

IN THE SUPREME COURT OF OHIO

State of Ohio,	:
	: Case Nos. 2008-2172 and 2008-2119
Appellee,	:
	: On Appeal and Certified Conflict from
v.	: the Marion County Court of Appeals,
	: Third Appellate District, Case No. 9-
Rusty Jordan,	: 08-11
	:
Appellant.	:

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**MERIT BRIEF OF APPELLANT RUSTY JORDAN**

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**FILED**  
 APR 27 2009  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

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## **Statement of the Case and the Facts**

Mr. Jordan was previously sent to prison for a possession of cocaine, vandalism, forgery, and receiving stolen property—all fourth or fifth degree felonies.<sup>1</sup> The State introduced his judgment entry of sentence into evidence, which included postrelease control, but did not introduce any evidence of whether the trial court properly imposed postrelease control on Mr. Jordan during his sentencing hearings as required by R.C. 2929.19(B)(3).

Upon Mr. Jordan's release from prison, the Ohio Adult Parole Authority purported to impose postrelease control. Mr. Jordan failed to report, and was charged with escape. He argued that the State failed to prove that the trial court's entry was valid because the State failed to prove that the trial court properly notified him of postrelease control under R.C. 2929.19(B)(3). The court of appeals rejected that argument holding that the State need not prove that the Adult Parole Authority had authority to impose postrelease control.

The court of appeals certified a conflict, and this Court accepted this case as both a discretionary appeal and certified conflict.

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<sup>1</sup> The statement of the law and the case is based entirely on the court of appeals opinion. Apx. at A-7.

## Argument

### **Proposition of Law No. I:**

**In order to prove escape from postrelease control, the State must show that a trial court imposed postrelease control in open court pursuant to R.C. 2929.19(B)(3) and then journalized the sanction in the judgment entry of sentence. State v. Bezak, 114 Ohio St.3d 94, 2007-Ohio-3250, ¶ 16, applied.**

The State did not prove that any trial court imposed postrelease control in open court. Accordingly, the State failed to meet its burden to prove detention beyond a reasonable doubt, and this Court should vacate Mr. Jordan's conviction.

- I. Notification of postrelease control in court is not a mere formality. It is legally and practically essential.**
  - A. Without a judicial imposition in of postrelease control in open court and in the journal entry of sentence, the Adult Parole Authority is without authority to impose the sanction.**
    - 1. Detention requires "supervision."**

A defendant cannot be guilty of "escape" unless he or she is "under detention[.]" R.C. 2921.34(A)(1).<sup>2</sup> "Detention" includes "supervision by an employee of the department of rehabilitation and correction of a person on any type of release from a state correctional institution," R.C. 2929.21(E).

This Court has held that the Ohio Adult Parole Authority (APA) cannot impose postrelease control unless a trial court imposes the sanction at the

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<sup>2</sup> "No person, knowing the person is under detention or being reckless in that regard, shall purposely break or attempt to break the detention, or purposely fail to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement."

sentencing hearing and journalizes the sentence in the final judgment entry. “[W]hen a trial court fails to notify an offender that he may be subject to postrelease control at a sentencing hearing, as required by former R.C. 2929.19(B)(3), the sentence is void. . . .” Bezak at ¶16. Further, this Court has ruled that unless postrelease control is imposed at the sentencing hearing and the judgment entry, “*the Adult Parole Authority is without authority to impose it.*” Hernandez v. Kelley, 108 Ohio St.3d 395, 2006-Ohio-126, at ¶20, quoting State v. Jordan, 104 Ohio St.3d 21, 2004-Ohio-6085, at ¶19 (emphasis supplied by the Court in Herndandez). Otherwise, postrelease control would not have survived a separation of powers challenge. Woods v. Telb, 89 Ohio St.3d 504, 512-3, 2000-Ohio-171.

“[W]ithout authority” means “without authority.” Absent a judgment that includes postrelease control, a detention order from the APA is void and meaningless. A court cannot punish a person for violating a void court order. See, e.g., In re Guardianship of Jadwisiak (1992), 64 Ohio St.3d 176, 184 (“If the order is void, the violation of the order is not contempt”). In the case of postrelease control, a defendant is not under “detention” unless the Adult Parole Authority has authority to impose the sanction.

## **2. “Supervision” requires authority.**

“Words used in a statute must be accorded their usual, normal or customary meaning. ‘Supervisor’ is defined ‘in a broad sense, [as] one having authority over others, to superintend and direct.’” State ex rel. Hawkins v. Pickaway County Bd. of Elections (1996), 75 Ohio St.3d 275, 277, quoting

Black's Law Dictionary (6 Ed.1990) 1438. Without authority, supervision becomes suggestion. And a person giving another suggestions is not "supervising" that person in the logical sense of the word.

Ex-offenders who commit new crimes can be prosecuted for those offenses. But when the executive branch oversteps its authority and imposes postrelease control without a court entry based on a sentence imposed in open court, the ex-offender has no duty to comply. He is not under "detention." He is not under "supervision." He cannot be prosecuted for leading a lawful life without reporting to his would-be parole officer.

**B. Trial courts must provide impose postrelease control in open court because defendants frequently do not see the judgment entry of sentence.**

As this Court held in Woods v. Telb, 89 Ohio St.3d 504, 512-3, 2000-Ohio-171, R.C. 2967.28, the postrelease control statute, would be unconstitutional if the APA could impose the sanction without a judgment entry of sentence based on imposition in open court. But in addition to getting the statute over the separation-of-powers hurdle, imposition in open court also provides notice to the defendant and ensures that the defendant is aware of his or her actual responsibilities.

A defendant does not always receive a copy of their judgment entry of sentence. In many counties, one copy of the entry is sent to the institution, and another to counsel. The First District recognized the practical need to notify a defendant in open court because:

A notice written on a sentencing entry merely stating that the defendant is subject to post-release control under R.C. 2967.28 is

insufficient notice. That is because, at least in this county, the defendant does not see the journal entry of the sentence either at the sentencing hearing or at the plea hearing. How could a defendant possibly be notified by a paper he or she has never seen?

State v. Brown, 1<sup>st</sup> Dist. Nos. C-020162, C-020163, C-020164, 2002-Ohio-5983, at ¶27. Accordingly, without imposition in open court, an entry purporting to impose postrelease control is void, and the defendant is without notice of his or her responsibilities. More importantly, any attempt by the APA to “supervise” a defendant results in only suggestions, not “supervision.” Without “supervision,” the defendant is not subject to “detention.” Without “detention,” the defendant has nothing from which to “escape.”

**C. The State must prove that a defendant broke “detention, or purposely fail[ed] to return to detention. . . .”**

Actual detention, as defined in R.C. 2921.01(E), is an element of escape. The State may assert that R.C. 2921.34(B) transforms the element into an affirmative defense, but the State would be mistaken. Under R.C. 2921.34(B):

[I]rregularity or lack of jurisdiction is an affirmative defense only if either of the following occurs:

- (1) The escape involved no substantial risk of harm to the person or property of another.
- (2) The detaining authority knew or should have known there was no legal basis or authority for the detention.

