

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO : Case No. 2010-0047
 :
 Plaintiff-Appellee, : On Appeal from the
 : Hamilton County Court of Appeals,
 vs. : First Appellate District
 :
 RONALD GINGELL :
 :
 Defendant-Appellant. :

MERIT BRIEF OF APPELLANT RONALD GINGELL

Margie Slagle (0082217)
Counsel of Record
David A. Singleton (0074556)
Ohio Justice & Policy Center
215 E. Ninth Street, Suite 601
Cincinnati, Ohio 45202
(513) 421-1108 exts. 20, 17
(513) 562-3200 (fax)
mslagle@ohiojpc.org
dsingleton@ohiojpc.org

Counsel for Appellant

Joseph T. Deters (0012084)
Paula Adams (0069036)
Counsel of Record
Hamilton County Prosecuting Attorney's Office
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3228
(513) 946-3107 (fax)
Joseph.Deters@hcpros.org
Paula.Adams@hcpros.org

Counsel for Appellee

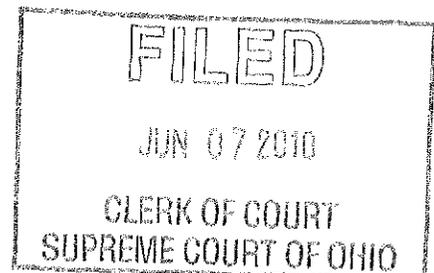


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STATEMENT OF THE CASE AND FACTS

In 1981, Ronald Gingell was convicted of three counts of rape and incarcerated.¹ In 2003, the State conducted a hearing to determine Mr. Gingell's classification and registration duties. See *id.* After the hearing, the court ordered Mr. Gingell to register as a sexually oriented offender for 10 years. See *id.* Most significantly, for purposes of this appeal, the court notified Mr. Gingell that a failure to comply with his registration duties, would constitute a fifth degree felony. See *id.*

Ohio Revised Code 2950.99 is the criminal sentencing statute that sets forth the penalty for a failure to register. Since 1997, the statute has been amended several times, and the penalty for a failure to register has become more severe. Initially, the offense was a first degree misdemeanor. When Mr. Gingell was ordered to register, the failure to register was a fifth degree felony.² After the most recent amendment effective January 1, 2008, the failure to register penalty is tied directly to the underlying sex offense conviction. R.C. 2950.99(A)(1)(a). If the underlying sex offense conviction is a felony of the first, second, third, or fourth degree felony, the failure to register is the same degree as the underlying offense. R.C. 2950.99(A)(1)(a)(ii).

¹ The Court can take judicial notice of the Hamilton County court records in *State v. Gingell*, C.P. No. B812202. See Evid.R. 201(B) and *Morgan v. Cincinnati* (1986), 25 Ohio St.3d 285, 496 N.E.2d 468.

² Former 2950.99 stated: "Whoever violates a prohibition in section 2950.04, 2950.05, or 2950.06 of the Revised Code is guilty of a felony of the fifth degree if the most serious sexually oriented offense that was the basis of the registration, change of address notification, or address verification requirement that was violated under the prohibition is a felony if committed by an adult, and a misdemeanor of the first degree if the most serious sexually oriented offense that was the basis of the registration, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor if committed by an adult."

In July 2008, Mr. Gingell was indicted for: 1) failing to notify the sheriff of a changed address and 2) failing to verify his address with the sheriff. (T.d. 1). Both offenses were charged as first degree felonies because amended R.C. 2950.99 was retroactively applied. (T.d. 1). Mr. Gingell pled guilty to the failure to verify, and the state dismissed the other charge. (T.d. 12). The court sentenced Mr. Gingell to an eight year prison term and five years of post-release control. (T.d. 18).

Mr. Gingell appealed his conviction alleging that his attorney was ineffective for failing to inform him that the offense should have been charged as a fifth degree felony and instead advising him to enter a guilty plea to a first degree felony. (App. 25). This failure resulted in a plea that was not voluntary or intelligent. (App. 25). Further, Mr. Gingell was prejudiced because trial counsel's failure resulted in a possible maximum 10 year sentence and five years of PRC rather than a maximum sentence of 1 year. (App. 25).

