

ORIGINAL

**IN THE
SUPREME COURT OF OHIO**

STATE OF OHIO	:	NO. 09-1997
Plaintiff-Appellee	:	On Appeal from the Hamilton County Court of Appeals, First Appellate District
vs.	:	
KENNETH HODGE	:	Court of Appeals Case Number C-080968
Defendant-Appellant	:	

MERIT BRIEF OF PLAINTIFF-APPELLEE

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE AND FACTS	1
ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW	
Proposition of Law No. 1: THE UNITED STATES SUPREME COURT’S DECISION IN OREGON V. ICE DID NOT ABROGATE THIS COURT’S DECISION IN STATE V FOSTER.....	2
CONCLUSION	12
PROOF OF SERVICE	12
APPENDIX	A-1
R.C. 2929.14	A-2
R.C. 2929.41	A-14
R.C. 2941.25	A-15
R.C. 2911.01	A-16

TABLE OF AUTHORITIES

	<u>PAGE</u>
CASES:	
<i>Apprendi v. New Jersey</i> (2000), 530 U.S. 466, 120 S.Ct. 2348.....	2
<i>Blakely v. Washington</i> (2004), 542 U.S. 296, 124 S.Ct. 2531	2
<i>Foster v. Ohio</i> (2006), 549 U.S. 979, 127 S.Ct. 442.....	5
<i>Harmelin v. Michigan</i> (1991), 501 U.S. 957, 997, 111 S.Ct. 2680	9, 10
<i>Jawish v. Morlet</i> (D.C. App. 1952), 86 A.2d 96.....	5
<i>Oregon v. Ice</i> (2009), --- U.S. ---, 129 S.Ct. 711	2, 3, 4, 5, 6, 7
<i>Oregon v. Ice</i> (2009), 346 Or. 95, 204 P.3d 1290.....	5
<i>Oregon v. Ice</i> (2007), 343 Or. 248, 170 P.3d 1049.....	3
<i>State ex rel. Badgett v. Lee</i> (1945), 156 Fla. 291, 294-295, 22 So.2d 804	5
<i>State v. Elmore</i> , 122 Ohio St.3d 472, 2009-Ohio-3478, 912 N.E.2d 582.....	4, 7
<i>State v. Foster</i> , 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.....	2, 3
<i>State v. Hairston</i> , 118 Ohio St.3d 289, 2008-Ohio-2338, 888 N.E.2d 1073	9, 10
<i>State v. Hodge</i> (Sept. 16, 2009), 1st Dist. No. C-080968	4
<i>State v. Kalish</i> , 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 4912.....	10
<i>State v. Weitbrecht</i> (1999), 86 Ohio St.3d. 368, 373, 715 N.E.2d 167.....	9
<i>Queen v. Cutbush</i> , 2 L.R.Q.B. 379, 382, 10 Cox Crim. Cas. 489, 492 (1867).....	7
<i>Westfield Insurance Company v. Galatis</i> , 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256	8
STATUTES:	
R.C. 2941.25	6
R.C. 2929.14	6, 10
R.C. 2929.41(A).....	6
R.C. 2911.01(A)(1).....	10
LAW REVIEW ARTICLE:	
Frank O. Bowman, III, Debauch: How the Supreme Court Has Mangled American Sentencing Law and How it Might Yet Be Mended, University of Chicago Law Review, Vol. 77, Forthcoming 2010.....	3

STATEMENT OF THE CASE AND FACTS

In July of 2008, Hodge pled guilty to five counts of Aggravated Robbery, each carried a three-year gun specification. The trial court imposed a three-year prison term on each count and an additional three-year prison term for the gun specification. The trial court ran the sentences consecutively for a total aggregate prison sentence of 18 years.

About 8:30 at night, right before Christmas 2007, Hodge, along with co-defendants Nashon Wallace and David Keeling, approached a group of boy scouts and their fathers selling Christmas trees in Northside. (T.p. 11). Keeling carried a loaded sawed-off shotgun under his coat. *Id.*

He pointed at one of the boys and demanded money. *Id.* One of the fathers, John Hancock, intervened and tried to get the robbers to leave. *Id.* Hodge punched Hancock and his son in the face. *Id.* Wallace then took the group's earnings for the night from the nearby storage locker. *Id.* The robbery netted the group \$130. *Id.*

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: THE UNITED STATES SUPREME COURT'S DECISION IN OREGON V. ICE DID NOT ABROGATE THIS COURT'S DECISION IN STATE V FOSTER.