This section does not change the fact that R.C. 2921.34(A)(1) requires “detention,” that R.C. 2921.01(E) requires supervision, and that the word “supervision” requires authority to control the actions of the defendant. Once the State proves actual detention, the burden would shift to the defendant to prove the affirmative defense, but here, the State did not meet its burden.

A lack of actual detention is an element, not an affirmative defense under R.C. 2901.05(D)(1)(b), because whether postrelease control was imposed in open court is not “peculiarly within the knowledge of the accused. . . .” The prosecution need only ask for a transcription of the hearing.

## **II. The State has adequate means of protecting the public.**

Following the statutory requirement to require the State to prove detention beyond a reasonable doubt is not a significant imposition on the State. First, the State need only obtain the judgment entry and sentencing transcript from the case that allegedly imposed postrelease control. Second, the APA has adequate means of deterring improper behavior of defendants on postrelease control. The APA has developed a “sanctions grid” based on research as to which behaviors are most dangerous, and on which sanctions are most effective. See, e.g., “Ohio’s Evidence-Based Approach to Community Sanctions and Supervision,” Sara Andrews, Superintendent, Ohio Adult Parole Authority, and Linda S. Janes, Chief, Ohio Bureau of Community Sanctions;<sup>3</sup> and “Sanctions for Violations of Conditions of Supervision,” Department of Rehabilitation and Correction Policy No. 100-APA-14.<sup>4</sup> Accordingly, requiring the State to prove detention beyond a reasonable doubt will not endanger the public.

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<sup>3</sup> <<<http://nicic.org/Downloads/PDF/Library/period304.pdf>>> (downloaded April 27, 2009).

<sup>4</sup> <<[http://www.drc.ohio.gov/web/drc\\_policies/documents/100-APA-14.pdf](http://www.drc.ohio.gov/web/drc_policies/documents/100-APA-14.pdf)>> (downloaded April 27, 2009).

**III. The State's failure to prove detention beyond a reasonable doubt violated Mr. Jordan's right to have the State prove all elements of his offense beyond a reasonable doubt.**

The State's failure to prove detention violated Mr. Jordan's right to be convicted only upon sufficient evidence proven beyond a reasonable doubt to a jury. Fifth, Sixth and Fourteenth Amendments to the United States Constitution. In re Winship (1970), 397 U.S. 358. Further, any attempt to make the defendant prove the lack of detention would be an improper effort to "seek to shift to [the defendant] the burden of proving any of those elements. . . ." Martin v. Ohio (1987), 480 U.S. 228, 233; Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

**Certified Question:**

**If a defendant is under *actual* detention, can the defendant be convicted of escape under R.C. 2921.34(A)(1) when the record demonstrates that the defendant knew he was under detention or was reckless in that regard, irrespective of whether the defendant was *properly* under said detention?<sup>5</sup>**

Mr. Jordan respectfully submits that the Court of Appeals misstates the true conflict. Mr. Jordan does not concede that he was under "*actual* detention[.]" Emphasis supplied by the court of appeals. The APA purported to supervise Mr. Jordan, but, as he argues above, a defendant is not subject to postrelease control, and therefore not "detained," unless a trial court imposes the sanction in open court and journalizes that imposition in the judgment entry of sentence. Accordingly, this Court should hold that the State has not proven that a defendant is under postrelease control "detention" unless the

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<sup>5</sup> Emphasis in original.

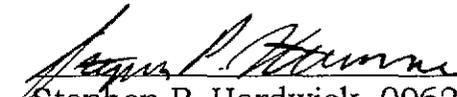
State shows that a trial court imposed postrelease control at the sentencing hearing and journalized that imposition in the judgment entry of sentence.

**Conclusion**

The Ohio Adult Parole Authority has no authority to impose postrelease control unless the trial court has both imposed postrelease control in open court and journalized that imposition in a journal entry. Here, because the State failed to prove that the trial court imposed postrelease control in open court, it failed to show that he was under APA "supervision." Accordingly, the State failed to prove that the APA actually "detained" Mr. Jordan, and this Court should vacate his conviction for "escape."

Respectfully submitted,

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**Certificate of Service**

I certify that a copy of the foregoing was sent by e-mail to Denise Martin, Assistant Marion County Prosecutor at [dmartin@co.marion.oh.us](mailto:dmartin@co.marion.oh.us), on April 27, 2009.

  
\_\_\_\_\_  
Stephen P. Hardwick

IN THE SUPREME COURT OF OHIO

State of Ohio, :  
 : Case Nos. 2008-2172 and 2008-2119  
 Appellee, :  
 :  
 v. : On Appeal and Certified Conflict from  
 : the Marion County Court of Appeals,  
 : Third Appellate District, Case No. 9-  
 Rusty Jordan, : 08-11  
 :  
 Appellant. :

---

**APPENDIX TO**

**MERIT BRIEF OF APPELLANT RUSTY JORDAN**

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IN THE SUPREME COURT OF OHIO

State of Ohio,  
Appellee,  
v.  
Rusty Jordan,  
Appellant.

:  
: **08-2119**  
: Case No. \_\_\_\_\_  
:  
:  
: On Appeal from the Marion County  
: Court of Appeals, Third Appellate  
: District, Case No. 9-08-11  
:  
:

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**NOTICE OF APPEAL OF APPELLANT RUSTY JORDAN**

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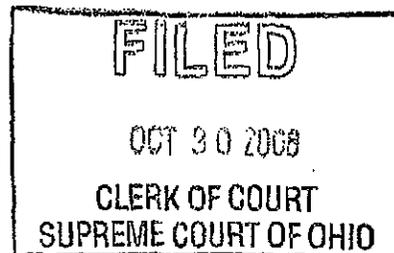
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**Notice of Appeal of Appellant Rusty Jordan**

Appellant Rusty Jordan hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Marion County Court of Appeals, Third Appellate District, entered in Court of Appeals Case No. 9-08-11 on September 15, 2008.

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

Respectfully submitted,

Office of the Ohio Public Defender



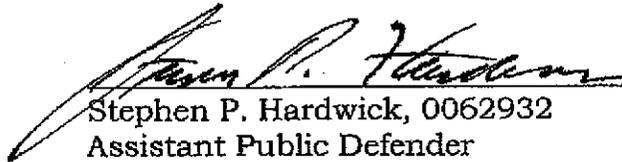
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I certify that I mailed the foregoing **NOTICE OF APPEAL OF APPELLANT RUSTY JORDAN** was sent by regular U.S. Mail, postage prepaid to Renee Potts, Assistant Marion County Prosecutor, 134 E. Center Street, Marion, Ohio 43302 on October 30, 2008.

