

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 :
 Plaintiff-Appellee : Case No. 2007-0693
 :
 :
 v. : On Discretionary Appeal from the
 : Fulton County Court of Appeals,
 JAMES C. BLOOMER, : Sixth Appellate District,
 : Case No. 06FU12
 :
 Defendant-Appellant :

APPELLANT JAMES C. BLOOMER'S MERIT BRIEF

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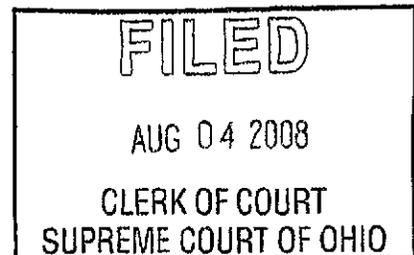


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STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

James C. Bloomer pleaded guilty to the illegal manufacture of methamphetamines, a second degree felony. R.C. 2925.04(A). On November 26, 2002, the trial court sentenced him to four years in prison, but did not sentence him to postrelease control. The State did not exercise its right to appeal the sentence.

On May 23, 2006, the trial court held a resentencing hearing. Mr. Bloomer objected to the hearing and to the sentencing add-on, both in writing and orally. T.p. 2-5.

Mr. Bloomer's counsel asked the court to completely resentence Mr. Bloomer (either up or down), but the trial court found "that it really has no leeway at this point. I'm going to modify—I'm going to correct [the] sentence which was rendered on November 22, 2002." T.p. 5. The Court further held that the "[p]revious sentence in all respects [is] otherwise ratified." T.p. 6.

Mr. Bloomer gave a statement in which he explained the progress he had made in prison, and in which he acknowledged that his prison sentence literally saved his life:

You Honor, with respectfully, I don't understand how a Court can do this. Okay? I've done forty seven months of forty-eight months of my sentence. I've done everything in my power to change who I've been. Day one. You sentenced me to a mandatory sentence, I've finished a two year associates degree in Culinary Arts and Business Management. I've also voluntarily put myself into rehabilitation called "Oasis in the Prison." I've done three years in my rehabilitation and I'm still in recovery. I've plans on initiating myself into halfway houses in the Columbus area when I leave here, and continue my recovery. I've have jobs waiting for me there and by setting me up with PRC, it's going to throw a lot of that stuff out for me. I intended to continue my recovery, and stay

clean and sober and I thank you for giving me those four years to take a good look at who I am and be able to change who I am. I've two children waiting for me out there, and a family that supports me as you can see. I love them very much and without being locked up, I would never know who they were because I would probably would have been dead now. . . .

The sentencing entry was filed on May 25, 2006 and journalized on May 26, 2006. Mr. Bloomer filed a timely notice of appeal. On appeal, he challenged the trial court's authority to collaterally attack his judgment of conviction.¹ The court of appeals affirmed. This Court accepted this case and held it for State v. Simpkins, Case No. 2007-52, and then this Court vacated the briefing stay.

¹ While briefing was stayed, the Adult Parole Authority terminated Mr. Bloomer's postrelease control early because he met or exceeded all expectations. This case is not moot because Mr. Bloomer incurred expenses directly attributable to his postrelease control, mostly lost wages and transportation expenses when he was required to report, for which he may be entitled to reimbursement.

Argument

Proposition of Law No. I:

A trial court may not add postrelease control to a sentence except as ordered by a court of appeals on a timely direct appeal.

Proposition of Law No. II:

Once a defendant nears completion of his judicially-imposed but illegal sentence, the State cannot increase his punishment because he gains a legitimate expectation of finality under the Due Process and Double Jeopardy Clauses of the United States Constitution.

Adding postrelease control to Mr. Bloomer's sentence violated his right to be free from double jeopardy because he had a legitimate expectation of finality in his original judgment entry. Once a defendant has a legitimate expectation of finality, the right to be free from double jeopardy prohibits the state from increasing a criminal sentence. United States v. DiFrancesco (1980), 449 U.S. 117, 137, 66 L. Ed. 2d 328, 101 S. Ct. 426 (defendant "has no expectation of finality in his sentence until the appeal is concluded or the time to appeal has expired").

Although, generally speaking, defendants do not have a legitimate expectation of finality in an illegal sentence, United States v. Arrellano-Rios (C.A. 9 1986), 799 F. 2d 520, 524, the State could not add a criminal sanction to Mr. Bloomer's sentence because he had completed 97% of his judicially-imposed sentence. Generally, there is no double jeopardy violation when a defendant is resentenced on direct appeal because his first judicial punishment was illegal. State v. Jordan, 104 Ohio St.3d 21, 2004-Ohio-6085; State v.

Beasley (1984), 14 Ohio St.3d 74. But “the power of a sentencing court to correct an invalid sentence must be subject to some temporal limit.” Breest v. Helgemoe (C.A. 1, 1978), 579 F.2d 95, 101.

Neither Beasley nor Jordan addressed a case in which the defendant had completed or nearly completed his prison term. A defendant can gain an expectation of finality that triggers double jeopardy and due process protections as he approaches the completion of his sentence. U.S. v. Daddino (C.A. 7, 1993), 5 F.3d 262, 265 (where the sentence is final, and the defendant has served all or nearly all of his sentence, there is an expectancy of finality); Fifth and Fourteenth Amendments to the United States Constitution.

Simpkins addressed a case in which a defendant asserted that the delay in resentencing him violated his right to be free from double jeopardy, but this Court did not make a hard rule. Instead, this Court noted the absence of a reason why the delay might be unfair:

Although Simpkins was near the end of a significant sentence, we discern no unfairness in his resentencing and no violation of due process.

As we explained recently in In re C.S., 115 Ohio St.3d 267, 2007-Ohio-4919, ¶ 80-81, due-process rights are malleable ones that are designed to ensure that individuals are treated with fundamental fairness in light of the given situation and the interests at stake.

State v. Simpkins, 117 Ohio St. 3d 420, at ¶34-5.

Unlike in Simpkins, Mr. Bloomer explains why the delay was in his case was unfair. As Mr. Bloomer explained at his sentence-correction hearing, by waiting until the last minute, the State denied him the chance to argue for a

shorter prison term. T.p. 3. That was not an unrealistic explanation. As Mr. Bloomer explained at his sentence-correction hearing, he had performed well in prison. He had completed a degree and completed a voluntary rehabilitation program. Perhaps most importantly, he accepted responsibility for his actions, and went so far as to say the prison term saved his life and his relationship with his children. T.p. 4.

Further, courts are presumed to follow the law, so, presumably, when choosing a sentence between two and eight years, the trial court considered the “overriding purposes of felony sentencing[:] [T]o protect the public from future crime by the offender and others and to punish the offender.” R.C. 2929.11(A). A shorter prison term with post-release control could punish and protect as much as a longer prison term without post-release control. So when the trial court elected to merely “correct” the sentence when it was 97% served,² Mr. Bloomer lost the ability to argue for a shorter term.

Proposition of Law No. III:

Revised Code Section 2929.191, part of H.B. 137 violates the Double Jeopardy Clause of the Fifth Amendment.