Here, as in his appeal to the First District, Hodge claims that the United States Supreme Court's decision in *Oregon v. Ice* (2009), --- U.S. ---, 129 S.Ct. 711 abrogated this Court's decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470 and automatically "revivified" R.C. 2929.14(E) and 2929.41(A). For this reason, he claims that his sentence to consecutive terms is contrary to law because the trial court did not make the requisite findings on the record. But, *Ice* did not overrule or abrogate *Foster*. Instead, *Ice* supports this Court's severance remedy in *Foster*. And, because Hodge cannot show grounds to overturn *Foster's* rule, it should stand.

In *Apprendi v. New Jersey* (2000), 530 U.S. 466, 120 S.Ct. 2348, Apprendi received an enhanced sentence based upon a New Jersey hate crimes statute that allowed the sentencing judge to increase the sentence above the statutory maximum if the judge, at a hearing held after conviction, determined, by a preponderance of the evidence, the crime was motivated by racial bias. The Supreme Court held that Apprendi's sentence violated the Sixth Amendment guarantee of a right to trial by jury. *Id.* Justice Stevens, writing for the 5-4 majority, held that, "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Id.* at 490.

In *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, the Supreme Court, also in a 5-4 vote, applied the *Apprendi* bright-line rule to strike down Washington State's sentencing statute that empowered judges to *increase* the length of prison time beyond the "standard range"

prescribed by Washington's sentencing guidelines based on facts not found by juries beyond a reasonable doubt.

In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, this Court, relying on *Apprendi* and *Blakely*, declared that portions of Ohio's sentencing statute, which required trial judges, rather than juries, to make statutorily enumerated findings before imposing *consecutive* sentences, violated the Sixth Amendment guarantee of a right to trial by jury. Consequently, this Court severed these provisions from Ohio's sentencing scheme and held that trial judges have full discretion to impose consecutive sentences that are within the statutory range and are no longer required to make judicial findings or give their reasons for imposing consecutive sentences. *Foster*, at ¶ 100.

In *Oregon v. Ice* (2009), --- U.S. ---, 129 S.Ct. 711, the Supreme Court examined Oregon's consecutive sentence law which, like Ohio's, required judges to engage in judicial fact-finding before imposing consecutive rather than concurrent sentences. The Oregon Supreme Court applied *Apprendi's* bright-line rule and determined that Oregon's consecutive sentencing law violated the Sixth Amendment right to trial by jury. *Oregon v. Ice* (2007), 343 Or. 248, 170 P.3d 1049. In a move that surprised many legal commentators, the Supreme Court reversed the Oregon Supreme Court and held that Oregon's consecutive sentencing law did not run afoul of the Sixth Amendment right to trial by jury. *Oregon v. Ice*, 129 S.Ct. 711; *See, e.g.* Frank O. Bowman, III, *Debacle: How the Supreme Court Has Mangled American Sentencing Law and How it Might Yet Be Mended*, University of Chicago Law Review, Vol. 77, Forthcoming 2010. The Supreme Court held that, in light of historical practices and the right of states to administer their criminal justice systems, the Sixth Amendment did not prevent states from allowing judges, rather than juries, to make any finding of facts necessary to the imposition of consecutive, rather

than concurrent, sentences. *Id.* at 716-720. In its decision, the Supreme Court noted that the historical record demonstrates that both in England before the Nation's founding and in early American States, the common law generally entrusted the decision whether to impose consecutive or concurrent sentences to the *unfettered discretion of the judge*. *Id.* at 717-718.

Hodge now argues that Ohio's consecutive sentencing law requiring judicial fact-finding and reasons for imposing consecutive sentences is constitutional after all, and that these provisions are revived as a result of the Supreme Court's ruling in *Ice*. The First District rejected Hodge's claim and found that it was bound by this Court's decision in *Foster*, absent a contrary decision by this Court. *State v. Hodge* (Sept. 16, 2009), 1st Dist. No. C-080968.