  
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IN THE SUPREME COURT OF OHIO

State of Ohio, :  
 : Case No. 08-2172  
 Appellee, :  
 :  
 v. : On Certified Conflict from the Marion  
 : County Court of Appeals, Third  
 Rusty Jordan, : Appellate District, Case No. 9-08-11  
 :  
 Appellant. :

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**APPELLANT RUSTY JORDAN'S NOTICE OF CERTIFIED CONFLICT**

---

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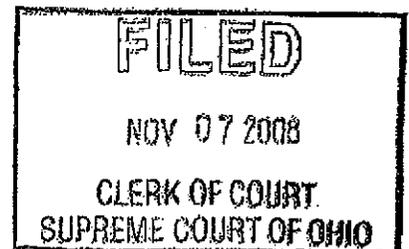
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**Appellant Rusty Jordan's Notice of Certified Conflict**

Appellant Rusty Jordan hereby gives notice to the Supreme Court of Ohio that on November 5, 2008, the Marion County Court of Appeals, Third Appellate District, certified a conflict between its September 15, 2008 judgment entered in this case, Marion App. No. 9-08-11, and the decision of the Summit County Court of Appeals, Ninth Appellate District, in State v. North, Lorain App. No. 06CA009063, 2007-Ohio-5383. The opinions are attached as Exhibits 2 and 3.

Mr. Jordan asked the court of appeals to certify the following question:

May a criminal defendant be convicted of 'escape' from postrelease control when the Adult Parole Authority lacked authority to impose the sanction pursuant to Hernandez v. Kelly, 108 Ohio St.3d 395, 2006-Ohio-126?

The Court of Appeals certified the following question:

If a defendant is under *actual* detention, can the defendant be convicted of escape under R.C. 2921.34(A)(1) when the record demonstrates that the defendant knew he was under detention or was reckless in that regard, irrespective of whether the defendant was *properly* under said detention?

Entry certifying a conflict, Exhibit 1.

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

Respectfully submitted,

Office of the Ohio Public Defender



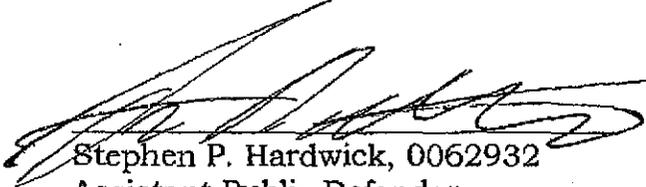
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IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO  
MARION COUNTY

STATE OF OHIO,

FILED  
COURT OF APPEALS

SEP 15 2008

PLAINTIFF-APPELLEE,

MARION COUNTY OHIO  
JULIE M. KAGEL, CLERK

CASE NO. 9-08-11

v.

RUSTY JORDAN,

JOURNAL  
ENTRY

DEFENDANT-APPELLANT.

For the reasons stated in the opinion of this Court rendered herein, the assignments of error are overruled, and it is the judgment and order of this Court that the judgment of the trial court is affirmed at the costs of the appellant for which judgment is rendered and that the cause be remanded to that court for execution.

It is further ordered that the Clerk of this Court certify a copy of this judgment to that court as the mandate prescribed by Appellate Rule 27 or by any other provision of law, and also furnish a copy of any opinion filed concurrently herewith directly to the trial judge and parties of record.

*Vernon Z. Boston*  
*John B. Hillman*  
JUDGES

DATED: September 11, 2008  
/jlr

**IN THE COURT OF APPEALS  
THIRD APPELLATE DISTRICT  
MARION COUNTY**

**FILED  
COURT OF APPEALS**

**SEP 15 2008**

**MARION COUNTY OHIO  
JULIE M. KAGEL, CLERK**

**STATE OF OHIO,**

**PLAINTIFF-APPELLEE,**

**CASE NO. 9-08-11**

**v.**

**RUSTY JORDAN,**

**OPINION**

**DEFENDANT-APPELLANT.**

**CHARACTER OF PROCEEDINGS: An Appeal from Common Pleas Court**

**JUDGMENT: Judgment Affirmed**

**DATE OF JUDGMENT ENTRY: September 15, 2008**

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For Appellee**

Case No. 9-08-11

**PRESTON, J.**

{¶1} Defendant-appellant, Rusty Jordan (hereinafter "Jordan"), appeals the judgment of the Marion County Court of Common Pleas. For the reasons that follow, we affirm.

{¶2} On October 31, 2007, the Marion County Grand Jury indicted Jordan on one count of escape, in violation of R.C. 2921.34, a third degree felony. The charge stemmed from Jordan's violation of postrelease control. Jordan was placed on postrelease control following his release from prison. A jury trial was conducted on January 7-8, 2008. The jury found Jordan guilty of escape. Thereafter, the trial court sentenced Jordan to three years imprisonment.

{¶3} It is from this judgment that Jordan appeals and asserts five assignments of error for our review. For clarity of analysis, we have combined Jordan's first, second, and third assignments of error.

**ASSIGNMENT OF ERROR NO. I**

**THE JURY'S GUILTY VERDICT WAS AGAINST THE  
MANIFEST WEIGHT OF THE EVIDENCE**

**ASSIGNMENT OF ERROR NO. II**

**THE CONVICTION OF ESCAPE WAS NOT SUPPORTED  
BY SUFFICIENT EVDIENCE**

**ASSIGNMENT OF ERROR NO. III**

**THE TRIAL COURT DID NOT HAVE THE AUTHORITY  
TO SENTENCE APPELLANT DUE TO THE FACT THERE**

Case No. 9-08-11

**WAS A LACK OF PROOF THAT APPELLANT WAS  
UNDER DETENTION**

{¶4} In his first assignment of error, Jordan argues that the jury's verdict was against the manifest weight of the evidence. Jordan argues that: (1) the trial court has to inform the defendant about postrelease control at the sentencing hearing and in the sentencing entry; (2) the prosecution had the burden to prove that Jordan was properly placed on postrelease control; and (3) R.C. 2921.34, the escape statute, requires that the defendant be under detention and since Jordan was not properly under detention, the guilty verdict was erroneous. Further, Jordan argues that "since the Escape statute requires that appellee prove beyond a reasonable doubt that appellant had a specific intention to break or attempt to break detention, and appellant never even understood he was under detention, the jury did clearly lose its way in finding appellant guilty of Escape." (Appellant's Brief at 13).

{¶5} Jordan argues, in his second assignment of error, that since the prosecution presented no evidence that he had been notified about postrelease control at his sentencing hearing that his conviction was not supported by sufficient evidence.

{¶6} In Jordan's third assignment of error, he asserts that since the prosecution presented no evidence that the trial court his notified him of postrelease control at the sentencing hearing the original judgment entry imposing

Case No. 9-08-11

sentence was void. Thus, Jordan asserts, he was never lawfully sentenced to postrelease control, and the trial court had no authority to sentence him on the escape.