On first look, it might appear that H.B. 137 does not apply to Mr. Bloomer because his sentencing proceeding was held after the effective date of the statute. But the first look is wrong. In the bill’s uncodified law the General Assembly expressly stated that it “believes” that “the amendments made to sections 2929.14, 2929.19, and 2967.28 and the enactment of section

² Mr. Bloomer served 1415 days of a 1461-day sentence before his sentence-correction hearing.

2929.191 of the Revised Code . . . are not substantive in nature and merely clarify that . . . convicted offenders described . . . always are subject by operation of law and without need for any prior notification or warning to a period of post-release control after their release from imprisonment. . . .” Am. H.B. 137, uncodified law, ¶5(B).³ So on its own terms, H.B. 137 applies to Mr. Bloomer.

When a trial court fails to notify the offender of post-release control and/or incorporate post-release control in the journal entry, the sentence is “void” and “contrary to law.” Jordan, 104 Ohio St. 3d at 27; Bezak, 114 Ohio St. 3d 94, 96-97. Under those circumstances, the trial court may not merely add post-release control to the original sentence as the original sentence is a legal nullity. Id. at 27-28; see also Bezak, 114 Ohio St. 3d at 97. Rather, the trial court must conduct a de novo sentencing and “resentence the offender as if there had been no original sentence.” Jordan, 104 Ohio St. 3d at 28; Bezak, 114 Ohio St. 3d at syllabus and 96-97.

Because the trial court did not properly impose post-release control on Mr. Bloomer in 2002, the original sentence was void and could only be corrected, if at all, with a de novo sentencing. Jordan, 104 Ohio St. 3d at 28;

³ Ohio courts have historically afforded uncodified law the full effect of legislation. See Voinovich v. Bd. of Park Comms. of Cleveland Metro. Park Dist. (1975), 42 Ohio St.2d 511, 511 (referring to uncodified law as “legislation”); Perk v. City of Euclid (1969), 17 Ohio St.2d 4, 4-5 (holding that an uncodified temporary statute is “retroactive legislation”); In re McCrary (1991), 75 Ohio App.3d 601, 607 (uncodified law should be enforced “with the same vigor as a codified statutory provision”). Although, perhaps this section is merely advisor because the General Assembly expressly declares that the uncodified law is the General Assembly’s “belie[f,]” not that the provisions are actually law.

Bezak, 114 Ohio St. 3d at syllabus. Instead of conducting a required de novo sentencing, the trial court in this case simply added post-release control to Mr. Bloomer's original journalized sentence. (T.p. at 5-6). In failing to hold the de novo sentencing hearing mandated by Bezak, the trial court committed reversible error. See State v. Bond, Hamilton App. No. C-060611, 2007-Ohio-4194, ¶ 5 (explaining that the mere addition of post-release control pursuant to R.C. 2929.191 is insufficient).

By adding post-release control to Mr. Bloomer's original sentence (rather than conducting a de novo sentencing), the trial court punished Mr. Bloomer twice for the same offenses in successive proceedings in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 of the Ohio Constitution. In 2002, Mr. Bloomer was first punished with a four-year prison sentence. In 2006, with his original prison sentence left intact and 97% served, Mr. Bloomer was punished a second time with the addition of three years of post-release control. Because such "add-on" punishment is unconstitutional and because the procedure employed by the trial court is inconsistent with Ohio Supreme Court precedent, the trial court's addition of post-release control must be reversed. See Bond, 2007-Ohio-4194, at ¶ 5 and 10.

Proposition of Law No. IV:

H.B. 137 violates the Single Subject Rule.

House Bill 137 purports to give trial courts the authority to add postrelease control after a sentence has been executed and to give the Adult Parole Authority the power to impose postrelease control without a judicial order. Before the postrelease control provisions were added, the bill concerned only measures regarding the sealing of juvenile court records.⁴ The adult postrelease control provisions were added only shortly before passage.⁵

The Ohio Constitution requires that bills address only a single subject. Section 15(D), Article II of the Ohio Constitution. Violations of that rule can lead to the invalidation of the act:

We hold that a manifestly gross and fraudulent violation of the one-subject provision contained in Section 15(D), Article II of the Ohio Constitution will cause an enactment to be invalidated. Since the one-subject provision is capable of invalidating an enactment, it cannot be considered merely directory in nature.

In re Nowak, 104 Ohio St. 3d 466, 2004-Ohio-677, at ¶54.

Since postrelease control is limited to people convicted of crimes, not to the sealing of juvenile records, House Bill 137 violates the single subject rule.

Proposition of Law No. V:

Am. Sub. H.B. 137 renders postrelease control unconstitutional because it permits the executive to impose the sanction without a court order.

Postrelease control survived its initial separation of powers challenge only because a court authorized the sanction before the executive could impose

⁴ http://www.legislature.state.oh.us/bills.cfm?ID=126_HB_137_I.

⁵ http://www.legislature.state.oh.us/bills.cfm?ID=126_HB_137.

it on a defendant. Woods v. Telb (2000), 89 Ohio St. 3d 504, 512 (“in contrast to the bad-time statute, post-release control is part of the original judicially imposed sentence . . . [;] there is nothing in the Parole Board’s discretionary ability to impose post-release control sanctions that impedes the judiciary’s ability to impose a sentence”).

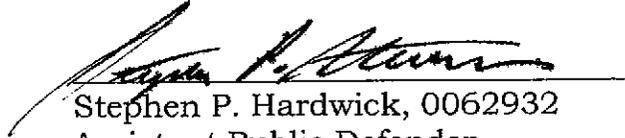
However, Am. Sub. H.B. 137 now authorizes the executive branch to impose the sanction without a court order. R.C. 2929.14(F)(1) (“the failure of a court to include a post-release control requirement in the sentence pursuant to this division does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender”). Because postrelease control no longer requires court authorization, and because R.C. 2929.14(F)(1) now “impedes the judiciary’s ability to impose a sentence[,]” postrelease control can no longer survive a separation of powers challenge.

CONCLUSION

This Court should vacate Mr. Bloomer's term of postrelease control.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



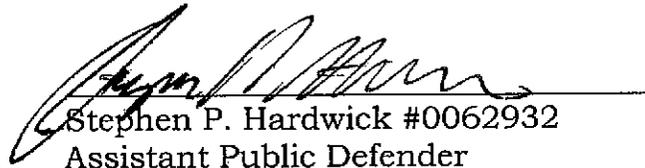
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Appellant James C. Bloomer's Merit Brief** was sent via regular U.S. mail, postage prepaid to the office of Paul H. Kennedy, Assistant Fulton County Prosecuting Attorney, 123 Courthouse Plaza, Wauseon, Ohio 43567 this 4th day of August, 2008.



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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2007-0693
Plaintiff-Appellee	:	
	:	
v.	:	On Discretionary Appeal from the
	:	Fulton County Court of Appeals,
JAMES C. BLOOMER,	:	Sixth Appellate District,
	:	Case No. 06FU12
Defendant-Appellant	:	

APPENDIX TO

APPELLANT JAMES C. BLOOMER'S MERIT BRIEF

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee

v.