Appellee submits that the *Ice* decision did not invalidate this Court's severance remedy in *Foster*. *Ice* involved an Oregon statute and it did not specifically overrule *Foster*. If anything, *Ice* re-affirms the severance remedy in *Foster*, giving trial judges discretion to impose consecutive rather than concurrent sentences. This Court acknowledged this in *State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478 at ¶ 36, 912 N.E.2d 582: "*Foster* did not prevent the trial court from imposing consecutive sentences; it merely took away a judge's duty to make findings before doing so."

In sum, the imposition of consecutive sentences against Hodge is constitutional under *Apprendi*, *Blakely*, *Ice*, *Foster* and *Elmore*, and should stand.

(A) *Ice* does not abrogate *Foster* or automatically and retroactively reactivate Ohio's consecutive sentencing law

Hodge argues that the Supreme Court's ruling in *Ice* automatically revives those portions of Ohio's consecutive sentencing law that were declared unconstitutional in *Foster*. Hodge argues that these provisions were dormant but not dead under *Foster*. Thus, he argues that because *Foster* was overruled by the United States Supreme Court's decision in *Ice*, the

provisions were automatically “revivified” and in effect at the time of his sentencing. Hodge fails to understand the American rule of law and precedent.

Hodge cites several cases that stand for the proposition that when a statute is declared unconstitutional it is inoperative and unenforceable, not repealed or abolished. *Jawish v. Morlet* (D.C. App. 1952), 86 A.2d 96, citing *State ex rel. Badgett v. Lee* (1945), 156 Fla. 291, 294-295, 22 So.2d 804. Under this logic, if the statute is later held to be constitutional, it is restored to its operative force and does not have to be re-enacted by the legislature. *Id.* Even if this is a correct statement of law, these cases are easily distinguishable from the posture of Hodge’s case. The Supreme Court did not overturn *Foster* and hold Ohio’s consecutive sentencing statute constitutional in *Ice*.

In *Ice*, the Supreme Court upheld the constitutionality of Oregon’s consecutive sentencing law after the Oregon Supreme Court held that it violated the rule of *Apprendi*. *Oregon v. Ice*, 129 S.Ct. 711. On remand, the Oregon Supreme Court modified its earlier holding and upheld Oregon’s consecutive sentencing law consistent with the Supreme Court’s ruling in *Ice*. *Oregon v. Ice* (2009), 346 Or. 95, 204 P.3d 1290.

Ice did not declare that this Court erred in *Foster* nor did it expressly overrule *Foster*. It did not pass any judgment on the constitutionality of Ohio’s consecutive sentencing statute, other than to cite *Foster* in a footnote listing other states that applied the rule of *Apprendi* to consecutive sentences. *Oregon v. Ice*, 129 S.Ct. at 716. In fact, the Supreme Court denied certiorari in *Foster* and declined the opportunity to determine whether Ohio’s consecutive sentencing law was constitutional. *See Foster v. Ohio* (2006), 549 U.S. 979, 127 S.Ct. 442.

And, *Ice* should not be read as even remotely applicable to *Foster*. *Ice*’s rule that States may assign to judges, rather than juries, the finding of facts necessary to the imposition of

consecutive, rather than concurrent, sentences for multiple offenses, was based on the particular statute at issue in Oregon. That statute said judges may impose consecutive sentences arising from the same course of conduct when they find either (a) that the offense was an indication of the defendant's willingness to commit more than one criminal offense, or (b) the offense caused or created a risk of causing greater or qualitatively different harm to the victim. *Oregon v. Ice* (2009), 129 S.Ct. 711, syllabus. Oregon's statute differs greatly from those portions struck by this Court in *Foster*. In fact, it appears to be more akin to Ohio's allied offenses rule (R.C. 2941.25) than to the provisions of R.C. 2929.14(E) and 2929.41(A).

