

ORIGINAL

IN THE
SUPREME COURT OF OHIO

IN RE: ESTATE OF
JOSEPHINE A. CENTORBI

: CASE NO. 2010-0597
:
:
: On appeal from the Cuyahoga
: County Court of Appeals,
: Eight Appellate District
: Case No. 93501
:
:

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INTRODUCTION

When a loved one enters a nursing home, it sets in motion a long process both personally and financially. The burden of helping that loved one frequently falls on a person who is not represented by counsel; a person who is overwhelmed by the prospect of a parent or sibling entering a long term care facility never to return home again. Once placement is made, the financial burden begins. Either a person privately pays for care at around \$8,000.00 per month or they must enter the maze of Medicaid eligibility. When a family is not represented by counsel, they are left to figure out the vast inner workings of a convoluted bureaucracy alone.

On the day of the face to face appointment with Medicaid, they are overloaded with paperwork by a rushed and overworked caseworker. The applicant's representative is required to hand over more documents than was required when they had a child, got married, or even opened a probate estate. When the process is over and the person is approved for Medicaid the family member breathes a sigh of relief and the ordeal is over in their mind. They frequently do not understand the Estate recovery provisions that allow the State of Ohio to come back against an estate or non-probate assets after death. They literally think the case is over when Medicaid is approved.

After death, a pro se applicant for the Medicaid recipient relies on the probate court to help them navigate the next steps and to provide the proper forms in the case. When the State doesn't promulgate the mandated form, the probate court and the estate representative are at the mercy of a broken system.

While the federal law has provided for a mechanism for the State to collect against both probate and non-probate assets through the estate recovery system, that system is not meant to be unlimited. The federal law leaves the implementation to the State through legislative enactment.

The State of Ohio enacted R.C. 5111.11 and then limited its reach in R.C. 2117.061 by imposing a one year statute of limitations on the State as a creditor. The law does not mandate an estate be opened, nor does it mandate any notice to the State by the next of kin. The State, however, was mandated to create a form that it never created, which has caused confusion like that presented in this case.

The Eighth District correctly weighed the balance between the clear intent of the one year statute of limitations and the interest of the State of Ohio in recovering monies paid to Medicaid recipients. The State knows what a Medicaid applicant has at time of application, and at death. The State knows exactly when the Medicaid recipient died, and the State has a vast arsenal of attorneys, both in the Office of the Attorney General and through its army of collection firms that are deputized to help them go after the families with aggressive tactics. The State does not, also, need an unlimited statute of limitations.

STATEMENT OF CASE AND FACTS

Josephine Centorbi died intestate on February 12, 2007. Ms. Centorbi died with two assets, an Avon Products Account for \$310.92 which was distributed to Ms. Fiorille and a one quarter interest in real estate located at 15800 Steinway Boulevard in Maple Heights, Ohio. This real estate was initially owned by Helen M. Russo, the decedent's mother. Helen Russo died on April 10, 1991, and the property at issue transferred by a Certificate of Transfer issued by the Cuyahoga County Probate Court on October 12, 1993 to four sisters; Patricia Russo, Andrea Russo, Nancy Diane Russo (now Fiorille) and Josephine Centorbi. Josephine lived at the Steinway residence with her sister Patricia until Josephine's admission to a nursing home. After Josephine moved to the nursing home, Patricia Russo continued to live in the home until her death on August 27, 2010.

On December 21, 2007, the decedent's sister, Nancy Diane Fiorille (nee Russo) filed an Application to Relieve the Estate from Administration, which was granted that same day. A Certificate of Transfer was issued by the Court and Josephine's 25% interest in the home was distributed to Anthony Centorbi, the decedent's son through the transaction at issue here. The Certificate of Transfer has yet to be filed with the Cuyahoga County Recorder.

The Special Counsel to the Ohio Estate Recovery Program, the collection firm of Weltman, Weinberg and Reis, filed a Motion to Vacate the Order Releasing the Assets from Administration, which was denied because the Movant was outside the time period for filing a claim against the estate, as nearly two years had passed since the death of the decedent.

The decision of the Magistrate denying the Motion to Vacate was affirmed by Judge Anthony J. Russo of the Cuyahoga County Probate Court on or around June 3, 2009. In that decision the Court found that the Appellant had no right to Civil Rule 60(b) relief because that motion was not timely filed, nor were their arguments meritorious.

The Special Counsel and the Ohio Attorney General then filed appealed to the Eighth District Court of Appeals listing the Appellee as Anthony Centorbi and failing to send any notice whatsoever to Diane Nancy Fiorille, the estate representative. The Court issued its decision on February 22, 2010, and upheld the Cuyahoga County Probate Court's ruling that the State was barred from their creditor claim by the one year statute of limitations.

The Ohio Attorney General then filed a Notice of Appeal to this Court with a Memorandum in Support of Appeal on or about April 6, 2010. The Appellant's Merit Brief was filed on August 10, 2010. None of the docketed Notices, Memorandum and Briefs was sent to the estate representative, Diane Nancy Fiorille.

The undersigned counsel entered an appearance on October 22, 2010, on behalf of Diane Nancy Fiorille. The undersigned contacted her on behalf of the Ohio Chapter of the National Academy of Elder Law Attorneys to offer pro bono services with regard to the Appeal before this Court. That was the first she heard of the appeal and accepted the representation at that time.

LAW

The General Assembly intended to set a one year statute of limitations on the State of Ohio in making estate recovery claims in an effort to balance the need for reimbursement to the state against the necessity of bringing finality to a decedent's estate. The enactment of R.C. 2117.061 set a one year statute of limitations on recovery by the State, thereby restricting a previously unlimited period of recourse against the probate estate of a Medicaid recipient. Immunity of the State from a statute of limitations is a long standing principle of law. *State ex rel. Bd. of Educ. of Springfield City Sch. Dist. v. Gibson*, 130 Ohio St. 318, 320 (1935). However, a State can subject itself to a limitation period by specifically expressing intent to limit its rights within the statutory language. *Id.* Prior to 2003, the State of Ohio had an unlimited timeframe in which to recover against the probate estate of a Medicaid recipient. *See Ohio Dep't of Human Serv. v. Eastman*, 145 Ohio App. 3d 369, 373 (9th Dist. 2001) ("[T]he state's claim is] not ... time barred by the operation of R.C. 2117.061(B) and (C), as they are generally worded statutes of limitation (or non-claim), in that they do not specifically foreclose claims by the state.")