JAMES C. BLOOMER,

Defendant-Appellant

:
: Case No. **07-0693**

:
: On Discretionary Appeal from the
: Fulton County Court of Appeals,
: Sixth Appellate District,
: Case No. 06FU12

JAMES C. BLOOMER'S NOTICE OF APPEAL

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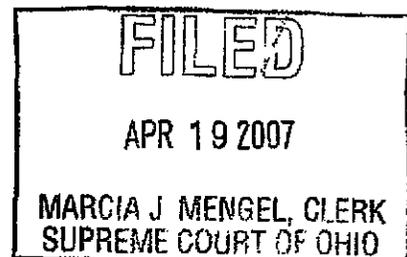
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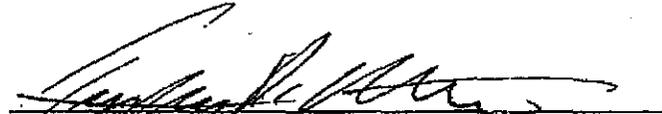
NOTICE OF APPEAL OF APPELLANT JAMES C. BLOOMER

Appellant James C. Bloomer hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Fulton County Court of Appeals, Sixth Appellate District in State v. Bloomer, Court of Appeals Case No. 06FU12, announced on March 9, 2007.

This case raises a substantial constitutional question, involves a felony, and is one of public or great general interest.

Respectfully submitted,

David H. Bodiker (0016590)
Ohio Public Defender



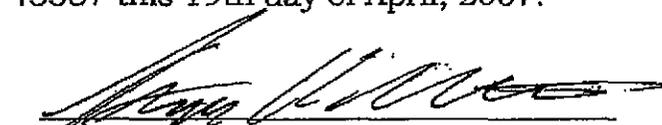
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Counsel for James C. Bloomer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **JAMES C. BLOOMER'S NOTICE OF APPEAL** was sent via regular U.S. mail, postage prepaid to the office of John H. Whitmore, Assistant Fulton County Prosecuting Attorney, 123 Courthouse Plaza, Wauseon, Ohio 43567 this 19th day of April, 2007.


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Counsel for James C. Bloomer

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FULTON COUNTY COURT OF APPEALS
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IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

State of Ohio

Court of Appeals No. F-06-012

Appellee

Trial Court No. 02CR000044

v.

James C. Bloomer

DECISION AND JUDGMENT ENTRY

Appellant

Decided: March 9, 2007

Roger D. Nagel, Fulton County Prosecuting Attorney, and
Jon H. Whitmore, Assistant Prosecuting Attorney, for appellee.

David H. Bodiker, State Public Defender, and
Stephen P. Hardwick, Assistant Public Defender for appellant.

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Fulton County Court of Common Pleas that sentenced appellant to four years incarceration on his conviction of one count of illegal manufacture of drugs and three years of mandatory post-release control. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant sets forth a single assignment of error:

1.

{¶ 3} "The trial court erred by resentencing Mr. Bloomer pursuant to an 'after-the-fact' hearing in violation of his right to due process and his right to be free from double jeopardy and ex post facto legislation. U.S. Const. Art. I, § 10, Fifth and Fourteenth Amendments to the U.S. Const.; R.C. 2953.08."

{¶ 4} Appellant was convicted of one count of illegal manufacture of drugs in violation of R.C. 2925.04(A), a second-degree felony, after entering a plea of guilty to the charge. On November 22, 2002, the trial court sentenced appellant to four years incarceration. The mandatory three-year period of post-release control for a conviction of a second-degree felony was set forth in the "Notice pursuant to R.C. 2929.19(B)(3)" and on the plea form, both of which appellant signed, but the trial court did not address the issue of post-release control in its sentencing entry. Accordingly, upon the state's motion, a resentencing hearing was held on May 23, 2006, before appellant completed his sentence. The hearing was held in order to notify appellant that he would be subject to post-release control upon his release from prison. Appellant's sentence was not modified in any other respect.

{¶ 5} Appellant argues that the trial court's "after-the-fact" resentencing violated his right to due process and subjected him to double jeopardy.

{¶ 6} While a trial court lacks authority to reconsider its own valid final judgment in a criminal case, *State ex rel. White v. Junkin* (1997), 80 Ohio St.3d 335, 338, this rule is subject to two narrow exceptions which provide the trial court with continuing jurisdiction. *State v. Garretson* (2000), 140 Ohio App.3d 554, 559. First, a trial court

can correct clerical errors in judgments. *Id.*, citing Crim.R. 36. Second, a trial court may correct a void sentencing order. *Id.*, citing *State v. Beasley* (1984), 14 Ohio St.3d 74, 75. The case before us falls within the second exception.

{¶ 7} As noted above, the trial court did not impose the mandatory three-year term of post-release control required by R.C. 2967.28(B)(2) for a second-degree felony conviction. Therefore, appellant's sentence was void. "Any attempt by a court to disregard statutory requirements when imposing a sentence renders the attempted sentence a nullity or void." *Beasley*, 14 Ohio St.3d at 75. Further, the Supreme Court of Ohio has held that "where a sentence is void because it does not contain a statutorily mandated term, the proper remedy is * * * to resentence the defendant." *State v. Cruzado*, 111 Ohio St.3d 353, 2006-Ohio-5795, ¶ 20, citing *State v. Jordan*, 104 Ohio St.3d 21, 2004-6085, ¶ 23. Resentencing would not be an option in this case if appellant's journalized sentence had expired by the time the omission was discovered. *Cruzado*, ¶ 22, citing *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126. But because appellant's sentence had not been completed when he was resentenced, the trial court was authorized to correct the invalid sentence to include the appropriate mandatory term of post-release control. *Cruzado*, supra, ¶ 28.

{¶ 8} The Supreme Court noted in *Cruzado* at ¶ 20 that, following its decision in *Hernandez*, supra, "the General Assembly amended R.C. 2967.28 to provide that when a trial court imposes a sentence that should include a mandatory term of post release control after the July 11, 2006 effective date of the amendment, 'the failure of a

sentencing court to notify the offender * * * 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." R.C. 2967.28(B).

Cruzado continues: "For those cases in which an offender was sentenced before the July 11, 2006 amendment and was not notified of mandatory post release control or in which there was not a statement regarding post release control in the court's journal or sentence, R.C. 2929.191 authorizes the sentencing court – before the offender is released from prison – to prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison."

{¶ 9} Appellant herein was sentenced before July 11, 2006. It is clear that the trial court in this case followed the procedure set forth in R.C. 2929.191 and acknowledged in *Cruzado*, supra. Further, contrary to appellant's claim, a trial court's correction of a statutorily incorrect sentence does not violate an appellant's right to be free from double jeopardy. *Beasley*, supra at 76.

{¶ 10} Based on the foregoing, we find that the trial court was authorized to correct appellant's invalid sentence that had not expired and, accordingly, appellant's sole assignment of error is not well-taken.