{¶7} When reviewing the sufficiency of the evidence, “[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks* (1981), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶8} However, when determining whether a conviction is against the manifest weight of the evidence, a reviewing court must examine the entire record, “[weigh] the evidence and all reasonable inferences, consider the credibility of witnesses and [determine] whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” ” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541, quoting *State v. Martin* (1983), 20 Ohio App. 3d 172, 175, 485 N.E.2d 717.

{¶9} Jordan was convicted of escape, under R.C. 2921.34, which provides:

**(A)(1) No person, knowing the person is under detention or being reckless in that regard, shall purposely break or attempt to break the detention, or purposely fail to return to detention, either following temporary leave granted for a specific purpose**

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or limited period, or at the time required when serving a sentence in intermittent confinement.

\* \* \*

"Detention" is defined, in pertinent part, to include: "\* \* \* supervision by an employee of the department of rehabilitation and correction of a person on any type of release from a state correctional institution \* \* \*". R.C. 2921.01(E). See also, *State v. Boggs*, 2<sup>nd</sup> Dist. No. 22081, 2008-Ohio-1583, ¶¶12-14 (a person on post release control is under detention for purposes of the escape statute).

{¶10} At the trial, Jeremy Hecker, an Adult Parole Authority employee and Jordan's parole officer, testified that Jordan had been in prison at North Central Correctional Institution in Marion. (Tr. 1/7/08-1/8/08 at 91-92). Hecker testified that Jordan was on parole for Marion County Common Pleas Court Case Number 05 CR 438, and identified State's Exhibit Number 5, the journal entry from that case. (Id. at 92). The aforementioned case involved: possession of cocaine, a fifth degree felony; vandalism, a fifth degree felony; two forgeries, both fifth degree felonies; and receiving stolen property, a fourth degree felony. (Id. at 83); (State's Ex. 5). Hecker testified that Jordan was placed on postrelease control because he owed restitution. (Id. at 94).

{¶11} Hecker checked the address that Jordan was going to be living with his mother at 311 Olney Avenue in Marion and approved the address. (Id. at 94-96, 101). Jordan's mother called Hecker and informed him that she had moved to

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an apartment at 243 West Pleasant Street, and Hecker approved the apartment over the phone. (Id. at 104). Hecker testified that on December 13th Jordan signed a paper with his monitored time conditions listed. (Id. at 108); (State's Ex. 2B). Hecker testified that he explained various things to his parolees including: "if they abscond supervision [they] can and probably will be charged with the offense of Escape." (Id. at 109).

{¶12} On December 18, 2006, Hecker received a telephone call from the Marion Police Department. (Id. at 112). Later, Jordan was arrested and Hecker placed him on an APA hold. (Id.). Hecker then issued Jordan a written sanction, which indicated that Jordan's postrelease control was bumped up from monitored time to basic supervision. (Id. at 113). On December 26th, Hecker reviewed the basic conditions of supervision with Jordan, and Jordan signed the document. (Id. at 120); (State's Ex. 6). The third condition of supervision provided: "I understand if I'm a releasee and abscond supervision I may be prosecuted for a crime of Escape under Section 2921.34 of the Revised Code." (Tr. 1/7/08-1/8/08 at 117); (State's Ex. 6). The conditions also included that Jordan was to report to Hecker the first Wednesday of every month. (Id. at 119); (Id.).

{¶13} Jordan reported on January 3rd, February 7th, March 7th, and April 4th at the old warden's house in front of the North Central Correctional

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Institution. (Tr. 1/7/08-1/8/08 at 122-125).<sup>1</sup> Hecker testified that on April 18th, Patrolman Zacharias "advised he was at the offender's residence and nobody would answer the door. He thought the offender might be in there. He advised the landlord was there and the door was unlocked." (Id. at 126). Hecker went to Jordan's residence with Patrolman Zacharias and searched the residence for Jordan. (Id.). Thereafter, Hecker "faxed an Order to Arrest to the Police Department and the Sheriff's Department." (Id. at 127).

{¶14} On May 2nd, Jordan reported for his visit and was arrested. (Id. at 127). Hecker testified "I actually applauded him for reporting when he probably knew he was gonna be arrested, and I explained to him at that time that he did the right thing because if he runs from me it is Escape." (Id. at 127). Jordan was released on June 4, 2007. (Id. at 128).

{¶15} Hecker testified that Jordan reported for his scheduled visit on June 6th. (Id. at 128). According to Hecker, Jordan was instructed to report on July 3, 2007 at the Multi-County Jail because the white house, which was used for reporting, was being used for training. (Id. at 129). Hecker testified that a note was placed on the door instructing people to report to the jail. (Id. at 129). Jordan did not report as directed. (Id. at 129). Hecker went to Jordan's residence but did not make any contact with Jordan. (Id. at 129). Hecker left his business card at

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<sup>1</sup> The old warden's house is also referred to as the "white house" in this opinion.

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the residence. (Id. at 129-30). According to Hecker, Jordan called him and said that he forgot to report, so Hecker told Jordan to report on July 18th at the jail. (Id. at 130).

{¶16} On July 18th, Patrolman Zacharias called and informed Hecker that they were looking for Jordan due to another incident. (Id. at 131). Jordan did not report on July 18th. (Id. at 131). That same day, Hecker faxed an order to arrest to both the police department and the sheriff's department. (Id. at 131-32).

{¶17} On August 5th, Hecker and the Police Department went to Jordan's residence at 243 West Pleasant Street and made contact with Jordan's mother. (Id. at 132). According to Hecker, Jordan's mom stated that "he wasn't there and hadn't been staying there," and she advised that he may be at a different residence. (Id.). However, they did not locate Jordan at that address either. (Id.). Hecker was advised that Jordan was hanging out with Ryan Nelson, and they contacted Nelson who said that he was not there. (Id. at 133).

{¶18} On August 9th, Hecker received a voice mail from Jordan stating that he had gone to the sheriff's department, and they did not have a warrant for him. (Id.) Jordan left a telephone number and Hecker called that number but got an answering machine, and so, he left a message telling Jordan to turn himself in at the Marion Police Department because there was a local order to arrest. (Id.).

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Hecker testified that Jordan did not turn himself in and did not report in August. (Id. at 134).

{¶19} On August 17th, Hecker and Patrolman Cox went to Jordan's APA approved residence at 243 West Pleasant Street and made contact with a neighbor who said that Jordan and his family moved out. (Id. at 134). Hecker and Patrolman Cox went up to the apartment, and it was completely empty. (Id.) Hecker testified that Jordan had not notified him that he had changed his residence. (Id.)

{¶20} On August 20th, Jordan was officially declared "whereabouts unknown," and Hecker sent an e-mail requesting a statewide warrant. (Id. at 135). On October 12th, Hecker received an e-mail advising him that Jordan was residing at 554 Wilson Street, and he forwarded the e-mail to the police department. (Id. at 136). Later, Hecker was informed that Jordan was arrested at 554 Wilson Street. (Id. at 136-7).