Under pre-*Foster* Ohio law, sentences ran concurrently unless the trial court found that: 1) the consecutive service is necessary to protect the public from future crime or to punish the offender and 2) consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and 3) either: (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) the harm caused by two or more of the multiple offenses was so great or unusual that no single prison term adequately reflects the seriousness of the offender's conduct, or (c) the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. R.C. 2929.14(E)(4). Obviously, whether the United States Supreme Court would have ruled the same way if faced with an entirely different sentencing scheme is a hypothetical question only.

The impact of Ohio's statute is significantly different from that of Oregon. In *Ice*, the Supreme Court based its ruling on whether the facts to be found by the judge affect the

traditional role of the jury. Here, before *Foster*, the mandatory fact-finding by the judge went far beyond those traditionally imposed in sentencing considerations. A defendant could not be judged solely by the jury for any particular incident. Instead, a trial court had to nullify the legal effect of some of the jury's convictions if it could not find facts beyond whether or not the offenses were allied. This is contrary to the common law rule and historical record, wherein "consecutive, rather than concurrent, sentences was the prevailing practice." *Ice*, supra, at 718, citing *Queen v. Cutbush*, 2 L.R.Q.B. 379, 382, 10 Cox Crim. Cas. 489, 492 (1867). "Right and justice require that when a man has been guilty of separate offenses, that he should not escape from the punishment due to the additional offense, merely because he is already sentenced to be imprisoned for another offense." *Id.* The pre-*Foster* status of the law infringed on the jury's domain.

Instead of overruling *Foster*, *Ice* supports this Court's severance remedy employed therein. In *Ice*, the Supreme Court held that, in light of historic practice and respect for state sovereignty, the Sixth Amendment does not prevent states from enacting statutes that allow judges unfettered or guided discretion before imposing consecutive, rather than concurrent, sentences. *Oregon v. Ice*, supra at 714-715. This Court's severance remedy in *Foster* effectively puts Ohio in the category of states that allow guided discretion before the imposition of consecutive sentences. Consequently, the Supreme Court's ruling in *Ice* does not abrogate or nullify *Foster*. *Elmore*, supra.

(B) *Foster* is good law and should not be overruled under the doctrine of stare decisis

Ice provides no basis for this Court to overturn *Foster*. Under the doctrine of stare decisis, a prior decision of this Court may only be overruled where: (1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the

decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it. *Westfield Insurance Company v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, paragraph one of the syllabus. Hodge fails to meet the three requirements, which he would need to do to justify overturning *Foster's* precedent.

Foster was not wrongly decided nor has there been any change in circumstances that no longer justify adherence to *Foster*. *Ice* did not overrule *Foster*. Again, *Ice* supports this Court's severance remedy in *Foster* that resulted in giving trial judges guided discretion to impose consecutive sentences.

Foster does not defy practical workability; it does the opposite. The practical effect of *Foster's* severance remedy was to give trial judges greater discretion to impose consecutive sentences. That is the same discretion trial judges across Ohio held for many years prior to the General Assembly's enactment in 1996 of the provisions on consecutive sentencing requiring judicial fact-finding that this Court severed in *Foster*. By not having to engage in mandatory judicial fact-finding, the severance remedy in *Foster* makes the sentencing process easier for trial judges to administer.

Abandoning *Foster* would create an undue hardship on those who have relied upon it. Ohio courts have followed *Foster* since 2006, and have sentenced hundreds, if not thousands, of felons to consecutive prison terms without engaging in mandated judicial fact-finding. If this Court were to overrule *Foster* and again require judicial fact-finding, many offenders would have to be re-sentenced. The scheduling and arranging of new sentencing hearings for these offenders would burden Ohio's courts with crowded dockets, Ohio's prison's with administrative inconvenience, and taxpayers with considerable costs.

Under the doctrine of stare decisis, this Court's decision in *Foster* must stand.

(C) Hodge's consecutive sentences are not disproportionate or otherwise constitutionally infirm and they do not impose an undue burden on government resources

Hodge argues that his aggregate prison sentence for five counts of aggravated robbery and accompanying gun specifications was disproportionate and excessive. Curiously, in support of his argument, Hodge cites to 20 cases out of Hamilton County where half the offenders received lesser sentences, not for aggravated robbery, but for singular convictions of voluntary manslaughter.