{¶ 11} On consideration whereof, the judgment of the Fulton County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant

to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Fulton County.

JUDGMENT AFFIRMED.

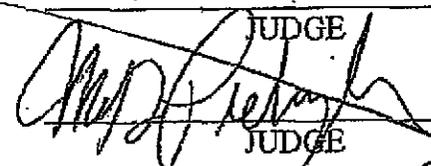
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

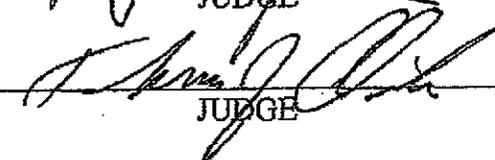
Peter M. Handwork, J.

Mark L. Pietrykowski, P.J.

Thomas J. Osowik, J.
CONCUR.



JUDGE


JUDGE


JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

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IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

STATE OF OHIO, : Case No. 02CR000044
Plaintiff, : Judge James E. Barber
-vs- : **JUDGMENT ENTRY OF RESENTENCE**
JAMES C. BLOOMER, :
Defendant. : . :

This matter came on for resentencing on the 23rd day of May, 2006, to notify the defendant in accordance with Hernandez v. Kelly, ___ Ohio St.3d ___, 2006-Ohio-126, that he is subject to post-release control. The defendant was present in open court with his court-appointed attorney, Paul H. Duggan, and the Assistant Prosecuting Attorney, Paul H. Kennedy, was present on behalf of the State of Ohio.

Whereupon, the Court granted for good cause shown the nolle prosequi to Counts I, III, IV, V, and VI, of the Indictment entered by the Assistant Prosecuting Attorney.

Whereupon, the Defendant was afforded all rights pursuant Crim. R. 32. The Court has considered the record, oral statements, any victim impact statement and the pre-sentence report previously prepared by the Adult Probation Department, as well as the principles and purposes of sentencing under R.C. §2929.11, and has balanced the seriousness and recidivism factors under R.C. §2929.12.

The Court finds that Defendant has been convicted of **ILLEGAL MANUFACTURE OF DRUGS**, in violation of R.C. §2925.04(A), a felony of the second degree.

The Court further finds pursuant to R.C. 2929.13(B)(2) that Defendant is not

amenable to Community Control and that prison is consistent with the principles and purposes of sentencing under R.C. §2929.11.

It is therefore ORDERED that Defendant serve a mandatory prison term of **four (4) years**.

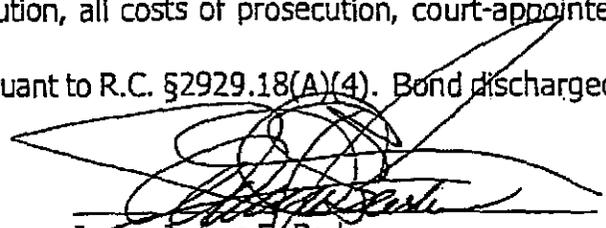
The Court further imposes a discretionary fine of \$1,500.00. The Court further orders that all items seized by the Multi-Area Narcotics Task Force be forfeited and destroyed.

Pursuant to O.R.C. 2925.03(G), the Court orders that Defendant's driver's license suspended for a period of three (3) years.

Defendant has been given notice under R.C. 2929.19(B)(3) and of his appellate rights under R.C. §2953.08. The Court further notified the defendant in accordance with R.C. 2967.28(B) that he was subject to **mandatory post-release control for a period of 3 years** and that the defendant's violation of a condition of post-release control could result in the imposition of a prison term of up to one-half of the stated prison term.

Defendant is ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Correction, forthwith. Credit for 1410 days is granted as of this date along with future custody days while Defendant awaits transportation to the appropriate State institution.

Defendant is ordered to pay restitution, all costs of prosecution, court-appointed attorney fees, and any fees permitted pursuant to R.C. §2929.18(A)(4). Bond discharged.


Judge James E. Barber

439810
PCJ

IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

FILED
FULTON COUNTY
COMMON PLEAS COURT

02 NOV 26 PM 4:16

State of Ohio,

Plaintiff

Case No. 02CR44

MARY GYPE
CLERK

-vs-

JUDGMENT ENTRY

James C. Bloomer,

Defendant

On the 22nd day of November, 2002, this cause came on for sentencing and the defendant was present in open Court with his court appointed attorney, Amber VanGuhthen, and the Assistant Prosecuting Attorney, Paul H. Kennedy, was present on behalf of the State of Ohio.

Whereupon, the Court granted for good cause shown the nolle prosequi to Counts I, III, IV, V, and VI, of the Indictment entered by the Assistant Prosecuting Attorney.

Whereupon, the defendant was afforded all rights pursuant to Crim. R. 32. The Court has considered the record, oral statements, and any victim impact statement, as well as the principles and purposes of sentencing under R.C. 2929.11, and has balanced the seriousness and recidivism factors under R.C. 2929.12.

The Court finds that defendant has been convicted of illegal Manufacture of Drugs, a violation of R.C. 2925.04(A), a felony of the second degree.

The Court finds pursuant to R.C. 2929.13(B)(2) that prison is consistent with the principles and purposes of sentencing set forth in Section 2929.11 of the Revised Code and that the defendant is not amenable to community control.

The Court finds pursuant to R.C. 2929.14(B) that the shortest prison term possible will demean the seriousness of the offense and will not

adequately protect the public and therefore imposes a greater term.

It is hereby ORDERED that defendant serve a mandatory prison term of four (4) years at the Ohio Department of Rehabilitation and Correction, Orient, Ohio, for the offense of Illegal Manufacture of Drugs, a violation of R.C. 2925.04(A), a felony of the second degree.

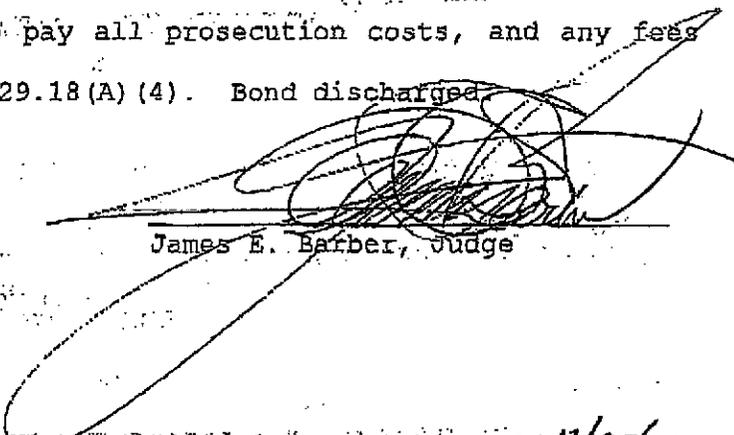
The Court further imposes a discretionary fine of \$1,500.00. The Court further orders that all items seized by the Multi-Area Narcotics Task Force be forfeited and destroyed.

Pursuant to O.R.C. §2925.03(G), the Court orders the defendant's driver's license suspended for a period of 3 years.