{¶21} On cross-examination, Hecker testified that he had previously come into contact with Jordan when he was at Owens Street Apartments looking for someone else, and Jordan had cussed at him and other people and called them "pigs." (Id. at 141). Hecker testified that if someone in Marion wanted to call him that it would be a long distance telephone call. (Id. at 141-42). Hecker testified that to his knowledge Jordan had not been out of the county. (Id. at 151).

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{¶22} On redirect examination, Hecker testified that the other 80 or 90 people that he supervised were able to find him after the reporting location changed to the Multi-County Jail. (Id. at 154-56).

{¶23} Patrolman Keith Cox, employed by the Marion City Police Department, testified that he assisted Hecker in looking for Jordan at 243 West Pleasant Street on August 17, 2007. (Id. at 160). Patrolman Cox testified that he was "advised by a neighbor that the people in the apartment had moved out." (Id. at 160). According to Patrolman Cox, the apartment was empty. (Id. at 161).

{¶24} Donnie Lutz, the maintenance manager at West Pleasant street, testified that Cindy Jordan, Ryan Johnson, and Marty Madison were listed on the lease, and they moved out approximately the second week of August. (Id. at 163). On cross-examination, Lutz testified that the roof of the apartment had been leaking in the apartment occupied by the Jordans. (Id. at 165).

{¶25} Jon Shaffer, a lieutenant at the Marion Police Department, testified that he received information that Hecker was looking for Jordan, and he along with three other police officers attempted to locate Jordan at an address given to them. (Id. at 84-85). When he arrived at the residence, he noticed a couple of children playing out back, and he walked to the front of the house where other officers were knocking on the door. (Id. at 86). No one answered the door. (Id.). Shaffer walked around to the back of the house to say something to the children

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when someone waived the children inside the residence. (Id.) The police knocked on the front door several times, rang the doorbell, and knocked on the back door. (Id.) Shaffer then yelled at the window that they were looking for Jordan and he needed to come to the door. (Id.) Shaffer testified that Jordan came to the door and was arrested. According to Shaffer, the police found Jordan at 554 Wilson Street in Marion. (Id. at 87).

{¶26} On cross-examination, Shaffer testified that Hecker wanted Jordan arrested on a parole violation but he was not aware of a warrant. (Id. at 87). Shaffer testified that he did not believe that Jordan gave anyone any trouble when he was picked up by the police. (Id. at 88). According to Shaffer, there was no indication how long Jordan had resided at that residence. (Id.).

{¶27} The defense presented the testimony of Jason Dutton, Randy Spencer, Cindy Murray Jordan, and Jordan. Jason Dutton and Randy Spencer both work at the Marion County Sheriff's Department and testified that they did not recall Jordan coming into the sheriff's department. (Id. at 179, 181).

{¶28} Cindy Murray Jordan, Jordan's mother, testified that Hecker came to the apartment and said that he had a warrant for Jordan's arrest. (Id. at 184-86). Cindy testified that she took Jordan to the sheriff's department on August 8, they checked the computers and the search took 15 to 20 minutes, however, there was not a warrant. (Id.). Further, Cindy testified that if Jordan "wasn't in jail then he

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was living with me on West Pleasant. And then August 11th we moved over on Wilson." (Id. at 188). Cindy testified that they moved because the roof leaked and there were health problems there. (Id.).

{¶29} Jordan testified that on December 12, 2006, he was released from the penitentiary. (Id. at 205). Jordan testified that he found out that he was going to be on postrelease control approximately two weeks before his release date. (Id. at 205). Jordan testified that he called Hecker upon his release and met him at the Multi-County Jail. (Id.). During the meeting, Hecker said that he remembered him from a past "run in." (Id. at 206). Jordan signed papers and "got out of there." (Id.).

{¶30} Jordan testified that he missed his reporting on July 3rd and called Hecker to tell him that he missed because there was no one there. (Id. at 207). Jordan testified that Hecker did not verbally tell him that they were going to be meeting at the Multi-County Jail. (Id.). Further, Jordan testified that he did not "have the knowledge that they could put a new felony Escape on [him]." (Id. at 208).

{¶31} On cross-examination, Jordan testified that he did not report to the Multi-County Jail nor the white house on July 18th. (Id. at 219). Jordan further testified that he did not report in August. (Id. at 220). Jordan testified that he went to the sheriff's department on August 8th. (Id. at 220). Jordan testified that

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he called Hecker and left a message with a phone number, and that he had no recollection of receiving a message from Hecker. (Id. at 222). Additionally, Jordan testified that he did not report in September or October and that he did not report for forty eight days. (Id. at 222-23). Jordan also testified that he moved but did not tell Hecker where he was living. (Id. at 224). Jordan stated:

**\* \* \* I'm saying that I never left Marion County. I never jumped no walls. I never ran from the police when they come to arrest me. I come out the door with my hands up. I done nothing in an Escape formality. I absolutely did not. I did not report and I changed my address and I've been held accountable for that at the Multi-County Jail.**

(Id. at 226).

{¶32} The Ohio Supreme Court has held:

**[w]hen a trial court fails to notify an offender that he may be subject to postrelease control at a sentencing hearing, as required by former R.C. 2929.19(B)(3), the sentence is void; the sentence must be vacated and the matter remanded to the trial court for resentencing. The trial court must resentence the offender as if there had been no original sentence. When a defendant is convicted of or pleads guilty to one or more offenses and postrelease control is not properly included in a sentence for a particular offense, the sentence for that offense is void. The offender is entitled to a new sentencing hearing for that particular offense.**

*State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶16.

However, in order to convict Jordan of escape, the prosecution did not need to prove beyond a reasonable doubt that Jordan was *properly* under detention, but rather, that Jordan knew he was under detention or that he was being reckless in

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that regard. R.C. 2921.34; *State v. Howard* (1969), 20 Ohio App.2d 347, 254 N.E.2d 390 (escape conviction is not affected by the validity of the sentence which the defendant was serving at the time of the defendant's escape).

{¶33} Both Hecker and Jordan's testimonies show that Jordan knew that he was on postrelease control. Jordan testified that he was informed that he was going to be on postrelease control prior to being released from the penitentiary, and he contacted Hecker after being released. (Tr. 1/7/08-1/8/08 at 205). Hecker testified that Jordan initially reported as required, and he signed paperwork regarding postrelease control. (Id. at 120, 122-125); (State's Ex. 6). Further, Jordan purposely broke or attempted to break the detention when he violated his postrelease control by not reporting to his parole officer in July or August.<sup>2</sup>

{¶34} After viewing the record, in a light most favorable to the prosecution, we find that a rational trier of fact could find all of the elements of escape beyond a reasonable doubt. Additionally, we cannot find that the jury lost its way or created a manifest miscarriage of justice when it found Jordan guilty of escape. Finally, based on our previous finding that the prosecution did not need to prove that Jordan was *properly* under detention, we find that the trial court was authorized to sentence Jordan for escape.