Mr. Gingell also asserted that the amended penalty statute was not expressly made retroactive to individuals whose duty to register predated the statute. (App. 13). He further claimed that any retroactive application of R.C. 2950.99 would violate R.C. 1.58, Ohio's retroactivity clause, the ex post facto clause, and unconstitutionally modify his final court order. (App. 13, 25). The First District Court of Appeals rejected the retroactivity argument and affirmed the trial court's judgment. See Entry Transmitting Errata, *State v. Gingell*, 1st Dist. No. C 08-01167, at ¶ 2. Because the Court concluded that the amended sentencing statute applied to Mr. Gingell, it did not address the constitutional issues or the ineffective assistance of counsel claim. *Id.*

LAW AND ARGUMENT

Proposition of Law 1: The application of the amended sentencing statute to individuals whose sex offense and duty to register predates the amendment is a retroactive application under Ohio's retroactivity analysis.

The First District Court of Appeals erroneously concluded that applying amended R.C. 2950.99 to Mr. Gingell was a prospective application because his failure to register occurred after the statute's enactment. See Entry Transmitting Errata, *State v. Gingell*, 1st Dist. No. C 08-01167, at ¶ 2. But this interpretation flies in the face of well established Ohio retroactivity jurisprudence. This Court has repeatedly held that "the retroactivity clause nullifies those new laws that 'reach back and create new burdens, new duties, new obligations, or new liabilities not existing at the time [the statute becomes effective].'" *Bielat v. Bielat* (2000), 87 Ohio St.3d 350, 352-353, 721 N.E.2d 28, quoting *Miller v. Hixson* (1901), 64 Ohio St. 39, 51, 59 N.E. 749. The threshold question is whether the amended sentencing statute reaches back and creates a new liability not existing when Mr. Gingell's duty arose.

When Mr. Gingell's duty to register arose, any subsequent failure to comply would result in a fifth degree felony. Amended 2950.99 increased the penalty for a failure to register from a fifth degree felony to a first degree felony, a new liability not existing at the time Mr. Gingell's registration duty was imposed. On its face, a retroactive application of amended R.C. 2950.99 reaches back and creates a new liability on the preexisting duty to register. Thus the First District Court of Appeals erred in concluding that applying the amended sentencing statute to a preexisting duty to register is not a retroactive application.

Proposition of Law 2: Amended R.C. 2950.99 does not apply to Mr. Gingell because the General Assembly did not intend for the penalty statute to apply retroactively.

Under R.C. 1.48, “[a] statute is presumed to be prospective in its operation unless expressly made retrospective.” “If the statute is silent on the question of its retroactive application, we must apply it prospectively only. In order to overcome the presumption that a statute applies prospectively, a statute must clearly proclaim its retroactive application.” *Hyle v. Porter*, 117 Ohio St.3d 165, 882 N.E.2d 899, 2008-Ohio-542, at ¶ 10 (internal citation omitted). As this Court explained in *Hyle*, statutes apply prospectively unless the General Assembly “expressly made the statute retroactive.” *Id.* at ¶ 8. “In order to overcome the presumption that a statute applies prospectively, a statute must clearly proclaim its retroactive application. Text that supports a mere inference of retroactivity is not sufficient to satisfy this standard; we cannot *infer* retroactivity from suggestive language.” *Id.* at ¶ 10; (emphasis in original).

The General Assembly amended R.C. 2950.99 in 2007. See Substitute Senate Bill 10. The statute now states that whoever violates the duty to register shall be punished as follows: “If the most serious sexually oriented offense *** that was the basis of the [duty to register] is a felony of the first, second, third, or fourth degree *** the offender is guilty of a felony of the same degree as the most serious sexually oriented offense *** that was the basis of the registration [duty].” R.C. 2950.99. But, the legislature failed to include any language to apply the statute retroactively to individuals like Mr. Gingell, whose registration duties and criminal penalty for a failure to comply, arose prior to the amendment.

The best indication of the legislative intent is the use of the present tense in the phrase: “If the most serious sexually oriented offense *** that was the basis of the [duty

to register] **is** a felony of the first, second, third, or fourth degree.” R.C.