Clearly the language of 2117.061 (E) intended to impose a restriction. It reads:

The administrator of the Medicaid estate recovery program shall present a claim for estate recovery to the person responsible for the estate of the decedent or the person's legal representative not later than ninety days after the date on which the Medicaid estate recovery reporting form is received under division (B) of this section or one year after the decedent's death, whichever is later.

The rules of statutory construction require that the language of a statute be strictly construed against the drafter. See Restatement (Second) of Contracts § 206 (1981). While courts defer to the plain meaning of the words in a given statute, they also presume that the legislature intended each provision in a statute to have a purpose. See *State ex rel. Besser v. Ohio State Univ.*, 721 N.E.2d 1044, 1048 (Ohio 2000).

If the intent of the General Assembly was simply to enact a triggering mechanism to require the administrator of the estate recovery program to make a claim within ninety days following the filing of the Medicaid estate recovery form they would not have set into the language a time frame based on the decedent's date of death. The idea that the words "whichever is later" should create a potentially endless period of recovery against a beneficiary would render the words "or one year after the decedent's death" meaningless. The court must look for a plain meaning where both phrases have a purpose. See *Boley v. Cooper Tire & Rubber Co.*, 929 N.E.2d 448, 452 (Ohio 2010).

In revamping the probate claim period for creditors the state legislature recognized the public interest in bringing finality to a decedent's estate but elevated estate recovery claims as a special class and provided the State additional; but not unlimited, time to perfect a claim. See H. 95, 125th Gen. Assem., Reg. Sess. (Ohio 2003). The section "Claims Against the Estate" of the Bill Analysis of House Bill 95 presented by the Ohio Legislative Service Committee states:

"All claims against an estate must be presented within one year of the decedent's death. The act permits the administrator of the Medicaid Estate Recovery Program to present claims the later of one year after the decedent's death or 90 days after receiving notice from the person responsible for the estate that the decedent was a Medicaid recipient." (Emphasis added).

The legislative history is important in this case. House Bill 95, which introduced the language in this dispute, was presented shortly after another bill was set forth that would limit

the claim period for regular creditors making claims against a decedent's estate from one year to six months. See H. 51, 125th Gen. Assem., Reg. Sess. (Ohio 2003). By specifically exempting 2117.061 from the shortened general creditor period, the General Assembly opted to leave the State's claim period at one year, rather than terminating it at six months.

Further, the fiduciary of an estate can accelerate the claim of potential creditors "by giving written notice to a potential claimant that identifies the decedent by name, states the date of the death of the decedent, identifies the executor or administrator by name and mailing address, and informs the potential claimant that any claims the claimant may have against the estate are required to be presented to the executor or administrator in a writing within the earlier of *thirty days* after receipt of the notice by the potential claimant or six months after the date of the death of the decedent." See Ohio Rev. Code Ann. § 2117.07 (2006). (emphasis added)

Thus, a creditor has thirty days from notification by the fiduciary in which to present a claim. An estate recovery claim can also be accelerated in advance of the ultimate one year from date of death limitation by filing a Medicaid estate recovery reporting form. The administrator of the estate recovery program has *ninety days* from receipt of the estate recovery form to file a claim. Again, a balance recognizing the state's interest is seen in the longer claim period when giving written notice.

Even recognizing the important interest of the State in recovering expended funds from the estate of Medicaid recipient's, it is clear that the legislature did not intend to leave the estate recovery program unrestricted.

History of Estate Recovery in Ohio

Ohio adopted an estate recovery program in January 1, 1995, in response to a Federal mandate contained in the Omnibus Budget Reconciliation Act of 1993. See Ohio Rev. Code

Ann. § 5111.11 (1995) (amended 2006). When enacted in 1995, the Ohio Estate recovery program only allowed recovery against probate assets and no notification procedure was required by the executor or administrator of an estate. Since its inception, the Ohio estate recovery program has been administered by the Ohio Attorney General's Office.

In 2003, the General Assembly passed House Bill 95 which included the state's first estate recovery notice provision. This provision, codified as R.C. 2117.061, required that the executor, administration, or applicant for a release from administration or summary release from administration give the administrator of the estate recovery notice within 30 days of appointment that the decedent was fifty-five years of age or older at the time of their death and that the decedent was a Medicaid recipient under Revised Code Chapter 5111. See Ohio Rev. Code Ann. § 2117.061(B) (2006). In addition, it required that the "person responsible for the estate" shall mark the appropriate box on the appropriate probate form to notify the court that the decedent was a Medicaid recipient. See Ohio Rev. Code Ann. § 2117.061(C) (2006). Upon receipt of this notice the state was required to make a claim against the estate within 90 days of receipt of notice, or one year from the date of death. In response to R.C. 2117.061, Standard Probate Form 7.0 was created which gave the required notice to the administrator of the estate recovery program for probate estates only.

In 2005, the General Assembly passed House Bill 66 which substantially modified Ohio Estate Recovery. See H. 66, 126th Gen. Assem., Reg. Sess. (Ohio 2005). Federal law has always allowed the states to choose which avenue they wish to take in regard to estate recovery, either against probate assets only, or against all assets of a decedent both probate and non-probate. Until House Bill 66, Ohio had always chosen to recover against probate assets only. With the passage of House Bill 66, R.C. 5111.11 was amended to allow recovery against all

“real and personal property and other assets in which an individual had any legal title or interest at the time of death (to the extent of the interest), including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.” See Ohio Rev. Code Ann. § 5111.11(A)(1)(b) (2006).

In addition, R.C. 2117.061 was amended to create a “Medicaid estate recovery reporting form.”

The statute, as amended, required that the form shall:

“require, at a minimum, that the person responsible for the estate list all of the decedent’s real and personal property and other assets that are part of the decedent’s estate as defined in section 5111.11 of the Revised Code. In the case of a decedent who was the spouse of a decedent subject to the Medicaid estate recovery program, the form shall require, at a minimum, that the person responsible for the estate list all of the decedent’s real and personal property and other assets that are part of the decedent’s estate as defined in section 5111.11 of the Revised Code and were also part of the estate, as so defined, of the decedent subject to the Medicaid estate recovery program. The administrator shall include on the form a statement printed in bold letters informing the person responsible for the estate that knowingly making a false statement on the form is falsification under section 2921.13 of the Revised Code, a misdemeanor of the first degree.” See Ohio Rev. Code Ann. § 2117.061(D) (2006).