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<sup>2</sup> The Bill of Particulars alleges that Jordan failed "to report to his parole officer on July 3, 2007 and/or July 18, 2007 and/or August 8, 2007."

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{¶35} Jordan's first, second, and third assignments of error are, therefore, overruled.

#### ASSIGNMENT OF ERROR NO. IV

##### THE TRIAL COURT ERRED BY GIVING A CONFUSING JURY INSTRUCTION ON ESCAPE.

{¶36} In his fourth assignment of error, Jordan maintains that the trial court erred by providing a confusing jury instruction on escape.

{¶37} Crim.R. 30(A) provides, in pertinent part: "[o]n appeal, a party may not assign as error the giving or the failure to give any instructions unless the party objects before the jury retires to consider its verdict, stating specifically the matter objected to and the grounds of the objection." The failure to object to jury instructions constitutes a waiver of that issue absent plain error. *State v. Bridge*, 3d Dist. No. 1-06-30, 2007-Ohio-1764, ¶19, citing *State v. Underwood* (1983), 3 Ohio St.3d 12, 13, 444 N.E.2d 1332. "Under the plain error standard, the appellant must demonstrate that, but for the error, the outcome of his trial would clearly have been different." *Id.* at ¶20, citations omitted.

{¶38} In the present case, the prosecution objected to the jury instruction before the jury retired to reach a verdict; however, the defense did not object to the jury instruction. In fact, defense counsel indicated that he did not see it as damaging to the defense. (Tr. 1/7/08-1/8/08 at 268). Since the defense did not

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object to the jury instruction, the defense waived the issue absent plain error. *Bridge*, 2007-Ohio-1764, at ¶19, citing *Underwood*, 3 Ohio St.3d at 13.

{¶39} Jordan has not demonstrated that the outcome of his trial would have been different if the trial court's jury instructions had been different. As previously noted, Jordan testified that he failed to report in July and August. (*Id.* at 119-20). Accordingly, Jordan has failed to meet the plain error standard of review.

{¶40} Jordan's fourth assignment of error is overruled.

#### ASSIGNMENT OF ERROR NO. V

#### APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL

{¶41} Jordan argues that he was denied effective assistance of trial counsel. Specifically, Jordan argues that his trial counsel was ineffective because trial counsel: (1) failed to join the prosecutor in requesting a modification of the jury instruction; (2) failed to move for dismissal of the case because there was no proof that Jordan was informed at the original sentencing hearing about postrelease control; (3) failed to object to hearsay evidence; and (4) failed to object to evidence that was irrelevant and prejudicial.

{¶42} "It is well-settled that in order to establish a claim of ineffective assistance of counsel, appellant must show two components: (1) counsel's performance was deficient or unreasonable under the circumstances; and (2) the

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deficient performance prejudiced the defense.” *State v. Price*, 3d Dist. No. 13-05-03, 2006-Ohio-4192, ¶6, citing *State v. Kole* (2001), 92 Ohio St.3d 303, 306, 750 N.E.2d 148, citing *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674. “To warrant reversal, the appellant must show that there is a reasonable probability that, but for counsel’s performance, the result of the proceeding would have been different.” *Id.*, citing *State v. Strickland*, 466 U.S. at 687.

{¶43} “In order to show that an attorney’s conduct was deficient or unreasonable, the appellant must overcome the presumption that the attorney provided competent representation by showing that the attorney’s actions were not trial strategies prompted by ‘reasonable professional judgment.’” *Id.* at ¶7, citing *Strickland*, 466 U.S. at 687. “Trial counsel is entitled to a strong presumption that all decisions fall within the wide range of reasonable professional assistance.” *Id.*, quoting *State v. Sallie* (1998), 81 Ohio St.3d 673, 675, 693 N.E.2d 267, citing *State v. Thompson* (1987), 33 Ohio St.3d 1, 514 N.E.2d 407.

{¶44} First, Jordan maintains that his trial counsel was ineffective for not joining the prosecution’s request to modify the jury instruction. However, Jordan’s trial counsel’s decision not to join in the prosecution’s objection to the jury instruction was a matter of trial strategy, and thus, does not constitute

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ineffective assistance of counsel. *Price*, 2006-Ohio-4192, at ¶7, citing *Strickland*, 466 U.S. at 687.

{¶45} Second, Jordan maintains that trial counsel was ineffective for failing to file a motion to dismiss because the prosecution presented no proof that he was informed about postrelease control at his original sentencing hearing. However, in Jordan's second assignment of error, we determined that there was sufficient evidence for Jordan to be convicted of escape. As a result, there is not a reasonable probability that the outcome of the trial would be different but for trial counsel's failure to file a motion to dismiss.

{¶46} Third, Jordan claims that trial counsel was ineffective for failing to object to hearsay evidence including Patrolman Zacharias' testimony that: Cindy stated that Jordan had not been staying at her residence; about an e-mail he received regarding an anonymous call about where Jordan had been residing; and that Cindy told him that Jordan needed help. In addition, Jordan claims that Patrolman Cox testified regarding a neighbor's statements and trial counsel was ineffective for not objecting. Finally, Jordan claims that trial counsel was ineffective for failing to object when the maintenance manager testified that a neighbor said Jordan and his family moved, and that he had never seen Jordan at the residence.

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{¶47} Hearsay evidence is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C). However, the aforementioned evidence does not constitute hearsay evidence as the evidence was not admitted to prove the truth of the matter asserted, but rather, to show why Hecker and the police officers took the steps that they did.

{¶48} In addition, Jordan has failed to establish that the outcome of his trial would have been different but for the aforementioned testimony.

{¶49} Fourth, Jordan maintains that his trial counsel was ineffective for failing to object to irrelevant and prejudicial evidence. Jordan maintains that the bill of particulars provided that the most serious offense that he was convicted of was a fifth degree felony, but the jury instructions and the written verdict form stated that the most serious offense was a fourth degree felony. Jordan also maintains that the bill of particulars did not include anything about him failing to inform Hecker about a new address, and trial counsel was ineffective for failing to object. In addition, Jordan maintains that trial counsel failed to object when the prosecution asked whether any of Hecker's other parolees had any difficulty reporting at the new location. Finally, Jordan maintains that trial counsel was ineffective for failing to object to Cindy's testimony, on cross-examination, that she told Hecker that she thought that Jordan was using drugs again.

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{¶50} Under the escape statute, the level of offense depends upon the level of the offense with which the defendant was under confinement when he escaped. See R.C. 2921.34. Regardless of whether Jordan was under detention because of a fourth degree offense or a fifth degree offense, the crime of escape would constitute a third degree felony. R.C. 2921.34(C)(2)(b). Thus, Jordan has not shown that there is a reasonable probability that, but for his trial counsel's performance, that the result of his proceeding would have been different.