2950.99(A)(1)(a)(ii) (emphasis added). The use of the present tense incorporates present and future felony convictions. R.C. 1.43(C) (stating that: “Words in the present tense include the future”). But it does not incorporate past convictions indicating that the statute applies prospectively only. Although the same sentence uses the past tense to describe the “offense *** that was the basis of the [duty to register]” that language “presents at best a *suggestion* of retroactivity, which is not sufficient to establish that a statute applies retroactively.” *Hyle* at ¶ 13 (emphasis in original). “[T]he drafters of legislation know the words to use in order to comply with the Ohio Constitution and the requirement created by the General Assembly” and could have included phrases such as: “notwithstanding any provisions of any prior statute or rule of law of this state” or “was convicted of or pleaded guilty to a sexually oriented offense prior to the effective date of this section.” *Id.* at ¶ ¶ 18, 15, 16.

Moreover, R.C.2901.04 requires that statutes defining offenses or penalties must be strictly construed against the state. As this Court recognized in *State v. Williams*, 114 Ohio St.3d 103, 868 N.E.2d 969, 2007-Ohio-3268, the failure to register is a criminal offense and “is subject to strict interpretation against the state, and must be liberally interpreted in favor of the accused.” *Id.* at ¶ 10. Thus, any doubt that the statute applies retroactively must be resolved against the state. *Id.*

Because R.C. 2950.99 does not proclaim its applicability to persons like Mr. Gingell whose duty to register arose prior to the amended sentencing statute, the penalty statute in effect when the duty arose should apply to him.

Proposition of Law 3: If amended R.C.2950.99 is expressly retroactive, it violates R.C. 1.58, Ohio's retroactivity clause, and the ex post facto clause.

A retroactive application of R.C. 2950.99 would violate R.C. 1.58 and would be unconstitutional. Under R.C. 1.58, a statutory amendment or repeal does not affect any “obligation or liability previously acquired” or “penalty, forfeiture, or punishment incurred in respect thereto.” It further states that in any proceeding with respect to that obligation, liability, or punishment, the punishment should be imposed as if the statute had not been amended or repealed. R.C. 1.58(A)(4). Under Ohio law, the amended statutes cannot be applied to Mr. Gingell. See *State v. Brooks*, 163 Ohio App.3d 241, 2005-Ohio-4728, 837 N.E.2d 796, at ¶ 16 (holding that the amended community control statute did not apply to the defendant because it would permit the modification of the sentence contrary to R.C. 1.58.).

State v. Brooks is instructive. *Id.* In *Brooks*, the defendant was convicted and incarcerated for a subsequent offense while on community control. In accordance with the amended statute in effect on the date of the subsequent conviction, the trial court tolled Brooks's community control during his incarceration. Brooks appealed, claiming that the tolling under the statute unconstitutionally modified his sentence. The Fourth District Court of Appeals held that the court erred as a matter of law in applying the amended statute because the “version of [the] sentencing statute in effect at [the] time of [the] underlying offense that led to community control sentence was applicable.” *Id.* at ¶ 1. The court concluded that “under Ohio law, it cannot be applied retroactively to permit the modification of Brooks's community-control sentence. Accordingly, we must apply the version of R.C. 2929.15 in effect at the time Brooks committed the underlying offense that caused him to receive his community-control sentence.” *Id.* at ¶ 16.

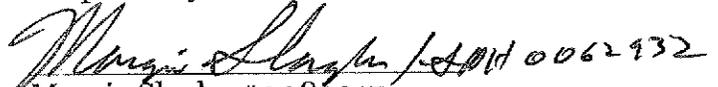
Mr. Gingell's obligation to register and the criminal penalty for failing to comply with that duty arose prior to the 2007 amendment to R.C. 2950.99. Accordingly, the version of the statute in effect when Mr. Gingell's duty arose should apply to his subsequent failure to register. See *id.*

Any other interpretation would be unconstitutional for three reasons: 1) Mr. Gingell's registration order would be modified; 2) the increased punishment violates the retroactivity clause and 3) the increased punishment violates the ex post facto clause. As this Court recently concluded, a statutory amendment cannot modify a final court order. *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424 at ¶ 56 (concluding: "There is no exception to the rule that final judgments may not be legislatively annulled in situations where the Legislature has enacted new legislation.") (internal citation omitted). And a retroactive application of R.C. 2950.99 would increase the punishment for Mr. Gingell's failure to comply with his preexisting, continuous duty to register. As this Court recently explained, "Ohio retroactivity analysis *** prohibits *** increased punishment." *State v. Ferguson*, 20 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110, at ¶ 39. Moreover, the Ex Post Facto Clause prohibits "[e]very law that changes the punishment and inflicts a greater punishment, than the law annexed to the crime when committed." *Calder v. Bull* (1798), 3 U.S. 386, 390. To apply the amended sentencing statute retroactively would unconstitutionally modify Mr. Gingell's registration order and increase the punishment on his preexisting registration obligations.