While the State of Ohio has been collecting against probate and non-probate assets since R.C. 5111.11 was amended, no “Medicaid estate recovery reporting form” has been promulgated by the administrator of the Medicaid estate recovery program and estate representatives have been forced to use the Standard Probate Form 7.0 that was proscribed under the previous R.C. 2117.061. Probate 7.0 form is not the Medicaid Estate Recovery form proscribed in R.C. 2117.061. The Standard Probate Form 7.0 does not list assets, either probate or non-probate, nor does it contain the “false statement” language as required by the statute. Therefore, it facially does not meet the requirements of the statutory “Medicaid estate recovery reporting form.”

ARGUMENT

- A. THIS COURT SHOULD AFFIRM THE LOWER COURT DECISION BINDING THE STATE TO A ONE YEAR STATUTE OF LIMITATIONS ON ESTATE RECOVERY CLAIMS AS IT IS IN COMPLIANCE WITH THE RULES OF STATUTORY CONSTRUCTION AND THE STATE CAN EASILY COMPLY WITH THE LIMITATION.**

When person applies for Medicaid, the state conducts a thorough evaluation of an applicant's assets. The State knows which applicant owns a home or a life insurance policy or a trust. They know who has transferred money and who has not. The initial application and the attendance of a face to face interview require not just full verbal disclosure but also written documentation of the value and ownership of each and every asset. Failure to disclose an asset to Medicaid is criminally punishable with a fraud conviction.

Once Medicaid is approved, the State continually monitors the status of each asset with a threat of penalties for failure to inform that State of changes in asset titling. The most prominent penalty for failure to cooperate with the State of Ohio is a denial of benefits resulting in costly health care bills for the elder in a nursing home. The State requires unmarried Medicaid recipients to list their homes for sale after 13 months of receiving benefits. If the initial face to face meeting was not enough, the state conducts redeterminations of eligibility to continually monitor the assets of the Medicaid recipient and requires the authorized representative to provided current asset information on an annual basis.

When a Medicaid applicant dies, the State is notified almost immediately so that the nursing home is not paid for one day more than that to which they are entitled. The nursing home frequently notifies the State before a death certificate has been issued, or the funeral has taken place. Before long (usually under 60 days), the State issues a letter for collection of

Medicaid expenditures. Within that letter, the State asks for estate information and any assets left in the recipient's name at death.

The Estate Recovery department of the Ohio Attorney General will frequently go after assets remaining at the nursing home in the Recipient's personal needs account with as little as \$30.00. The State, suffice it to say, needs no further help to collect against these families.

There is no reason the State needs an unlimited statute of limitation. If the State is bound to a one year statute of limitation, the State can utilize its own database to identify which Recipient owned a home and with whom they own that home. Currently, an heir cannot transfer a home either through probate or by a transfer on death affidavit without notifying the State. In this particular case, the State had not perfected its procedures, but since 2007, the State has iron clad control over real property transfers for Medicaid recipients when they die. There is no need for additional time to protect the State.

B. THIS COURT SHOULD AFFIRM THE LOWER COURT BECAUSE THERE IS NO WAY FOR AN ESTATE REPRESENTATIVE TO COMPLY WITH THE STATE'S FORM GENERATED STATUTE OF LIMITATIONS BECAUSE NO FORM EXISTS THEREBY MAKING IT IMPOSSIBLE TO COMPLY WITH THE LAW.

The concept of expanded estate recovery is fundamentally flawed in its execution. The law proscribes that the State can recover for Medicaid expenditures from the assets that the Medicaid recipient owned at death, whether an estate is opened or not. In 2005, the legislature amended R.C. 2117.061 to require the "person responsible for the estate" to submit a so-called "Medicaid estate recovery reporting form." The law in section R.C. 2117.061(D) states explicitly "The Administrator of the Medicaid recovery program shall prescribe a Medicaid Estate recovery reporting form..." Now, over eight years later, the State has never created the Medicaid Estate Recovery Reporting form.

It is a basic tenet of law that due process requires that the State be subject to the laws of the land. This is basic law on both a federal and State level. The State has not complied with the law in R.C. 2117.061(D) by failing to create a form. Therefore, a person cannot comply with the law. If that person cannot comply by, for instance, filing a form that did not exist, then the person cannot be penalized for the lack of compliance. It is nearly Orwellian in its absurdity.

C. UPHOLDING THE LOWER COURT'S DECISION IN THIS CASE IS REQUIRED BY PUBLIC POLICY.

The State would have us hold their right to recover from an estate or a recipient of a decedent's property forever. The law clearly intended the state to be bound by a one year statute of limitation. The three month notice provision was intended to give an estate representative a way to shorten the claim period, not give the state an unlimited time to bring a claim. The reality of the Estate Recovery process is that if the state can wait for someone to provide notice (even if the form that existed), then both probate and real property transactions would be impeded.

When a person dies, there is an interest in having creditor claims paid. That is long standing law. That public policy is limited because society would be harmed by the ability of creditors to come after heirs for the debts of the decedent. Society and law demands finality to creditor claims so that an estate can be opened, administered, and closed. The probate process is a balancing act between heirs and creditors. It is designed to close the door to one generation's debts and avoid a situation where family members become liable for the debts of their parents. That is a deliberate public policy that sets the United States apart from England back to colonial times.

Now, under the Medicaid Estate Recovery system, the Appellant would have us as a Society hold up the process by which we pass property to heirs indefinitely so that the State can take an unlimited amount of time to bring a claim for Medicaid expenditures. Further, because

the claim involves both probate and non-probate transfer of assets, the State acts like an eight hundred pound gorilla that lurks in the darkness waiting to come after unknowing recipients of an Medicaid decedent's property. Then the gorilla, through an aggressive collections company (the Special Counsel), paid on commission but "deputized" by the Ohio Attorney general can come in, and place either liens or recover from the son who owns a 25% share of his mother's house.