{¶51} Further, the fact that trial counsel failed to object on the basis that the bill of particulars does not contain anything about Jordan failing to inform his parole officer about changing his residence does not establish ineffective assistance of counsel in this case. Jordan testified that he failed to report, as required, on July 18th and in August, and this conduct is sufficient for an escape conviction. Thus, Jordan has failed to show that the outcome of his trial would have been different, but for, his trial counsel's conduct.

{¶52} Finally, Jordan has failed to demonstrate that but for his trial counsel's failure to object regarding Cindy's testimony the result of his trial would have been different. Thus, Jordan has failed to establish that he was provided ineffective assistance of trial counsel.

{¶53} Jordan's fifth assignment of error is overruled.

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{¶54} Having found no error prejudicial to appellant herein, in the particulars assigned and argued, we affirm the judgment of the trial court.

*Judgment Affirmed.*

**WILLAMOWSKI and ROGERS, J.J., concur.**

/jlr

## 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 VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

## 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 O.R.C. 2901.05

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED  
WITH THE SECRETARY OF STATE THROUGH APRIL 21, 2009 \*\*\*  
\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*  
\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH APRIL 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE  
CHAPTER 2901. GENERAL PROVISIONS  
IN GENERAL

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*ORC Ann. 2901.05 (2009)*

§ 2901.05. Burden and degree of proof; presumption concerning self-defense or defense of another; jury instructions concerning reasonable doubt

(A) Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution. The burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused.

(B) (1) Subject to division (B)(2) of this section, a person is presumed to have acted in self defense or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force.

(2) (a) The presumption set forth in division (B)(1) of this section does not apply if the person against whom the defensive force is used has a right to be in, or is a lawful resident of, the residence or vehicle.

(b) The presumption set forth in division (B)(1) of this section does not apply if the person who uses the defensive force uses it while in a residence or vehicle and the person is unlawfully, and without privilege to be, in that residence or vehicle.

(3) The presumption set forth in division (B)(1) of this section is a rebuttable presumption and may be rebutted by a preponderance of the evidence.

(C) As part of its charge to the jury in a criminal case, the court shall read the definitions of "reasonable doubt" and "proof beyond a reasonable doubt," contained in division (D) of this section.

(D) As used in this section,:

(1) An "affirmative defense" is either of the following:

(a) A defense expressly designated as affirmative;

(b) A defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence.

(2) "Dwelling" means a building or conveyance of any kind that has a roof over it and that is designed to be occupied by people lodging in the building or conveyance at night, regardless of whether the building or conveyance is

temporary or permanent or is mobile or immobile. As used in this division, a building or conveyance includes, but is not limited to, an attached porch, and a building or conveyance with a roof over it includes, but is not limited to, a tent.

(3) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.

(4) "Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

(E) "Reasonable doubt" is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. "Proof beyond a reasonable doubt" is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs.

**HISTORY:**

134 v H 511 (Eff 1-1-74); 137 v H 1168. Eff 11-1-78; 152 v S 184, § 1, eff. 9-9-08.

LEXSTAT ORC ANN. 2921.01

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TITLE 29. CRIMES -- PROCEDURE  
CHAPTER 2921. OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION  
IN GENERAL

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*ORC Ann. 2921.01 (2009)*

§ 2921.01. Definitions

*As used in sections 2921.01 to 2921.45 of the Revised Code:*

(A) "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers.

(B) "Public servant" means any of the following:

(1) Any public official;

(2) Any person performing ad hoc a governmental function, including, but not limited to, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant;

(3) A person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate. A person is a candidate for purposes of this division if the person has been nominated according to law for election or appointment to public office, or if the person has filed a petition or petitions as required by law to have the person's name placed on the ballot in a primary, general, or special election, or if the person campaigns as a write-in candidate in any primary, general, or special election.

(C) "Party official" means any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which the person directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

(D) "Official proceeding" means any proceeding before a legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with an official proceeding.

(E) "Detention" means arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted of crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States; hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of *section 2945.37, 2945.371 [2945.37.1], 2945.38, 2945.39, 2945.40,*

2945.401 [2945.40.1], or 2945.402 [2945.40.2] of the Revised Code; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; except as provided in this division, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; supervision by an employee of the department of rehabilitation and correction of a person on any type of release from a state correctional institution; or confinement in any vehicle, airplane, or place while being returned from outside of this state into this state by a private person or entity pursuant to a contract entered into under division (E) of section 311.29 of the Revised Code or division (B) of section 5149.03 of the Revised Code. For a person confined in a county jail who participates in a county jail industry program pursuant to section 5147.30 of the Revised Code, "detention" includes time spent at an assigned work site and going to and from the work site.

(F) "Detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States.

(G) "Valuable thing or valuable benefit" includes, but is not limited to, a contribution. This inclusion does not indicate or imply that a contribution was not included in those terms before September 17, 1986.

(H) "Campaign committee," "contribution," "political action committee," "legislative campaign fund," "political party," and "political contributing entity" have the same meanings as in section 3517.01 of the Revised Code.

(I) "Provider agreement" and "medical assistance program" have the same meanings as in section 2913.40 of the Revised Code.

## LEXSTAT ORC ANN. 2921.34

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TITLE 29. CRIMES -- PROCEDURE  
 CHAPTER 2921. OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION  
 OBSTRUCTING AND ESCAPE

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*ORC Ann. 2921.34 (2009)*

§ 2921.34. Escape

(A) (1) No person, knowing the person is under detention or being reckless in that regard, shall purposely break or attempt to break the detention, or purposely fail to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement.

(2) (a) Division (A)(2)(b) of this section applies to any person who is sentenced to a prison term pursuant to division (A)(3) or (B) of *section 2971.03 of the Revised Code*.

(b) No person to whom this division applies, for whom the requirement that the entire prison term imposed upon the person pursuant to division (A)(3) or (B) of *section 2971.03 of the Revised Code* be served in a state correctional institution has been modified pursuant to *section 2971.05 of the Revised Code*, and who, pursuant to that modification, is restricted to a geographic area, knowing that the person is under a geographic restriction or being reckless in that regard, shall purposely leave the geographic area to which the restriction applies or purposely fail to return to that geographic area following a temporary leave granted for a specific purpose or for a limited period of time.

(B) Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, is not a defense to a charge under this section if the detention is pursuant to judicial order or in a detention facility. In the case of any other detention, irregularity or lack of jurisdiction is an affirmative defense only if either of the following occurs:

- (1) The escape involved no substantial risk of harm to the person or property of another.
- (2) The detaining authority knew or should have known there was no legal basis or authority for the detention.

(C) Whoever violates this section is guilty of escape.

(1) If the offender, at the time of the commission of the offense, was under detention as an alleged or adjudicated delinquent child or unruly child and if the act for which the offender was under detention would not be a felony if committed by an adult, escape is a misdemeanor of the first degree.