CONCLUSION

This Court should reverse the decision below because the trial court erred as a matter of law in applying the amended statute and order that Mr. Gingell's failure to register is a fifth degree felony.

Respectfully submitted,



Margie Slagle, #0082217

David A. Singleton, #0074556

Ohio, Justice and Policy Center

215 East 9th Street, Suite 601

Cincinnati, OH 45202

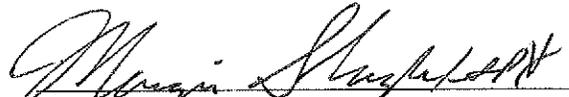
Phone: 421-1108 ext. 20

Fax: (513) 562-3200

Email: mslagle@ohiojpc.org

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Appellant's Brief was served by U.S. Mail upon Paula Adams, Assistant Prosecuting Attorney, Hamilton County Prosecuting Attorney's Office, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202, on this 7th day of June, 2010.


Margie Slagle

Appendix

ORIGINAL

IN THE SUPREME COURT OF OHIO

10-0047

RONALD GINGELL
Appellant,
vs.
STATE OF OHIO
Appellee.

: On Appeal from the Hamilton County
: Court of Appeals,
: First Appellate District
:
: Court of Appeals Case No. C 08-01167
:
: Trial Court No. B 08-05070
:
:

NOTICE OF APPEAL OF APPELLANT RONALD GINGELL

Margie Slagle (0082217)
Counsel of Record
David A. Singleton (0074556)
Ohio Justice & Policy Center
215 E. Ninth Street, Suite 601
Cincinnati, Ohio 45202
(513) 421-1108 exts. 20, 17
(513) 562-3200 (fax)
mslagle@ohiojpc.org
dsingleton@ohiojpc.org

Counsel for Appellant

Joseph T. Deters (0012084)
Paula Adams (0069036)
Counsel of Record
Hamilton County Prosecuting Attorney's Office
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3228
(513) 946-3107 (fax)
Joseph.Deters@hcpros.org
Paula.Adams@hcpros.org

Counsel for Appellee

FILED
JAN 08 2010
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL

Appellant Ronald Gingell hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Hamilton County Court of Appeals, First Appellate District, entered in Court of Appeals Case No. C 08-01167 on October 14, 2009 and November 24, 2009.

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

Respectfully submitted,

Margie Slagle By *Shayla Werner*
Margie Slagle, #0082217 per authority
David A. Singleton, #0074556
Ohio, Justice and Policy Center
215 East 9th Street, Suite 601
Cincinnati, OH 45202
Phone: 421-1108 ext. 20
Fax: (513) 562-3200
Email: mslagle@ohiojpc.org

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Appellant's Brief was served by U.S. Mail upon Paula Adams, Assistant Prosecuting Attorney, Hamilton County Prosecuting Attorney's Office, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202, on this 8th day of January, 2010.

Margie Slagle By *Shayla Werner*
Margie Slagle per authority

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,

Plaintiff-Appellee,

vs.

RONALD GINGELL,

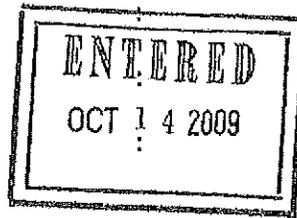
Defendant-Appellant.

:

APPEAL NO. C-081167
TRIAL NO. B-0805070

:

JUDGMENT ENTRY.



We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant, Ronald Gingell, appeals the judgment of the Hamilton County Court of Common Pleas convicting him of failing to verify his current address as a sexually oriented offender under R.C. 2950.06, a felony of the first degree. He was convicted after entering a guilty plea.

In his first assignment of error, Gingell now argues that the trial court erred in retroactively applying R.C. 2950.99, which made Gingell's violation of R.C. 2950.06 a first-degree felony.

A guilty plea acts as a waiver of all errors in the proceedings except those relating to the validity of the plea or the subject-matter jurisdiction of the trial court.² In this case, the claimed error does not fall within those exceptions, and we overrule the first assignment of error.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² See, e.g., *State v. West* (1999), 134 Ohio App.3d 45, 52, 730 N.E.2d 388.