Defendant has been given notice under R.C. 2929.19(B)(3) and of appellate rights under R.C. 2953.08.

Defendant is therefore ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Correction forthwith. Credit for 136 days is granted as of date of sentencing, along with any future custody days while defendant awaits transportation to the appropriate State institution.

Defendant is ordered to pay all prosecution costs, and any fees permitted pursuant to R.C. 2929.18(A)(4). Bond discharged.


James E. Barber, Judge

136
10
146

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Mary Gype, Clerk

By 14

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim or the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

LEXSTAT OH. CONST. ART. I, § 10

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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2008 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

CONSTITUTION OF THE STATE OF OHIO
ARTICLE I. BILL OF RIGHTS

Go to the Ohio Code Archive Directory

Oh. Const. Art. I, § 10 (2008)

§ 10. Trial of accused persons and their rights; depositions by state and comment on failure of accused to testify in criminal cases

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

HISTORY:

(As amended September 3, 1912.)

LEXSTAT ARTICLE 1, SECTION 15, OHIO CONSTITUTION

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CONSTITUTION OF THE STATE OF OHIO
ARTICLE I. BILL OF RIGHTS

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Oh. Const. Art. I, § 15 (2008)

§ 15. No imprisonment for debt

No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

LEXSTAT ORC 2925.04

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2925. DRUG OFFENSES
DRUG ABUSE

Go to the Ohio Code Archive Directory

ORC Ann. 2925.04 (2008)

§ 2925.04. Illegal manufacture of drugs or cultivation of marihuana

(A) No person shall knowingly cultivate marihuana or knowingly manufacture or otherwise engage in any part of the production of a controlled substance.

(B) This section does not apply to any person listed in division (B)(1), (2), or (3) of *section 2925.03 of the Revised Code* to the extent and under the circumstances described in those divisions.

(C) (1) Whoever commits a violation of division (A) of this section that involves any drug other than marihuana is guilty of illegal manufacture of drugs, and whoever commits a violation of division (A) of this section that involves marihuana is guilty of illegal cultivation of marihuana.

(2) Except as otherwise provided in this division, if the drug involved in the violation of division (A) of this section is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of methamphetamine or marihuana, illegal manufacture of drugs is a felony of the second degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of methamphetamine or marihuana, and if the offense was committed in the vicinity of a juvenile or in the vicinity of a school, illegal manufacture of drugs is a felony of the first degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(3) If the drug involved in the violation of division (A) of this section is methamphetamine, the penalty for the violation shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b) of this section, if the drug involved in the violation is methamphetamine, illegal manufacture of drugs is a felony of the second degree, and, subject to division (E) of this section, the court shall impose a mandatory prison term on the offender determined in accordance with this division. Except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than three years. If the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section, a violation of division (B)(6) of *section 2919.22 of the Revised Code*, or a violation of division (A) of *section 2925.041 [2925.04.1] of the Revised Code*, the court shall

impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than five years.

(b) If the drug involved in the violation is methamphetamine and if the offense was committed in the vicinity of a juvenile, in the vicinity of a school, or on public premises, illegal manufacture of drugs is a felony of the first degree, and, subject to division (E) of this section, the court shall impose a mandatory prison term on the offender determined in accordance with this division. Except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree that is not less than four years. If the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section, a violation of division (B)(6) of *section 2919.22 of the Revised Code*, or a violation of division (A) of *section 2925.041 [2925.04.1] of the Revised Code*, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree that is not less than five years.

(4) If the drug involved in the violation of division (A) of this section is any compound, mixture, preparation, or substance included in schedule III, IV, or V, illegal manufacture of drugs is a felony of the third degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the second degree, and there is a presumption for a prison term for the offense.

(5) If the drug involved in the violation is marihuana, the penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), or (f) of this section, illegal cultivation of marihuana is a minor misdemeanor or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the fourth degree.

(b) If the amount of marihuana involved equals or exceeds one hundred grams but is less than two hundred grams, illegal cultivation of marihuana is a misdemeanor of the fourth degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the third degree.

(c) If the amount of marihuana involved equals or exceeds two hundred grams but is less than one thousand grams, illegal cultivation of marihuana is a felony of the fifth degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(d) If the amount of marihuana involved equals or exceeds one thousand grams but is less than five thousand grams, illegal cultivation of marihuana is a felony of the third degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the second degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(e) If the amount of marihuana involved equals or exceeds five thousand grams but is less than twenty thousand grams, illegal cultivation of marihuana is a felony of the third degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the second degree, and there is a presumption for a prison term for the offense.

(f) Except as otherwise provided in this division, if the amount of marihuana involved equals or exceeds twenty thousand grams, illegal cultivation of marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds twenty thousand grams and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal cultivation of marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(D) In addition to any prison term authorized or required by division (C) or (E) of this section and *sections 2929.13 and 2929.14 of the Revised Code* and in addition to any other sanction imposed for the offense under this section or *sections 2929.11 to 2929.18 of the Revised Code*, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of *section 2929.18 of the Revised Code* unless, as specified in that division, the court determines that the offender is indigent. The clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of *section 2929.18 of the Revised Code* in accordance with and subject to the requirements of division (F) of *section 2925.03 of the*

Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of *section 2925.03 of the Revised Code*. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail as if the forfeited bail were a fine imposed for a violation of this section.

(2) The court shall suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of *section 2925.03 of the Revised Code*. If an offender's driver's or commercial driver's license or permit is suspended in accordance with that division, the offender may request termination of, and the court may terminate, the suspension in accordance with that division.

(3) If the offender is a professionally licensed person, the court immediately shall comply with *section 2925.38 of the Revised Code*.

(E) Notwithstanding the prison term otherwise authorized or required for the offense under division (C) of this section and *sections 2929.13 and 2929.14 of the Revised Code*, if the violation of division (A) of this section involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender and is guilty of a specification of the type described in *section 2941.1410 [2941.14.10] of the Revised Code*, the court, in lieu of the prison term otherwise authorized or required, shall impose upon the offender the mandatory prison term specified in division (D)(3)(a) of *section 2929.14 of the Revised Code* and may impose an additional prison term under division (D)(3)(b) of that section.

(F) It is an affirmative defense, as provided in *section 2901.05 of the Revised Code*, to a charge under this section for a fifth degree felony violation of illegal cultivation of marihuana that the marihuana that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed or cultivated under any other circumstances that indicate that the marihuana was solely for personal use.

Notwithstanding any contrary provision of division (F) of this section, if, in accordance with *section 2901.05 of the Revised Code*, a person who is charged with a violation of illegal cultivation of marihuana that is a felony of the fifth degree sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in this division, the person may be prosecuted for and may be convicted of or plead guilty to a misdemeanor violation of illegal cultivation of marihuana.

(G) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in an application for employment, a license, or any other right or privilege or made in connection with the person's appearance as a witness.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 148 v S 107 (Eff 3-23-2000); 149 v H 7. Eff 8-7-2001; 149 v S 123, § 1, eff. 1-1-04; 150 v S 58, § 1, eff. 8-11-04; 151 v S 53, § 1, eff. 5-17-06.