The practical effect of the Estate Recovery program with an unlimited statute of limitations is that families like the Centorbis who go through the probate process, do all that the probate court requires, and obtain a Certificate of Transfer can be subject to a taking by the State more than 2 years after the date of death.

For those who do not have to go through probate and do not have an "estate representative" who must file the supposed "estate recovery reporting form" the law creates an unstable legal status. The State, through these collections companies, would be enabled to go after the next of kin for years and years searching for any money that the Medicaid decedent might have owned. At least with a one year statute of limitations, the next of kin can rest after the one year knowing that the joint account, or life estate, or life insurance policy owned by the decedent cannot be garnished. More importantly, the bona fide purchaser who buys real property from a recipient won't be subject to an order to vacate their entire real estate transaction. The State would argue that the proceeds to the next of kin would be the only assets to which they would recover, but to do so would make that family member essentially responsible for the debts of their kin. To uphold the State's unlimited right to seek replenishment from the next of kin recreates the debtor state that the founders of our country sought to abolish over 200 years ago.

The reality of this system is that when a person goes on Medicaid, if they are single, they have to have less than \$1,500.00 in assets. There are few exceptions to this rule, but one of the major exceptions is that the house remains exempt for 13 months after the applicant goes on Medicaid. After 13 months the home is to be listed for sale at 90% of the county auditor's value and sold. There are exceptions to this rule if other people are living in the house, most notably, children who provided care that prevented nursing home admission for at least 2 years, a disabled adult child and a sibling with an equity interest.

For a married recipient of Medicaid the Estate recovery process is even more complicated. The married recipient can keep up to \$109,560.00 but if those assets are not taken out of the Medicaid recipient's name before he or she dies, the State can come back after the remaining spouse dies and go after the next of kin, years, and potentially decades later and surprise the heirs with a claim to assets passed either through probate or not. That type of unlimited jurisdiction is unheard of outside the fantasy world of Medicaid law.

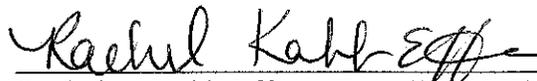
The State knows about the house from the initial application. For the single person, the house is the only asset remaining at death. The house, in Ohio can pass either through probate or through a transfer on death affidavit. As a practical matter the State is notified by the nursing home upon the death of the recipient and a release is required to transfer the property. The problem with an unlimited statute of limitation for claims against property like the Centorbis is that no real estate transaction of a person who received Medicaid is ever finished. The State could potentially place a lien against property that was once owned by the decedent that was a Medicaid recipient, and move to vacate any transfer of property, even an arms length transaction to a bona fide buyer. With the one year statute of limitations, the heirs can sell the property and the bona fide purchaser can know that the property has clear title and the new owners will not

have their ownership of their newly acquired property questioned. Imagining the nightmare for title insurers is just the beginning. The State must be limited in their ability to vacate title transfers in real property transactions or violate the public policy that requires finality to real estate transactions.

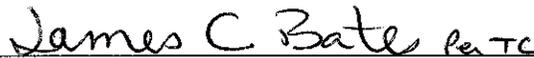
CONCLUSION

The undersigned respectfully requests, this uphold the Eighth District Court of Appeals decision imposing a one year statute of limitations on the State of Ohio to bring an estate recovery claim.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A Copy of the foregoing Brief In Support of Appellee on Anthony Centorbi, at 84 Elinor Avenue, REAR, Akron, Ohio 44305, and Benjamin C. Mizer, Solicitor General, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215 via regular U.S. Mail this 17th day of February, 2011.



5111.11 Estate recovery program.

(A) As used in this section and section 5111.111 of the Revised Code:

(1) "Estate" includes both of the following:

(a) All real and personal property and other assets to be administered under Title XXI of the Revised Code and property that would be administered under that title if not for section 2113.03 or 2113.031 of the Revised Code;

(b) Any other real and personal property and other assets in which an individual had any legal title or interest at the time of death (to the extent of the interest), including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

(2) "Institution" means a nursing facility, intermediate care facility for the mentally retarded, or a medical institution.

(3) "Intermediate care facility for the mentally retarded" and "nursing facility" have the same meanings as in section 5111.20 of the Revised Code.

(4) "Permanently institutionalized individual" means an individual to whom all of the following apply:

(a) Is an inpatient in an institution;

(b) Is required, as a condition of the medicaid program paying for the individual's services in the institution, to spend for costs of medical or nursing care all of the individual's income except for an amount for personal needs specified by the department of job and family services;

(c) Cannot reasonably be expected to be discharged from the institution and return home as determined by the department of job and family services.

(5) "Qualified state long-term care insurance partnership program" means the program established under section 5111.18 of the Revised Code.

(6) "Time of death" shall not be construed to mean a time after which a legal title or interest in real or personal property or other asset may pass by survivorship or other operation of law due to the death of the decedent or terminate by reason of the decedent's death.

(B) To the extent permitted by federal law, the department of job and family services shall institute a medicaid estate recovery program under which the department shall, except as provided in divisions (C) and (E) of this section, and subject to division (D) of this section, do all of the following:

(1) For the costs of medicaid services the medicaid program correctly paid or will pay on behalf of a permanently institutionalized individual of any age, seek adjustment or recovery from the individual's estate or on the sale of property of the individual or spouse that is subject to a lien imposed under section 5111.111 of the Revised Code;

(2) For the costs of medicaid services the medicaid program correctly paid or will pay on behalf of an individual fifty-five years of age or older who is not a permanently institutionalized individual, seek adjustment or recovery from the individual's estate;

(3) Seek adjustment or recovery from the estate of other individuals as permitted by federal law.

(C)(1) No adjustment or recovery may be made under division (B)(1) of this section from a permanently institutionalized individual's estate or on the sale of property of a permanently institutionalized individual that is subject to a lien imposed under section 5111.111 of the Revised Code or under division (B)(2) or (3) of this section from an individual's estate while either of the following are alive:

(a) The spouse of the permanently institutionalized individual or individual;

(b) The son or daughter of a permanently institutionalized individual or individual if the son or daughter is under age twenty-one or, under 42 U.S.C. 1382c, is considered blind or disabled.