(2) If the offender, at the time of the commission of the offense, was under detention in any other manner or if the offender is a person for whom the requirement that the entire prison term imposed upon the person pursuant to division (A)(3) or (B) of *section 2971.03 of the Revised Code* be served in a state correctional institution has been modified pursuant to *section 2971.05 of the Revised Code*, escape is one of the following:

(a) A felony of the second degree, when the most serious offense for which the person was under detention or for which the person had been sentenced to the prison term under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or

(c), or (B)(3)(a), (b), (c), or (d) of *section 2971.03 of the Revised Code* is aggravated murder, murder, or a felony of the first or second degree or, if the person was under detention as an alleged or adjudicated delinquent child, when the most serious act for which the person was under detention would be aggravated murder, murder, or a felony of the first or second degree if committed by an adult;

(b) A felony of the third degree, when the most serious offense for which the person was under detention or for which the person had been sentenced to the prison term under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of *section 2971.03 of the Revised Code* is a felony of the third, fourth, or fifth degree or an unclassified felony or, if the person was under detention as an alleged or adjudicated delinquent child, when the most serious act for which the person was under detention would be a felony of the third, fourth, or fifth degree or an unclassified felony if committed by an adult;

(c) A felony of the fifth degree, when any of the following applies:

(i) The most serious offense for which the person was under detention is a misdemeanor.

(ii) The person was found not guilty by reason of insanity, and the person's detention consisted of hospitalization, institutionalization, or confinement in a facility under an order made pursuant to or under authority of *section 2945.40, 2945.401 [2945.40.1], or 2945.402 [2945.40.2] of the Revised Code*.

(d) A misdemeanor of the first degree, when the most serious offense for which the person was under detention is a misdemeanor and when the person fails to return to detention at a specified time following temporary leave granted for a specific purpose or limited period or at the time required when serving a sentence in intermittent confinement.

## LEXSTAT ORC ANN. 2929.19

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

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ORC Ann. 2929.19 (2009)

§ 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 and, if the court imposes a mandatory prison term, notify the offender that the prison term is a mandatory prison term;

(b) In addition to any other information, include in the sentencing entry the name and section reference to the offense or offenses, the sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms, if sentences are imposed for multiple counts whether the sentences are to be served concurrently or consecutively, and the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications;

(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 January 1, 2008.

(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.

(8) The failure of the court to notify the offender that a prison term is a mandatory prison term pursuant to division (B)(3)(a) of this section or to include in the sentencing entry any information required by division (B)(3)(b) of this section does not affect the validity of the imposed sentence or sentences. If the sentencing court notifies the offender at the sentencing hearing that a prison term is mandatory but the sentencing entry does not specify that the prison term is mandatory, the court may complete a corrected journal entry and send copies of the corrected entry to the offender and the department of rehabilitation and correction, or, at the request of the state, the court shall complete a corrected journal entry and send copies of the corrected entry to the offender and department of rehabilitation and correction.

(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.

LEXSTAT ORC ANN. 2929.21

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

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*ORC Ann. 2929.21 (2009)*

§ 2929.21. Overriding purposes of misdemeanor sentencing; discrimination prohibited

(A) A court that sentences an offender for a misdemeanor or minor misdemeanor violation of any provision of the Revised Code, or of any municipal ordinance that is substantially similar to a misdemeanor or minor misdemeanor violation of a provision of the Revised Code, shall be guided by the overriding purposes of misdemeanor sentencing. The overriding purposes of misdemeanor 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 impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.

(B) A sentence imposed for a misdemeanor or minor misdemeanor violation of a Revised Code provision or for a violation of a municipal ordinance that is subject to division (A) of this section shall be reasonably calculated to achieve the two overriding purposes of misdemeanor 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 offenses committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a misdemeanor or minor misdemeanor violation of a Revised Code provision or for a violation of a municipal ordinance that is subject to division (A) of this section shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

(D) Divisions (A) and (B) of this section shall not apply to any offense that is disposed of by a traffic violations bureau of any court pursuant to *Traffic Rule 13* and shall not apply to any violation of any provision of the Revised Code that is a minor misdemeanor and that is disposed of without a court appearance. Divisions (A) to (C) of this section do not affect any penalties established by a municipal corporation for a violation of its ordinances.

## LEXSTAT ORC 2967.28

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

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ORC Ann. 2967.28 (2009)

§ 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 July 11, 2006, 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 July 11, 2006, 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 July 11, 2006, 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. Pursuant to an agreement entered into under *section 2967.29 of the Revised Code*, a court of common pleas or parole board may impose sanctions or conditions on an offender who is placed on post-release control under this division.

(D) (1) Before the prisoner is released from imprisonment, the parole board or, pursuant to an agreement under *section 2967.29 of the Revised Code*, the court 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 or court imposes one or more post-release control sanctions upon a prisoner, the board or court, in addition to imposing the sanctions, also shall include as a condition of the post-release control that the offender not leave the state without permission of the court or the offender's parole or probation officer and that the offender abide by the law. The board or court may impose any other conditions of release under a post-release control sanction that the board or court considers appropriate, and the conditions of release may include any community residential sanction, community non-residential 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 or court 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 or court 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 or court 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 or court shall presume that monitored time is the appropriate post-release control sanction unless the board or court 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 July 11, 2006, 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 or, pursuant to an agreement under *section 2967.29 of the Revised Code*, the court may review the releasee's behavior under the post-release control sanctions imposed upon the releasee under this section. The authority or court 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. The authority also may recommend that the parole board or court increase or reduce the duration of the period of post-release control imposed by the court. If the authority recommends that the board or court increase the duration of post-release control, the board or court shall review the releasee's behavior and may increase the duration of the period of post-release control imposed by the court up to eight years. If the authority recommends that the board or court reduce the duration of control for an offense described in division (B) or (C) of this section, the board or court 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 or court reduce the duration of the period of control imposed for an offense described in division (B)(1) of this section to a period less than the length of the stated prison term originally imposed, and in no case shall the board or court 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 or, pursuant to an agreement under *section 2967.29 of the Revised Code*, the court 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 or court may impose a more restrictive sanction upon the releasee, in accordance with the standards established under division (E) of this section or in accordance with the agreement made under *section 2967.29 of the Revised Code*, or may report the violation to the parole board for a hearing pursuant to division (F)(3) of this section. The authority or court 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 or court 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 or, pursuant to an agreement under *section 2967.29 of the Revised Code*, the court 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 or court finds that the releasee violated the sanction or condition, the board or court 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 or court may impose as a post-release control sanction a residential sanction that includes a prison term. The board or court 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. Unless a releasee's stated prison term was reduced pursuant to *section 5120.032 [5120.03.2] of the Revised Code*, 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. If a releasee's stated prison term was reduced pursuant to *section 5120.032 [5120.03.2] of the Revised Code*, the period of a prison term that is imposed as a post-release control sanction under this division and the maximum cumulative prison term for all violations under this division shall not exceed the period of time not served in prison under the sentence imposed by the court. 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 or court, 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 or court. 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 or court.