LEXSTAT ORC ANN. 2929.11

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*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR FELONY

Go to the Ohio Code Archive Directory

ORC Ann. 2929.11 (2008)

§ 2929.11. Purposes of felony sentencing; discrimination prohibited

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

HISTORY:

146 v S 2. Eff 7-1-96.

LEXSTAT ORC ANN. 2929.14

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR FELONY

Go to the Ohio Code Archive Directory

ORC Ann. 2929.14 (2008)

§ 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), (I), (J), 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), (I), (J), 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. Except as provided in division (D)(1)(g) of this section, 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) or (b) of this section upon an offender for a violation of *section 2923.122 [2923.12.2]* that involves a deadly weapon that is a firearm other than a dangerous ordnance, *section 2923.16*, or *section 2923.121 [2923.12.1]* 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*. If an offender is convicted of or pleads guilty to two or more felonies that include, 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 under division (D)(1)(f) of this section in connection with two or more of the felonies of which the offender is convicted or to which the offender pleads guilty, the sentencing court shall impose on the offender the prison term specified under division (D)(1)(f) of this section for each of two of the specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications. 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.

(g) If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies is aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (D)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (D)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

(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) or division (J)(1) or (2) 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 kidnaping 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 January 1, 2008, 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 January 1, 2008, 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 January 1, 2008, 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) (1) 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.

(2) (a) If an offender is convicted of or pleads guilty to a felony violation of *section 2907.22, 2907.24, 2907.241 [2907.24.1], or 2907.25 of the Revised Code* and to a specification of the type described in *section 2941.1421 [2941.14.21] of the Revised Code* and if the court imposes a prison term on the offender for the felony violation, the court may impose upon the offender an additional prison term as follows:

(i) Subject to division (J)(2)(a)(ii) of this section, an additional prison term of one, two, three, four, five, or six months;

(ii) If the offender previously has been convicted of or pleaded guilty to one or more felony or misdemeanor violations of *section 2907.22, 2907.23, 2907.24, 2907.241 [2907.24.1], or 2907.25 of the Revised Code* and also was

convicted of or pleaded guilty to a specification of the type described in section 2941.1421 [2941.14.21] of the Revised Code regarding one or more of those violations, an additional prison term of one, two, three, four, five, six, seven, eight, nine, ten, eleven, or twelve months.

(b) In lieu of imposing an additional prison term under division (J)(2)(a) of this section, the court may directly impose on the offender a sanction that requires the offender to wear a real-time processing, continual tracking electronic monitoring device during the period of time specified by the court. The period of time specified by the court shall equal the duration of an additional prison term that the court could have imposed upon the offender under division (J)(2)(a) of this section. A sanction imposed under this division shall commence on the date specified by the court, provided that the sanction shall not commence until after the offender has served the prison term imposed for the felony violation of *section 2907.22, 2907.24, 2907.241 [2907.24.1], or 2907.25 of the Revised Code* and any residential sanction imposed for the violation under *section 2929.16 of the Revised Code*. A sanction imposed under this division shall be considered to be a community control sanction for purposes of *section 2929.15 of the Revised Code*, and all provisions of the Revised Code that pertain to community control sanctions shall apply to a sanction imposed under this division, except to the extent that they would by their nature be clearly inapplicable. The offender shall pay all costs associated with a sanction imposed under this division, including the cost of the use of the monitoring device.

(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*.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 88 (Eff 9-3-96); 146 v H 445 (Eff 9-3-96); 146 v H 154 (Eff 10-4-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 151 (Eff 9-16-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 2 (Eff 1-1-99); 148 v S 1 (Eff 8-6-99); 148 v H 29 (Eff 10-29-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 130 (Eff 4-7-2003); 149 v S 123, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04*; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 137, § 1, eff. 7-11-06; 151 v H 137, § 3, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 151 v S 281, § 1, eff. 1-4-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v S 184, § 1, eff. 9-9-08; 152 v S 220, § 1, eff. 9-30-08.

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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2008 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR FELONY

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ORC Ann. 2929.19 (2008)

§ 2929.19. Sentencing hearing

(A) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony and before resentencing an offender who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to *section 2953.07 or 2953.08 of the Revised Code*. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative in accordance with *section 2930.14 of the Revised Code*, and, with the approval of the court, any other person may present information relevant to the imposition of sentence in the case. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender.

(B) (1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person pursuant to division (A) of this section, and, if one was prepared, the presentence investigation report made pursuant to *section 2951.03 of the Revised Code or Criminal Rule 32.2*, and any victim impact statement made pursuant to *section 2947.051 [2947.05.1] of the Revised Code*.

(2) The court shall impose a sentence and shall make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances:

(a) Unless the offense is a violent sex offense or designated homicide, assault, or kidnapping offense for which the court is required to impose sentence pursuant to division (G) of *section 2929.14 of the Revised Code*, if it imposes a prison term for a felony of the fourth or fifth degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to division (B) of *section 2929.13 of the Revised Code* for purposes of sentencing, its reasons for imposing the prison term, based upon the overriding purposes and principles of felony sentencing set forth in *section 2929.11 of the Revised Code*, and any factors listed in divisions (B)(1)(a) to (i) of *section 2929.13 of the Revised Code* that it found to apply relative to the offender.

(b) If it does not impose a prison term for a felony of the first or second degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and for which a presumption in favor of a prison term is specified as being applicable, its reasons for not imposing the prison term and for overriding the presumption, based upon the overriding purposes and principles of felony sentencing set forth in *section 2929.11 of the Revised Code*, and the basis of the findings it made under divisions (D)(1) and (2) of *section 2929.13 of the Revised Code*.

(c) If it imposes consecutive sentences under *section 2929.14 of the Revised Code*, its reasons for imposing the consecutive sentences;

(d) If the sentence is for one offense and it imposes a prison term for the offense that is the maximum prison term allowed for that offense by division (A) of *section 2929.14 of the Revised Code* or *section 2929.142 [2929.14.2] of the Revised Code*, its reasons for imposing the maximum prison term;

(e) If the sentence is for two or more offenses arising out of a single incident and it imposes a prison term for those offenses that is the maximum prison term allowed for the offense of the highest degree by division (A) of *section 2929.14 of the Revised Code* or *section 2929.142 [2929.14.2] of the Revised Code*, its reasons for imposing the maximum prison term.