(2) No adjustment or recovery may be made under division (B)(1) of this section from a permanently institutionalized individual's home that is subject to a lien imposed under section 5111.111 of the Revised Code while either of the following lawfully reside in the home:

(a) The permanently institutionalized individual's sibling who resided in the home for at least one year immediately before the date of the permanently institutionalized individual's admission to the institution and on a continuous basis since that time;

(b) The permanently institutionalized individual's son or daughter who provided care to the permanently institutionalized individual that delayed the permanently institutionalized individual's institutionalization and resided in the home for at least two years immediately before the date of the permanently institutionalized individual's admission to the institution and on a continuous basis since that time.

(D) In the case of a participant of the qualified state long-term care insurance partnership program, adjustment or recovery required by this section may be reduced in accordance with rules adopted under division (G) of this section.

(E) The department shall, in accordance with procedures and criteria established in rules adopted under division (G) of this section, waive seeking an adjustment or recovery otherwise required by this section if the director of job and family services determines that adjustment or recovery would work an undue hardship. The department may limit the duration of the waiver to the period during which the undue hardship exists.

(F) For the purpose of determining whether an individual meets the definition of "permanently institutionalized individual" established for this section, a rebuttable presumption exists that the individual cannot reasonably be expected to be discharged from an institution and return home if either of the following is the case:

(1) The individual declares that he or she does not intend to return home.

(2) The individual has been an inpatient in an institution for at least six months.

(G) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code regarding the medicaid estate recovery program, including rules that do both of the following:

(1) For the purpose of division (D) of this section and consistent with 42 U.S.C. 1396p(b)(1)(C), provide for reducing an adjustment or recovery in the case of a participant of the qualified state long-term care insurance partnership program;

(2) For the purpose of division (E) of this section and consistent with the standards specified by the United States secretary of health and human services under 42 U.S.C. 1396p(b)(3), establish procedures and criteria for waiving adjustment or recovery due to an undue hardship.

Effective Date: 08-29-2000; 06-30-2005; 06-30-2006; 2007 HB119 09-29-2007

2117.061 Notice of receipt of medicaid benefits to administrator of estate recovery program.

(A) As used in this section:

- (1) "Medicaid estate recovery program" means the program instituted under section 5111.11 of the Revised Code.
- (2) "Permanently institutionalized individual" has the same meaning as in section 5111.11 of the Revised Code.
- (3) "Person responsible for the estate" means the executor, administrator, commissioner, or person who filed pursuant to section 2113.03 of the Revised Code for release from administration of an estate.

(B) The person responsible for the estate of a decedent subject to the medicaid estate recovery program or the estate of a decedent who was the spouse of a decedent subject to the medicaid estate recovery program shall submit a properly completed medicaid estate recovery reporting form prescribed under division (D) of this section to the administrator of the medicaid estate recovery program not later than thirty days after the occurrence of any of the following:

- (1) The granting of letters testamentary;
 - (2) The administration of the estate;
 - (3) The filing of an application for release from administration or summary release from administration.
- (C) The person responsible for the estate shall mark the appropriate box on the appropriate probate form to indicate compliance with the requirements of division (B) of this section.

The probate court shall send a copy of the completed probate form to the administrator of the medicaid estate recovery program.

(D) The administrator of the medicaid estate recovery program shall prescribe a medicaid estate recovery reporting form for the purpose of division (B) of this section. In the case of a decedent subject to the medicaid estate recovery program, the form shall require, at a minimum, that the person responsible for the estate list all of the decedent's real and personal property and other assets that are part of the decedent's estate as defined in section 5111.11 of the Revised Code. In the case of a decedent who was the spouse of a decedent subject to the medicaid estate recovery program, the form shall require, at a minimum, that the person responsible for the estate list all of the decedent's real and personal property and other assets that are part of the decedent's estate as defined in section 5111.11 of the Revised Code and were also part of the estate, as so defined, of the decedent subject to the medicaid estate recovery program. The administrator shall include on the form a statement printed in bold letters informing the person responsible for the estate that knowingly making a false statement on the form is falsification under section 2921.13 of the Revised Code, a misdemeanor of the first degree.

(E) The administrator of the medicaid estate recovery program shall present a claim for estate recovery to the person responsible for the estate of the decedent or the person's legal representative not later than ninety days after the date on which the medicaid estate recovery reporting form is received under division (B) of this section or one year after the decedent's death, whichever is later.

Effective Date: 09-26-2003; 06-30-2005; 2007 HB119 09-29-2007

RULE 60. Relief From Judgment or Order

(A) **Clerical mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(B) **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules.

[Effective: July 1, 1970.]

129th GENERAL ASSEMBLY

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HB 51

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(125th General Assembly)
(Amended Substitute House Bill Number 51)

AN ACT

To amend sections 2106.01, 2106.02, 2107.19, 2109.301, 2109.32, 2113.53, 2117.06, 2117.07, 2117.11, and 2117.12 and to enact section 2101.163 of the Revised Code relative to the election by a surviving spouse, notice of admission of a will to probate, accounts of administrators and executors, distribution of estate assets, presentation of creditors' claims to distributees, dispute resolution procedures in probate court, and time for presenting claims against an estate.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2106.01, 2106.02, 2107.19, 2109.301, 2109.32, 2113.53, 2117.06, 2117.07, 2117.11, and 2117.12 be amended and section 2101.163 of the Revised Code be enacted to read as follows:

Sec. 2101.163. (A) A probate judge may establish by rule procedures for the resolution of disputes between parties to any civil action or proceeding that is within the jurisdiction of the probate court. Any procedures so adopted shall include, but are not limited to, mediation. If the probate judge establishes any procedures under this division, the probate judge may charge, in addition to the fees and costs authorized under section 2101.16 of the Revised Code, a reasonable fee, not to exceed fifteen dollars, that is to be collected on the filing of each action or proceeding and that is to be used to implement the procedures.

(B) The probate court shall pay to the county treasurer of the county in which the court is located all fees collected under division (A) of this section. The treasurer shall place the funds from the fees in a separate fund to be disbursed upon an order of the probate judge.

(C) If the probate judge determines that the amount of the moneys in the fund described in division (B) of this section is more than the amount that is sufficient to satisfy the purpose for which the additional fee described in division (A) of this section was imposed, the probate judge may declare a surplus in the fund and expend the surplus moneys for other appropriate judicial expenses of the probate court.

