination of community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, the court shall place the offender under the general control and supervision of a department of probation in the county that serves the court for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer. Alternatively, if the offender resides in another county and a county department of probation has been established in that county or that county is served by a multicounty probation department established under section 2301.27 of the Revised Code, the court may request the court of common pleas of that county to receive the offender into the general control and supervision of that county or multicounty department of probation for purposes of reporting to the court a violation of any condition of the

sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer, subject to the jurisdiction of the trial judge over and with respect to the person of the offender, and to the rules governing that department of probation.

If there is no department of probation in the county that serves the court, the court shall place the offender, regardless of the offender's county of residence, under the general control and supervision of the adult parole authority for purposes of reporting to the court a violation of any of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer.

(b) If the court imposing sentence upon an offender sentences the offender to any community control sanction or combination of community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, and if the offender violates any condition of the sanctions, any condition of release under a community control sanction imposed by the court, violates any law, or departs the state without the permission of the court or the offender's probation officer, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction shall report the violation or departure directly to the sentencing court, or shall report the violation or departure to the county or multicounty department of probation with general control and supervision over the offender under division (A)(2)(a) of this section or the officer of that department who supervises the offender, or, if there is no such department with general control and supervision over the offender under that division, to the adult parole authority. If the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction reports the violation or departure to the county or multicounty department of probation or the adult parole authority, the department's or authority's officers may treat the offender as if the offender were on probation and in violation of the probation, and shall report the violation of the condition of the sanction, any condition of release under a community control sanction imposed by the court, the violation of law, or the departure from the state without the required permission to the sentencing court.

(B) If the conditions of a community control sanction are violated or if the offender violates a law or leaves the state without the permission of the court or the offender's probation officer, the sentencing court may impose a longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit specified in division (A) of this section, may impose a more restrictive sanction under section 2929.16, 2929.17, or 2929.18 of the Revised Code, or may impose a prison term on the offender pursuant to section 2929.14 of the Revised Code. The prison term, if any, imposed upon a violator pursuant to this division shall be within the range of prison terms available for the offense for which the sanction that was violated was imposed and shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing pursuant to division (B)(3) of section 2929.19 of the Revised Code. The court may reduce the longer period of time that the offender is required to spend under the longer sanction, the more restrictive sanction, or a prison term imposed pursuant to this division by the time the offender successfully spent under the sanction that was initially imposed.

(C) If an offender, for a significant period of time, fulfills the conditions of a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code in an exemplary manner, the court may reduce the period of time under the sanction or impose a less restrictive sanction, but the court shall not permit the offender to violate any law or

permit the offender to leave the state without the permission of the court or the offender's probation officer.

(D) (1) If a court under division (A)(1) of this section imposes a condition of release under a community control sanction that requires the offender to submit to random drug testing, the department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section may cause the offender to submit to random drug testing performed by a laboratory or entity that has entered into a contract with any of the governmental entities or officers authorized to enter into a contract with that laboratory or entity under section 341.26, 753.33, or 5120.63 of the Revised Code.

(2) If no laboratory or entity described in division (D)(1) of this section has entered into a contract as specified in that division, the department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section shall cause the offender to submit to random drug testing performed by a reputable public laboratory to determine whether the individual who is the subject of the drug test ingested or was injected with a drug of abuse.

(3) A laboratory or entity that has entered into a contract pursuant to section 341.26, 753.33, or 5120.63 of the Revised Code shall perform the random drug tests under division (D)(1) of this section in accordance with the applicable standards that are included in the terms of that contract. A public laboratory shall perform the random drug tests under division (D)(2) of this section in accordance with the standards set forth in the policies and procedures established by the department of rehabilitation and correction pursuant to section 5120.63 of the Revised Code. An offender who is required under division (A)(1) of this section to submit to random drug testing as a condition of release under a community control sanction and whose test results indicate that the offender ingested or was injected with a drug of abuse shall pay the fee for the drug test if the department of probation or the adult parole authority that has general control and supervision of the offender requires payment of a fee. A laboratory or entity that performs the random drug testing on an offender under division (D)(1) or (2) of this section shall transmit the results of the drug test to the appropriate department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section.