(3) Subject to division (B)(4) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) Impose a stated prison term;

(b) Notify the offender that, as part of the sentence, the parole board may extend the stated prison term for certain violations of prison rules for up to one-half of the stated prison term;

(c) Notify the offender that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison if the offender is being sentenced for a felony of the first degree or 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. If a court imposes a sentence including a prison term of a type described in division (B)(3)(c) of this section on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(c) of this section that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the mandatory period of supervision 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 division (B)(3)(c) of this section and failed to notify the offender pursuant to division (B)(3)(c) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(d) Notify the offender that the offender may be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(3)(c) of this section. *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 division (B)(3)(d) of this section and failed to notify the offender pursuant to division (B)(3)(d) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of *section 2967.131 [2967.13.1] of the Revised Code*, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(e) of this section that the parole board may impose a prison term as described in division (B)(3)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of *section 2967.131 [2967.13.1] of the Revised Code* or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of *section 2967.28 of the Revised Code*, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. *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 and failed to notify the offender pursuant to division (B)(3)(e) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(f) Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in *section 341.26, 753.33, or 5120.63 of the Revised Code*, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

(4) (a) The court shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, and the court shall comply with the requirements of *section 2950.03 of the Revised Code* if any of the following apply:

(i) The offender is being sentenced for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator in relation to that offense.

(ii) The offender is being sentenced for a sexually oriented offense that the offender committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iii) The offender is being sentenced on or after July 31, 2003, for a child-victim oriented offense, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iv) The offender is being sentenced under *section 2971.03 of the Revised Code* for a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after January 2, 2007.

(v) The offender is sentenced to a term of life without parole under division (B) of *section 2907.02 of the Revised Code*.

(vi) The offender is being sentenced for 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*.

(vii) The offender is being sentenced under division (B)(3)(a), (b), (c), or (d) of *section 2971.03 of the Revised Code* for an offense described in those divisions committed on or after the effective date of this amendment.

(b) Additionally, if any criterion set forth in divisions (B)(4)(a)(i) to (vii) of this section is satisfied, in the circumstances described in division (G) of *section 2929.14 of the Revised Code*, the court shall impose sentence on the offender as described in that division.

(5) If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to *section 2929.14 of the Revised Code*.

(6) Before imposing a financial sanction under *section 2929.18 of the Revised Code* or a fine under *section 2929.32 of the Revised Code*, the court shall consider the offender's present and future ability to pay the amount of the sanction or fine.

(7) If the sentencing court sentences the offender to a sanction of confinement pursuant to *section 2929.14* or *2929.16 of the Revised Code* that is to be served in a local detention facility, as defined in *section 2929.36 of the Revised Code*, and if the local detention facility is covered by a policy adopted pursuant to *section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code* and *section 2929.37 of the Revised Code*, both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

(i) If the offender is presented with an itemized bill pursuant to *section 2929.37 of the Revised Code* for payment of the costs of confinement, the offender is required to pay the bill in accordance with that section.

(ii) If the offender does not dispute the bill described in division (B)(7)(a)(i) of this section and does not pay the bill by the times specified in *section 2929.37 of the Revised Code*, the clerk of the court may issue a certificate of judgment against the offender as described in that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (B)(7)(a)(ii) of this section.

(C) (1) 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*, the court shall impose the mandatory term of local incarceration in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of *section 2929.18 of the Revised Code*, and, in addition, may impose additional sanctions as specified in *sections 2929.15, 2929.16, 2929.17, and 2929.18 of the Revised Code*. The court shall not impose a prison term on the offender except that the court may impose a prison term upon the offender as provided in division (A)(1) of *section 2929.13 of the Revised Code*.

(2) 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 court shall impose the mandatory prison term in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of *section 2929.18 of the Revised Code*, and, in addition, may impose an additional prison term as specified in *section 2929.14 of the Revised Code*. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may impose a community control sanction on the offender, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(D) The sentencing court, pursuant to division (K) of *section 2929.14 of the Revised Code*, may recommend placement of the offender in a program of shock incarceration under *section 5120.031 [5120.03.1] of the Revised Code* or an intensive program prison under *section 5120.032 [5120.03.2] of the Revised Code*, disapprove placement of the offender in a program or prison of that nature, or make no recommendation. If the court recommends or disapproves placement, it shall make a finding that gives its reasons for its recommendation or disapproval.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 170, Eff 9-6-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 137, § 1, eff. 7-11-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08.

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ORC Ann. 2929.191 (2008)

§ 2929.191. Correction to judgment of conviction concerning post-release control

(A) (1) If, prior to the effective date of this section, a court imposed a sentence including a prison term of a type described in division (B)(3)(c) of *section 2929.19 of the Revised Code* and failed to notify the offender pursuant to that division that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison or to include a statement to that effect 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*, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison.

If, prior to the effective date of this section, a court imposed a sentence including a prison term of a type described in division (B)(3)(d) of *section 2929.19 of the Revised Code* and failed to notify the offender pursuant to that division that the offender may be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison or to include a statement to that effect 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*, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender may be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison.

(2) If a court prepares and issues a correction to a judgment of conviction as described in division (A)(1) of this section before the offender is released from imprisonment under the prison term the court imposed prior to the effective date of this section, the court shall place upon the journal of the court an entry nunc pro tunc to record the correction to the judgment of conviction and shall provide a copy of the entry to the offender or, if the offender is not physically present at the hearing, shall send a copy of the entry to the department of rehabilitation and correction for delivery to the offender. If the court sends a copy of the entry to the department, the department promptly shall deliver a copy of the entry to the offender. The court's placement upon the journal of the entry nunc pro tunc before the offender is released from imprisonment under the term shall be considered, and shall have the same effect, as if the court at the time of original sentencing had included the statement in the sentence and the judgment of conviction entered on the journal and had notified the offender that the offender will be so supervised regarding a sentence including a prison term of a type described in division (B)(3)(c) of *section 2929.19 of the Revised Code* or that the offender may be so supervised regarding a sentence including a prison term of a type described in division (B)(3)(d) of that section.

(B) (1) If, prior to the effective date of this section, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(3)(e) of *section 2929.19 of the Revised Code* regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control or to include in the judgment of conviction entered on the journal a statement to that effect, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of *section 2929.19 of the Revised Code*, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of *section 2967.131 [2967.13.1] of the Revised Code* the parole board may impose as part of the sentence a prison term of up to one-half of the stated prison term originally imposed upon the offender.

(2) If the court prepares and issues a correction to a judgment of conviction as described in division (B)(1) of this section before the offender is released from imprisonment under the term, the court shall place upon the journal of the court an entry nunc pro tunc to record the correction to the judgment of conviction and shall provide a copy of the entry to the offender or, if the offender is not physically present at the hearing, shall send a copy of the entry to the department of rehabilitation and correction for delivery to the offender. If the court sends a copy of the entry to the department, the department promptly shall deliver a copy of the entry to the offender. The court's placement upon the journal of the entry nunc pro tunc before the offender is released from imprisonment under the term shall be considered, and shall have the same effect, as if the court at the time of original sentencing had included the statement in the judgment of conviction entered on the journal and had notified the offender pursuant to division (B)(3)(e) of *section 2929.19 of the Revised Code* regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(C) On and after the effective date of this section, a court that wishes to prepare and issue a correction to a judgment of conviction of a type described in division (A)(1) or (B)(1) of this section shall not issue the correction until after the court has conducted a hearing in accordance with this division. Before a court holds a hearing pursuant to this division, the court shall provide notice of the date, time, place, and purpose of the hearing to the offender who is the subject of the hearing, the prosecuting attorney of the county, and the department of rehabilitation and correction. The offender has the right to be physically present at the hearing, except that, upon the court's own motion or the motion of the offender or the prosecuting attorney, the court may permit the offender to appear at the hearing by video conferencing equipment if available and compatible. An appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender were physically present at the hearing. At the hearing, the offender and the prosecuting attorney may make a statement as to whether the court should issue a correction to the judgment of conviction.