Sec. 2106.01. (A) After the initial appointment of an administrator or executor of the estate, the probate court shall issue a citation to the surviving spouse, if any is living at the time of the issuance of the citation, to elect whether to exercise the surviving spouse's rights under Chapter 2106. of the Revised Code, including, after the probate of a will, the right to elect to take under the will or under section 2105.06 of the Revised Code.

A surviving spouse may waive the service of the citation required under this division by filing in the probate court a written waiver of the citation. The waiver shall include an acknowledgment of receipt of the description of the general rights of the surviving spouse required by division (B) of section 2106.02 of the Revised Code.

(B) If the surviving spouse elects to take under section 2105.06 of the Revised Code and if the value of the property that the surviving spouse is entitled to receive is equal to or greater than the value of the decedent's interest in the mansion house as determined under section 2106.10 of the Revised Code, the surviving spouse also is entitled to make an election pursuant to division (A) of section 2106.10 of the Revised Code.

(C) If the surviving spouse elects to take under section 2105.06 of the Revised Code, the surviving spouse shall take not to exceed one-half of the net estate, unless two or more of the decedent's children or their lineal descendants survive, in which case the surviving spouse shall take not to exceed one-third of the net estate.

For purposes of this division, the net estate shall be determined before payment of federal estate tax, estate taxes under Chapter 5731. of the Revised Code, or any other tax that is subject to apportionment under section 2113.86 or 2113.861 of the Revised Code.

(D) Unless the will expressly provides that in case of an election under division (A) of this section there shall be no acceleration of remainder or other interests bequeathed or devised by the will, the balance of the net estate shall be disposed of as though the surviving spouse had predeceased the testator. If there is a disposition by a will to an

inter vivos trust that was created by the testator, if under the terms of the trust the surviving spouse is entitled to any interest in the trust or is granted any power or nomination with respect to the trust, and if the surviving spouse makes an election to take under section 2105.06 of the Revised Code, then, unless the trust instrument provides otherwise, the surviving spouse is deemed for purposes of the trust to have predeceased the testator, and there shall be an acceleration of remainder or other interests in all property bequeathed or devised to the trust by the will, in all property held by the trustee at the time of the death of the decedent, and in all property that comes into the hands of the trustee by reason of the death of the decedent.

(E) The election of a surviving spouse to take under a will or under section 2105.06 of the Revised Code may be made at any time after the death of the decedent, but the surviving spouse shall not make the election later than five months from the date of the initial appointment of an administrator or executor of the estate. On a motion filed before the expiration of the five-month period, and for good cause shown, the court may allow further time for the making of the election. If no action is taken by the surviving spouse before the expiration of the five-month period, it is conclusively presumed that the surviving spouse elects to take under the will. The election shall be entered on the journal of the court.

When proceedings for advice or to contest the validity of a will are begun within the time allowed by this division for making the election, the election may be made within three months after the final disposition of the proceedings, if the will is not set aside.

(F) When a surviving spouse succeeds to the entire estate of the testator, having been named the sole devisee and legatee, it shall be presumed that the spouse elects to take under the will of the testator, unless the surviving spouse manifests a contrary intention.

Sec. 2106.02. (A) The citation to make the election referred to in section 2106.01 of the Revised Code shall be sent to serve on the surviving spouse by ~~certified mail pursuant to Civil Rule 73~~. Notice that the citation has been issued by the court shall be given to the administrator or executor of the estate of the deceased spouse.

(B) The citation shall be accompanied by a general description of the effect of the election to take under the will or under section 2105.06 of the Revised Code and the general rights of the surviving spouse under Chapter 2106. of the Revised Code. The description shall include a specific reference to the procedures available to the surviving spouse under section 2106.03 of the Revised Code and to the presumption that arises if the surviving spouse does not make the election in accordance with division (E) of section 2106.01 of the Revised Code. The description of the general rights of the surviving spouse under Chapter 2106. of the Revised Code shall include a specific reference to the presumption that arises if the surviving spouse does not ~~make exercise the election rights under Chapter 2106. of the Revised Code~~ within the time period specified by section 2106.25 of the Revised Code. The description of the effect of the election and of the general rights of the surviving spouse need not relate to the nature of any particular estate.

(C) A surviving spouse electing to take under the will may manifest the election in writing within the times described in division (E) of section 2106.01 of the Revised Code.

Sec. 2107.19. (A)(1) Subject to divisions (A)(2) and (B) of this section, when a will has been admitted to probate, the fiduciary for the estate or another person specified in division (A)(4) of this section shall, within two weeks of the admission of the will to probate, give a notice as described in this division and in the manner provided by Civil Rule 73(E) to the surviving spouse of the testator, to all persons who would be entitled to inherit from the testator under Chapter 2105. of the Revised Code if the testator had died intestate, and to all legatees and devisees named in the will. The notice shall mention the probate of the will and, if a particular person being given the notice is a legatee or devisee named in the will, shall state that the person is named in the will as beneficiary. A copy of the will admitted to probate is not required to be given with the notice.

(2) A person entitled to be given the notice described in division (A)(1) of this section may waive that right by filing a written waiver of the right to receive the notice in the probate court. The person may file the waiver of the right to receive the notice at any time prior to or after the will has been admitted to probate.

(3) The fact that the notice described in division (A)(1) of this section has been given, subject to division (B) of this section, to all persons described in division (A)(1) of this section who have not waived their right to receive the notice, and, if applicable, the fact that certain persons described in that division have waived their right to receive the notice in accordance with division (A)(2) of this section, shall be evidenced by a certificate that shall be filed in the probate court in accordance with division (A)(4) of this section.

(4) The notice of the admission of the will to probate required by division (A)(1) of this section and the certificate of giving notice or waiver of notice required by division (A)(3) of this section shall be given or filed by the fiduciary for the estate or by the applicant for the admission of the will to probate, the applicant for a release from administration, any other interested person, or the attorney for the fiduciary or for any of the preceding persons. The certificate of giving notice shall be filed not later than two months after the appointment of the fiduciary or, if no fiduciary has been appointed, not later than two months after the admission of the will to probate, unless the court grants an extension of that time. Failure to file the certificate in a timely manner shall subject the fiduciary or applicant to the citation and penalty provisions of section 2109.31 of the Revised Code.