OHIO FIRST DISTRICT COURT OF APPEALS

In the second assignment of error, Gingell argues that the trial court erred in imposing a prison sentence of eight years. Specifically, he argues that the trial court erred in basing the sentence on what he terms an "ex parte" investigation.

This assignment of error is also without merit. The transcript of the sentencing hearing indicates that the trial court based its sentence on material contained in the presentence investigation, on a psychological evaluation performed by the court clinic, and on other matters that were properly before the court. The sentence was within the statutory range for a first-degree felony,³ and we accordingly overrule the second assignment of error.

In the third and final assignment of error, Gingell argues that he was denied the effective assistance of trial counsel. Specifically, he argues that counsel was deficient in advising him to plead guilty to a first-degree felony. He premises this argument on the allegedly improper retroactive application of the amended version of R.C. 2950.99. Because we have already rejected the argument concerning retroactivity, we overrule the third assignment of error.

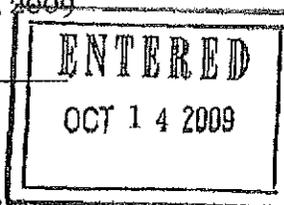
The judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 14, 2009
per order of the Court _____
Presiding Judge



³ See *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

R.C. 1.43

§ 1.43. Singular and plural; gender; tense

(A) The singular includes the plural, and the plural includes the singular.

(B) Words of one gender include the other genders.

(C) Words in the present tense include the future.

R.C. 1.58

§ 1.58. Effect of reenactment, amendment, or repeal

(A) The reenactment, amendment, or repeal of a statute does not, except as provided in division (B) of this section:

- (1) Affect the prior operation of the statute or any prior action taken thereunder;
- (2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder;
- (3) Affect any violation thereof or penalty, forfeiture, or punishment incurred in respect thereto, prior to the amendment or repeal;
- (4) Affect any investigation, proceeding, or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(B) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

R.C. 2901.04

§ 2901.04. Rules of construction; references to previous conviction; interpretation of statutory references that define or specify a criminal offense

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(C) Any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

§ 2929.14 Definite prison terms.

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

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

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

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

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

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

(B) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(5), (D)(6), (D)(7), (D)(8), (G), (I), (J), or (L) of this section, in section 2907.02, 2907.05, or 2919.25 of the Revised Code, or in Chapter 2925. of the Revised Code, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender, the court shall impose the shortest prison term authorized for the offense pursuant to division (A) of this section, unless one or more of the following applies:

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

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

(C) Except as provided in division (D)(7), (D)(8), (G), or (L) of this section, in section 2919.25 of the Revised Code, or in Chapter 2925. of the Revised Code, the court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of the offense, upon offenders who pose the greatest likelihood of committing future crimes, upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section.

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

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

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

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

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

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

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

(e) The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.12 or 2923.123 of the Revised Code. The court shall not impose any of the prison terms described in division (D)(1)(a) or (b) of this section upon an offender for a violation of section 2923.122 that involves a deadly weapon that is a firearm other than a dangerous ordnance, section 2923.16, or section 2923.121 of the Revised Code. The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.13 of the Revised Code unless all of the following apply:

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

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

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

offender under division (D)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (D)(1)(a) or (c) of this section relative to the same offense.

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

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

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

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

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

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

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

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

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

(ii) The offender within the preceding twenty years has been convicted of or pleaded guilty to three or more offenses described in division (CC)(1) of section 2929.01 of the Revised Code, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.

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

(c) For purposes of division (D)(2)(b) of this section, two or more offenses committed at the same time or as part of the same act or event shall be considered one offense, and that one offense shall be the offense with the greatest penalty.

(d) A sentence imposed under division (D)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20 or section 2967.193, or any other provision of Chapter 2967, or Chapter 5120, of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.

(e) When imposing a sentence pursuant to division (D)(2)(a) or (b) of this section, the court shall state its findings explaining the imposed sentence.