This Court recently discussed proportionality review in *State v. Hairston*, 118 Ohio St.3d 289, 2008-Ohio-2338 at ¶ 20, 888 N.E.2d 1073, where it upheld an aggregate prison sentence of 134 years imposed upon an offender who pled guilty to four counts of aggravated robbery, three counts of aggravated burglary, three counts of kidnapping, and one count of having a weapon while under disability:

“...we conclude for purposes of the Eighth Amendment and Section 9, Article I of the Ohio Constitution, proportionality review should focus on individual sentences rather than upon the cumulative impact of multiple sentences imposed consecutively. Where none of the individual sentences imposed on an offender are grossly disproportionate to their respective offenses, an aggregate prison term resulting from consecutive imposition of those sentences does not constitute cruel and unusual punishment.”

“[T]he Eighth Amendment does not require strict proportionality between crime and sentence. Rather it forbids only extreme sentences that are ‘grossly disproportionate’ to the crime.” *State v. Weitbrecht* (1999), 86 Ohio St.3d 368, 373, 715 N.E.2d 167, quoting *Harmelin v. Michigan* (1991), 501 U.S. 957, 997, 111 S.Ct. 2680. This Court will not compare the punishment under review with punishments imposed on other offenders in Ohio, except in rare cases in which the threshold comparison of the crime committed and the sentence imposed leads

to an inference of gross disproportionality. *Hairston*, 2008-Ohio-2338 at ¶ 13, quoting *Harmelin*, 501 U.S. at 1005.

A sentence is grossly disproportionate to the offense only if it shocks the sense of justice of the community or is considered shocking to a reasonable person. *Hairston*, 2008-Ohio-2338 at ¶ 14. A sentence that falls within the statutory range is not, as a general rule, disproportionate to the offense. *Hairston*, 2008-Ohio-2338 at ¶ 21.

Hodge's sentences of three years imprisonment for the commission of five aggravated robberies and a gun specification that all run consecutive for a total of 18 years does not shock the sense of justice of the community or of a reasonable person. Aggravated robbery is a first degree felony. R.C. 2911.01(A)(1). A first degree felony is punishable by imprisonment for definite terms of three to ten years. R.C. 2929.14. Hodge's sentence was in the appropriate statutory range. Indeed, the individual sentences imposed were on the lowest end of that range,

Prior to sentencing, the trial judge ordered and read a presentence investigation report; letters submitted by Hodge from family, friends, and pastors; and heard from Hodge and his lawyer. (T.p. 14-28). The judge was familiar with the facts and circumstances surrounding the offenses. There is nothing particularly mitigating in using force to rob a group of boy scouts selling Christmas trees, while a cohort was armed with a sawed-off shotgun.

In sum, Hodge's consecutive sentences were within the statutory range and imposed in accordance with the law under *Apprendi*, *Blakely*, *Foster*, *Ice*, *Elmore*, and *Hairston*. Since Hodge's sentences were not contrary to law and the trial judge did not abuse his discretion, they should be upheld. *See State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 4912.

Hodge also argues that his sentence imposes an unnecessary burden on Ohio taxpayers. He argues that the ODRC believes that "the data continue to point to an emerging upward trend

overall in average sentence length” but fails to cite the source of his claim. And, the sources he does cite fail to take into consideration what effect, if any, the recent economic recession has had on increases in crimes and sentences. Hodge fails to adequately support his claim that *Foster* alone is the cause of increased prison sentences, or that such sentences are improper.

Contrary to his assertion, Hodge was privy to an evidence-based evaluation before he was sentenced. The court ordered a presentence investigation and considered it before imposing Hodge’s eighteen-year sentence. Hodge provides no evidence that the presentence investigation, or the court’s actual sentence, was improper.

Instead, Hodge assumes that the pre-*Foster* laws actually result in better sentences than discretionary ones judges typically give. If he were correct, the legislature should have altered the common-law tradition sooner than it did by enacting sentencing reform. But centuries of legal wisdom illustrates that judges who appropriately exercise their discretion are enforcing proper laws of the state. Because the sentencing reforms cannot reach the bounds of every appropriate consideration a judge should make in any case, they should be considerations, not requirements. The current state of the law does not present an undue burden on Ohio’s taxpayers; appropriately sentencing defendants for crimes they commit are a due burden of any civilization, and the state of Ohio is no exception.