(B) The fiduciary or another person specified in division (A)(4) of this section is not required to give a notice pursuant to division (A)(1) of this section to persons who have been notified of the application for probate of the will or of a contest as to jurisdiction or to persons whose names or places of residence are unknown and cannot with reasonable diligence be ascertained, and a person authorized by division (A)(4) of this section to give notice shall file in the probate court a certificate to that effect.

Sec. 2109.301. (A) An administrator or executor shall render an account at any time other than a time otherwise mentioned in this section upon an order of the probate court issued for good cause shown either at its own instance

or upon the motion of any person interested in the estate. Except as otherwise provided in division (B)(2) of this section, an administrator or executor shall render a final account within thirty days after completing the administration of the estate or within any other period of time that the court may order.

Every account shall include an itemized statement of all receipts of the administrator or executor during the accounting period and of all disbursements and distributions made by the executor or administrator during the accounting period. In addition, the account shall include an itemized statement of all funds, assets, and investments of the estate known to or in the possession of the administrator or executor at the end of the accounting period and shall show any changes in investments since the last previous account.

Every account shall be upon the signature of the administrator or executor. When two or more administrators or executors render an account, the court may allow the account upon the signature of one of them. The court may examine the administrator or executor under oath concerning the account.

When an administrator or executor is authorized by law or by the instrument governing distribution to distribute the assets of the estate, in whole or in part, the administrator or executor may do so and include a report of the distribution in the administrator's or executor's succeeding account.

In estates of decedents in which none of the legatees, devisees, or heirs is under a legal disability, each partial accounting of an executor or administrator may be waived by the written consent of all the legatees, devisees, or heirs filed in lieu of a partial accounting otherwise required.

(B)(1) Every administrator and executor, within six months after appointment, shall render a final and distributive account of the administrator's or executor's administration of the estate unless one or more of the following circumstances apply:

- (a) An Ohio estate tax return must be filed for the estate.
- (b) A proceeding contesting the validity of the decedent's will pursuant to section 2107.71 of the Revised Code has been commenced.
- (c) The surviving spouse has filed an election to take against the will.
- (d) The administrator or executor is a party in a civil action.
- (e) The estate is insolvent.
- (f) For other reasons set forth by the administrator or executor, subject to court approval, it would be detrimental to the estate and its beneficiaries or heirs to file a final and distributive account.

(2) In estates of decedents in which the sole legatee, devisee, or heir is also the administrator or executor of the estate, no partial accountings are required, and the administrator or executor of an estate of that type shall not file a final account or final and distributive account. ~~In or, in lieu of filing a final account, the administrator or executor of an estate of that type shall be discharged by filing~~ may file with the court within thirty days after completing the administration of the estate a certificate of termination of an estate that states all of the following:

- (a) All debts and claims presented to the estate have been paid in full or settled finally.
- (b) An estate tax return, if required under the provisions of the Internal Revenue Code or Chapter 5731. of the Revised Code, has been filed, and any estate tax has been paid.
- (c) All attorney's fees have been waived by or paid to counsel of record of the estate, and all executor or administrator fees have been waived or paid.
- (d) The amount of attorney's fees and the amount of administrator or executor fees that have been paid.
- (e) All assets remaining after completion of the activities described in divisions (B)(2)(a) to (d) of this section have been distributed to the sole legatee, devisee, or heir.

(3) In an estate of the type described in division (B)(2) of this section, a sole legatee, devisee, or heir of a decedent may be liable to creditors for debts of and claims against the estate that are presented after the filing of the certificate of termination described in that division and within the time allowed by section 2117.06 of the Revised Code for presentation of the creditors' claims.

(4) Not later than thirteen months after appointment, every administrator and executor shall render an account of the administrator's or executor's administration, unless a certificate of termination is filed under division (B)(2) of this section. Except as provided in divisions (B)(1) and (2) of this section, after the initial account is rendered, every administrator and executor shall render further accounts at least once each year.

Sec. 2109.32. (A) Every fiduciary's account required by section 2109.301, 2109.302, or 2109.303 of the Revised Code shall be set for hearing before the probate court. The hearing on the account shall be set not earlier than thirty days after the filing of the account.

At the hearing upon an account required by section 2109.302 or 2109.303 of the Revised Code and, if ordered by the court, upon an account required by section 2109.301 of the Revised Code, the court shall inquire into, consider, and determine all matters relative to the account and the manner in which the fiduciary has executed the fiduciary's trust, including the investment of trust funds, and may order the account approved and settled or make any other

order as the court considers proper. If, at the hearing upon an account, the court finds that the fiduciary has fully and lawfully administered the estate or trust and has distributed the assets of the estate or trust in accordance with the law or the instrument governing distribution, as shown in the account, the court shall order the account approved and settled and may order the fiduciary discharged. Upon approval of a final and distributive account required by division (B)(1) of section 2109.301 of the Revised Code, the court may order the surety bond for the fiduciary terminated. Unless otherwise ordered by the court, the fiduciary shall be discharged without further order twelve months following the approval of the final and distributive account.

(B)(1) An administrator or executor filing an account pursuant to section 2109.301 of the Revised Code shall provide at the time of filing the account a copy of the account to each heir of an intestate estate or to each beneficiary of a testate estate. An administrator or executor is not required to provide a copy of the account to any of the following:

(a) An heir or a beneficiary whose residence is unknown;

(b) A beneficiary of a specific bequest or devise who has received his or her distribution and for which a receipt has been filed or exhibited with the court.

(2) An administrator or executor filing an account pursuant to section 2109.301 of the Revised Code shall file with the probate court a certificate of service of account prior to or simultaneously with the filing of the account.

(3) The probate court shall not approve the final account of any executor or administrator until the following events have occurred:

(a) Three months have passed since the death of the decedent.

(b) The surviving spouse has filed an election to take under or against the will, or the time for making the election has expired.

~~(3)(4)~~ (4) If an administrator or executor learns of the existence of newly discovered assets after the filing of the final account or otherwise comes into possession of assets belonging to the estate after the filing of the final account, the executor or administrator shall file a supplemental final account with respect to the disposition of the assets and shall provide a copy of the supplemental final account to each heir of an intestate estate or to each beneficiary of a testate estate, as provided in division (B)(1) of this section and subject to the exceptions specified in divisions (B)(1)(a) and (b) of this section.