(3)(a) Except when an offender commits a violation of section 2903.01 or 2907.02 of the Revised Code and the penalty imposed for the violation is life imprisonment or commits a violation of section 2903.02 of the Revised Code, if the offender commits a violation of section 2925.03 or 2925.11 of the Revised Code and that section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, if the offender commits a felony violation of section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161, 4729.37, or 4729.61, division (C) or (D) of section 3719.172, division (C) of section 4729.51, or division (J) of section 4729.54 of the Revised Code that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of

a specification of the type described in section 2941.1410 of the Revised Code charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of section 2907.02 of the Revised Code and, had the offender completed the violation of section 2907.02 of the Revised Code that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of section 2907.02 of the Revised Code, the court shall impose upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant to section 2929.20 or Chapter 2967. or 5120. of the Revised Code.

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

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

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

(5) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1414 of the Revised Code that charges that the victim of the

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

(6) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1415 of the Revised Code that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 of the Revised Code, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (D)(6) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(6) of this section for felonies committed as part of the same act.

(7)(a) If an offender is convicted of or pleads guilty to a felony violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court shall impose on the offender a mandatory prison term that is one of the following:

(i) If the offense is a felony of the first degree, a definite prison term of not less than five years and not greater than ten years;

(ii) If the offense is a felony of the second or third degree, a definite prison term of not less than three years and not greater than the maximum prison term allowed for the offense by division (A) of section 2929.14 of the Revised Code;

(iii) If the offense is a felony of the fourth or fifth degree, a definite prison term that is the maximum prison term allowed for the offense by division (A) of section 2929.14 of the Revised.

(b) The prison term imposed under division (D)(7)(a) of this section shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(7)(a) of this section for felonies committed as part of the same act, scheme, or plan.

(8) If an offender is convicted of or pleads guilty to a felony violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1423 of the Revised Code that charges that the victim of the violation was a woman whom the offender knew was pregnant at the time of the violation, notwithstanding the range of prison terms prescribed in division (A) of this section for felonies of the same degree as the violation, the court shall impose on the offender a mandatory prison term that is either a definite prison term of six months or one of the prison terms prescribed in section 2929.14 of the Revised Code for felonies of the same degree as the violation.

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

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

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

(d) If a mandatory prison term is imposed upon an offender pursuant to division (D)(7) or (8) of this section, the offender shall serve the mandatory prison term so imposed consecutively to any other mandatory prison term imposed under that division or under any other provision of law and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(2) If an offender who is an inmate in a jail, prison, or other residential detention facility violates section 2917.02, 2917.03, 2921.34, or 2921.35 of the Revised Code, if an offender who is under detention at a detention facility commits a felony violation of section 2923.131 of the Revised

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

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

(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

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

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

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

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

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

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

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

(G) The court shall impose sentence upon the offender in accordance with section 2971.03 of the Revised Code, and Chapter 2971. of the Revised Code applies regarding the prison term or term of life imprisonment without parole imposed upon the offender and the service of that term of imprisonment if any of the following apply:

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

(2) A person is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, and either the court does not impose a sentence of life without parole when authorized pursuant to division (B) of section 2907.02 of the Revised Code, or division (B) of section 2907.02 of the Revised Code provides that the court shall not sentence the offender pursuant to section 2971.03 of the Revised Code.

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

(4) A person is convicted of or pleads guilty to a violation of section 2905.01 of the Revised Code committed on or after January 1, 2008, and that section requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(5) A person is convicted of or pleads guilty to aggravated murder committed on or after January 1, 2008, and division (A)(2)(b)(ii) of section 2929.022, division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d) of section 2929.03, or division (A) or (B) of section 2929.06 of the Revised Code requires the court to sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(6) A person is convicted of or pleads guilty to murder committed on or after January 1, 2008, and division (B)(2) of section 2929.02 of the Revised Code requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

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

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

(J)(1) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.143 of the Revised Code that charges the offender with having committed the offense in a school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years consecutively to and prior to the prison term imposed for the underlying offense.

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

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

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

in section 2941.1421 of the Revised Code regarding one or more of those violations, an additional prison term of one, two, three, four, five, six, seven, eight, nine, ten, eleven, or twelve months.

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

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

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

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

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison and the department does not subsequently place the offender in the recommended program or prison, the department shall send a notice to the court indicating why the offender was not placed in the recommended program or prison.

If the court does not make a recommendation under this division with respect to an offender and if the department determines as specified in section 5120.031 or 5120.032 of the Revised Code, whichever is applicable, that the offender is eligible for placement in a program or prison of that

nature, the department shall screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If there is an available program of shock incarceration or an intensive program prison for which the offender is suited, the department shall notify the court of the proposed placement of the offender as specified in section 5120.031 or 5120.032 of the Revised Code and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

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

Former R.C. 2950.99 (2003)

§ 2950.99 Penalties.