CONCLUSION

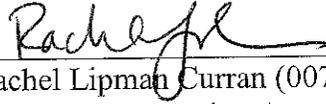
The court of appeals' decision affirming Hodge's consecutive sentences must stand.

Respectfully,

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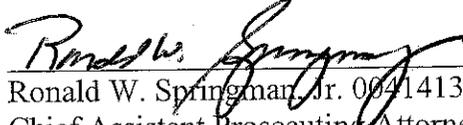


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APPENDIX

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 Code.

(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.

Effective Date: 04-08-2004; 06-01-2004; 09-23-2004; 04-29-2005; 07-11-2006; 08-03-2006; 01-02-2007; 01-04-2007; 04-04-2007; 2007 SB10 01-01-2008; 2008 SB184 09-09-2008; 2008 SB220 09-30-2008; 2008 HB280 04-07-2009; 2008 HB130 04-07-2009

2929.41 Concurrent and consecutive sentences.

(A) Except as provided in division (B) of this section, division (E) of section 2929.14, or division (D) or (E) of section 2971.03 of the Revised Code, a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States. Except as provided in division (B)(3) of this section, a jail term or sentence of imprisonment for misdemeanor shall be served concurrently with a prison term or sentence of imprisonment for felony served in a state or federal correctional institution.

(B)(1) A jail term or sentence of imprisonment for a misdemeanor shall be served consecutively to any other prison term, jail term, or sentence of imprisonment when the trial court specifies that it is to be served consecutively or when it is imposed for a misdemeanor violation of section 2907.322, 2921.34, or 2923.131 of the Revised Code.

When consecutive sentences are imposed for misdemeanor under this division, the term to be served is the aggregate of the consecutive terms imposed, except that the aggregate term to be served shall not exceed eighteen months.

(2) If a court of this state imposes a prison term upon the offender for the commission of a felony and a court of another state or the United States also has imposed a prison term upon the offender for the commission of a felony, the court of this state may order that the offender serve the prison term it imposes consecutively to any prison term imposed upon the offender by the court of another state or the United States.

(3) A jail term or sentence of imprisonment imposed for a misdemeanor violation of section 4510.11, 4510.14, 4510.16, 4510.21, or 4511.19 of the Revised Code shall be served consecutively to a prison term that is imposed for a felony violation of section 2903.06, 2903.07, 2903.08, or 4511.19 of the Revised Code or a felony violation of section 2903.04 of the Revised Code involving the operation of a motor vehicle by the offender and that is served in a state correctional institution when the trial court specifies that it is to be served consecutively.

When consecutive jail terms or sentences of imprisonment and prison terms are imposed for one or more misdemeanors and one or more felonies under this division, the term to be served is the aggregate of the consecutive terms imposed, and the offender shall serve all terms imposed for a felony before serving any term imposed for a misdemeanor.

Effective Date: 01-01-2004

2941.25 Allied offenses of similar import - multiple counts.

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

Effective Date: 01-01-1974

2911.01 Aggravated robbery.

(A) No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:

- (1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it;
- (2) Have a dangerous ordnance on or about the offender's person or under the offender's control;
- (3) Inflict, or attempt to inflict, serious physical harm on another.

(B) No person, without privilege to do so, shall knowingly remove or attempt to remove a deadly weapon from the person of a law enforcement officer, or shall knowingly deprive or attempt to deprive a law enforcement officer of a deadly weapon, when both of the following apply:

- (1) The law enforcement officer, at the time of the removal, attempted removal, deprivation, or attempted deprivation, is acting within the course and scope of the officer's duties;
- (2) The offender knows or has reasonable cause to know that the law enforcement officer is a law enforcement officer.

(C) Whoever violates this section is guilty of aggravated robbery, a felony of the first degree.

(D) As used in this section:

- (1) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.
- (2) "Law enforcement officer" has the same meaning as in section 2901.01 of the Revised Code and also includes employees of the department of rehabilitation and correction who are authorized to carry weapons within the course and scope of their duties.

Effective Date: 09-16-1997