HISTORY:

151 v H 137, § 1, eff. 7-11-06.

LEXSTAT ORC ANN. 2967.28

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TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2967. PARDON; PAROLE; PROBATION

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ORC Ann. 2967.28 (2008)

§ 2967.28. Period of post-release control for certain offenders; sanctions; proceedings upon violation

(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 [2929.19.1] 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 [2929.19.1] 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 [5120.03.1] or in division (B)(1) of *section 5120.032 [5120.03.2] 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 [5120.03.1], or division (B)(1) of *section 5120.032 [5120.03.2] 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 [2967.13.1] 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.

(E) The department of rehabilitation and correction, in accordance with Chapter 119. of the Revised Code, shall adopt rules that do all of the following:

(1) Establish standards for the imposition by the parole board of post-release control sanctions under this section that are consistent with the overriding purposes and sentencing principles set forth in *section 2929.11 of the Revised Code* and that are appropriate to the needs of releasees;

(2) Establish standards by which the parole board can determine which prisoners described in division (C) of this section should be placed under a period of post-release control;

(3) Establish standards to be used by the parole board in reducing the duration of the period of post-release control imposed by the court when authorized under division (D) of this section, in imposing a more restrictive post-release control sanction than monitored time upon a prisoner convicted of a felony of the fourth or fifth degree other than a felony sex offense, or in imposing a less restrictive control sanction upon a releasee based on the releasee's activities including, but not limited to, remaining free from criminal activity and from the abuse of alcohol or other drugs, successfully participating in approved rehabilitation programs, maintaining employment, and paying restitution to the victim or meeting the terms of other financial sanctions;

(4) Establish standards to be used by the adult parole authority in modifying a releasee's post-release control sanctions pursuant to division (D)(2) of this section;

(5) Establish standards to be used by the adult parole authority or parole board in imposing further sanctions under division (F) of this section on releasees who violate post-release control sanctions, including standards that do the following:

- (a) Classify violations according to the degree of seriousness;
- (b) Define the circumstances under which formal action by the parole board is warranted;
- (c) Govern the use of evidence at violation hearings;
- (d) Ensure procedural due process to an alleged violator;
- (e) Prescribe nonresidential community control sanctions for most misdemeanor and technical violations;
- (f) Provide procedures for the return of a releasee to imprisonment for violations of post-release control.

(F) (1) Whenever the parole board imposes one or more post-release control sanctions upon an offender under this section, the offender upon release from imprisonment shall be under the general jurisdiction of the adult parole authority and generally shall be supervised by the field services section through its staff of parole and field officers as described in *section 5149.04 of the Revised Code*, as if the offender had been placed on parole. If the offender upon release from imprisonment violates the post-release control sanction or any conditions described in division (A) of *section 2967.131 [2967.13.1] of the Revised Code* that are imposed on the offender, 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 directly to the adult parole authority or to the officer of the authority who supervises the offender. The authority's officers may treat the offender as if the offender were on parole and in violation of the parole, and otherwise shall comply with this section.

(2) If the adult parole authority determines that a releasee has violated a post-release control sanction or any conditions described in division (A) of *section 2967.131 [2967.13.1] of the Revised Code* imposed upon the releasee and that a more restrictive sanction is appropriate, the authority may impose a more restrictive sanction upon the releasee, in accordance with the standards established under division (E) of this section, or may report the violation to the parole board for a hearing pursuant to division (F)(3) of this section. The authority may not, pursuant to this division, increase the duration of the releasee's post-release control or impose as a post-release control sanction a residential sanction that includes a prison term, but the authority may impose on the releasee any other residential sanction, 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*.

(3) The parole board may hold a hearing on any alleged violation by a releasee of a post-release control sanction or any conditions described in division (A) of *section 2967.131 [2967.13.1] of the Revised Code* that are imposed upon the releasee. If after the hearing the board finds that the releasee violated the sanction or condition, the board may increase the duration of the releasee's post-release control up to the maximum duration authorized by division (B) or (C) of this section or impose a more restrictive post-release control sanction. When appropriate, the board may impose as a post-release control sanction a residential sanction that includes a prison term. The board shall consider a prison term as

a post-release control sanction imposed for a violation of post-release control when the violation involves a deadly weapon or dangerous ordnance, physical harm or attempted serious physical harm to a person, or sexual misconduct, or when the releasee committed repeated violations of post-release control sanctions. The period of a prison term that is imposed as a post-release control sanction under this division shall not exceed nine months, and the maximum cumulative prison term for all violations under this division shall not exceed one-half of the stated prison term originally imposed upon the offender as part of this sentence. The period of a prison term that is imposed as a post-release control sanction under this division shall not count as, or be credited toward, the remaining period of post-release control.

If an offender is imprisoned for a felony committed while under post-release control supervision and is again released on post-release control for a period of time determined by division (F)(4)(d) of this section, the maximum cumulative prison term for all violations under this division shall not exceed one-half of the total stated prison terms of the earlier felony, reduced by any prison term administratively imposed by the parole board, plus one-half of the total stated prison term of the new felony.

(4) Any period of post-release control shall commence upon an offender's actual release from prison. If an offender is serving an indefinite prison term or a life sentence in addition to a stated prison term, the offender shall serve the period of post-release control in the following manner:

(a) If a period of post-release control is imposed upon the offender and if the offender also is subject to a period of parole under a life sentence or an indefinite sentence, and if the period of post-release control ends prior to the period of parole, the offender shall be supervised on parole. The offender shall receive credit for post-release control supervision during the period of parole. The offender is not eligible for final release under *section 2967.16 of the Revised Code* until the post-release control period otherwise would have ended.

(b) If a period of post-release control is imposed upon the offender and if the offender also is subject to a period of parole under an indefinite sentence, and if the period of parole ends prior to the period of post-release control, the offender shall be supervised on post-release control. The requirements of parole supervision shall be satisfied during the post-release control period.

(c) If an offender is subject to more than one period of post-release control, the period of post-release control for all of the sentences shall be the period of post-release control that expires last, as determined by the parole board. Periods of post-release control shall be served concurrently and shall not be imposed consecutively to each other.

(d) The period of post-release control for a releasee who commits a felony while under post-release control for an earlier felony shall be the longer of the period of post-release control specified for the new felony under division (B) or (C) of this section or the time remaining under the period of post-release control imposed for the earlier felony as determined by the parole board.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 147 v S 111 (Eff 3-17-98); 148 v S 107 (Eff 3-23-2000); 149 v H 327 (Eff 7-8-2002); 149 v H 510; Eff 3-31-2003; 151 v H 137, § 1, eff. 7-11-06.