(A) Whoever violates a prohibition in section 2950.04, 2950.05, or 2950.06 of the Revised Code is guilty of a felony of the fifth degree if the most serious sexually oriented offense that was the basis of the registration, change of address notification, or address verification requirement that was violated under the prohibition is a felony if committed by an adult, and a misdemeanor of the first degree if the most serious sexually oriented offense that was the basis of the registration, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor if committed by an adult. In addition to any penalty or sanction imposed for the violation, if the offender or delinquent child is on probation or parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation shall constitute a violation of the terms and conditions of the probation, parole, post-release control sanction, or other type of supervised release.

(B) If a person violates a prohibition in section 2950.04, 2950.05, or 2950.06 of the Revised Code that applies to the person as a result of the person being adjudicated a delinquent child and being classified a juvenile sex offender registrant or is an out-of-state juvenile sex offender registrant, both of the following apply:

(1) If the violation occurs while the person is under eighteen years of age, the person is subject to proceedings under Chapter 2152. of the Revised Code based on the violation.

(2) If the violation occurs while the person is eighteen years of age or older, the person is subject to criminal prosecution based on the violation.

R.C. 2950.99

§ 2950.99. Penalties

(A) (1) (a) Except as otherwise provided in division (A)(1)(b) of this section, whoever violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code shall be punished as follows:

(i) If the most serious sexually oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder or murder if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the first degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fifth degree or a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

(b) If the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, whoever violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code shall be punished as follows:

(i) If the most serious sexually oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was

violated under the prohibition is aggravated murder or murder if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the first degree.

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, or third degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fourth or fifth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the third degree.

(iv) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

(2) (a) In addition to any penalty or sanction imposed under division (A)(1) of this section or any other provision of law for a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, if the offender or delinquent child is subject to a community control sanction, is on parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation shall constitute a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

(b) In addition to any penalty or sanction imposed under division (A)(1)(b)(i), (ii), or (iii) of this section or any other provision of law for a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code, if the offender previously has

been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code when the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is a felony if committed by an adult or a comparable category of offense committed in another jurisdiction, the court imposing a sentence upon the offender shall impose a definite prison term of no less than three years. The definite prison term imposed under this section is not restricted by division (B) of section 2929.14 of the Revised Code and shall not be reduced to less than three years pursuant to Chapter 2967, or any other provision of the Revised Code.

(3) As used in division (A)(1) of this section, "comparable category of offense committed in another jurisdiction" means a sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated, that is a violation of an existing or former law of another state or the United States, an existing or former law applicable in a military court or in an Indian tribal court, or an existing or former law of any nation other than the United States, and that, if it had been committed in this state, would constitute or would have constituted aggravated murder or murder for purposes of division (A)(1)(a)(i) of this section, a felony of the first, second, third, or fourth degree for purposes of division (A)(1)(a)(ii) of this section, a felony of the fifth degree or a misdemeanor for purposes of division (A)(1)(a)(iii) of this section, aggravated murder or murder for purposes of division (A)(1)(b)(i) of this section, a felony of the first, second, or third degree for purposes of division (A)(1)(b)(ii) of this section, a felony of the fourth or fifth degree for purposes of division (A)(1)(b)(iii) of this section, or a misdemeanor for purposes of division (A)(1)(b)(iv) of this section.

(B) If a person violates a prohibition in section 2950.04, 2950.041 [2950.04.1], 2950.05, or 2950.06 of the Revised Code that applies to the person as a result of the person being adjudicated a delinquent child and being classified a juvenile offender registrant or an out-of-state juvenile offender registrant, both of the following apply:

(1) If the violation occurs while the person is under eighteen years of age, the person is subject to proceedings under Chapter 2152, of the Revised Code based on the violation.

(2) If the violation occurs while the person is eighteen years of age or older, the person is subject to criminal prosecution based on the violation.

(C) Whoever violates division (C) of section 2950.13 of the Revised Code is guilty of a misdemeanor of the first degree.

U.S. Const. Art. I § 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility

Oh. Const. Art. II, § 28

§ 28. Retroactive laws

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.