(C) The rights of any person with a pecuniary interest in the estate are not barred by approval of an account pursuant to divisions (A) and (B) of this section. These rights may be barred following a hearing on the account pursuant to section 2109.33 of the Revised Code.

Sec. 2113.53. (A) At any time after the appointment of an executor or administrator, the executor or administrator may distribute to the beneficiaries entitled to assets of the estate under the will, if there is no action pending to set aside the will, or to the heirs entitled to assets of the estate by law, in cash or in kind, any part or all of the assets of the estate. Each beneficiary or heir is liable to return the assets, or the proceeds from the assets, to the estate if they are necessary to satisfy the share of a surviving spouse who elects to take against the will pursuant to section 2106.01 of the Revised Code, ~~if they are necessary to satisfy any claims against the estate as provided in this section;~~ or if the will is set aside.

(B) After distribution pursuant to division (A) of this section, a distributee shall be personally liable to a claimant who presents a valid claim within the time set forth in division (B) of section 2117.06 of the Revised Code, subject to the limitations described in this division.

If presentation of a claim is made pursuant to division (A)(2) of section 2117.06 of the Revised Code, only those distributees who have received timely presentation of the claim pursuant to division (B) of that section have any liability for the claim, subject to the limitations described in this division.

The personal liability of any distributee shall not exceed the lesser of the following:

(1) The amount the distributee has received reduced by the amount, if any, previously returned or otherwise used for the payment of the spouse's share or claims finally allowed;

(2) The distributee's proportionate share of the spouse's share or of claims finally allowed. Any distributee's proportionate share of the spouse's share or of claims finally allowed shall be determined by the following fraction:

(a) The numerator shall be the total amount received by the distributee, reduced by all amounts, if any, previously returned or otherwise used for the payment of the spouse's share or claims finally allowed.

(b) The denominator shall be the total amount received by all distributees reduced by all amounts, if any, previously returned or otherwise used for the payment of the spouse's share or claims finally allowed.

(C) If there is a surviving spouse and if the executor or administrator distributes any part of the assets of the estate before the expiration of the times described in division (E) of section 2106.01 of the Revised Code for the making of an election by a surviving spouse, the executor or administrator shall be personally liable to any surviving spouse who subsequently elects to take against the will. If the executor or administrator distributes any part of the assets of the estate within three months after the death of the decedent, the executor or administrator shall be personally liable only to those claimants who present their claims within that three-month period. If the executor or administrator distributes any part of the assets of the estate more than three months but less than one year after the death of the decedent, the executor or administrator shall be personally liable only to those claimants who present their claims before the time of distribution and within the time set forth in division (B) of section 2117.06 of

the Revised Code.

The executor or administrator shall be liable only to the extent that the sum of the remaining assets of the estate and the assets returned by the beneficiaries or heirs is insufficient to satisfy the share of the surviving spouse and to satisfy the claims against the estate. The executor or administrator shall not be liable in any case for an amount greater than the value of the estate that existed at the time that the distribution of assets was made and that was subject to the spouse's share or to the claims.

(D) The executor or administrator may provide for the payment of rejected claims or claims in suit by setting aside a sufficient amount of the assets of the estate for paying the claims. The assets shall be set aside for the payment of the claims in a manner approved by the probate court. Each claimant for whom assets are to be set aside shall be given notice, in the manner as the court shall order, of the hearing upon the application to set aside assets and shall have the right to be fully heard as to the nature and amount of the assets to be set aside for payment of the claim and as to all other conditions in connection with the claim. In any case in which the executor or administrator may set aside assets as provided in this section, the court, upon its own motion or upon application of the executor or administrator, as a condition precedent to any distribution, may require any beneficiary or heir to give a bond to the state with surety approved and in an amount fixed by the court, conditioned to secure the return of the assets to be distributed, or the proceeds from the assets or as much of the assets as may be necessary to satisfy the claims that may be recovered against the estate, and to indemnify the executor or administrator against loss and damage on account of such distribution. The bond may be in addition to the assets to be set aside or partially or wholly in lieu of the assets, as the court shall determine.

Sec. 2117.06. (A) All creditors having claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether due or not due, secured or unsecured, liquidated or unliquidated, shall present their claims in one of the following manners:

(1) After the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination, in one of the following manners:

(a) To the executor or administrator in a writing;

~~(b)~~ To the executor or administrator in a writing, and to the probate court by filing a copy of the writing with it;

~~(c)~~ In a writing that is sent by ordinary mail addressed to the decedent and that is actually received by the executor or administrator within the appropriate time specified in division (B) of this section. For purposes of this division, if an executor or administrator is not a natural person, the writing shall be considered as being actually received by the executor or administrator only if the person charged with the primary responsibility of administering the estate of the decedent actually receives the writing within the appropriate time specified in division (B) of this section.

(2) If the final account or certificate of termination has been filed, in a writing to those distributees of the decedent's estate who may share liability for the payment of the claim.

(B) Except as provided in section 2117.061 of the Revised Code, all claims shall be presented within one-year six months after the death of the decedent, whether or not the estate is released from administration or an executor or administrator is appointed during that one-year six-month period. Every claim presented shall set forth the claimant's address.

(C) Except as provided in section 2117.061 of the Revised Code, a claim that is not presented within one-year six months after the death of the decedent shall be forever barred as to all parties, including, but not limited to, devisees, legatees, and distributees. No payment shall be made on the claim and no action shall be maintained on the claim, except as otherwise provided in sections 2117.37 to 2117.42 of the Revised Code with reference to contingent claims.

(D) In the absence of any prior demand for allowance, the executor or administrator shall allow or reject all claims, except tax assessment claims, within thirty days after their presentation, provided that failure of the executor or administrator to allow or reject within that time shall not prevent the executor or administrator from doing so after that time and shall not prejudice the rights of any claimant. Upon the allowance of a claim, the executor or the administrator, on demand of the creditor, shall furnish the creditor with a written statement or memorandum of the fact and date of the allowance.

(E) If the executor or administrator has actual knowledge of a pending action commenced against the decedent prior to the decedent's death in a court of record in this state, the executor or administrator shall file a notice of the appointment of the executor or administrator in the pending action within ten days after acquiring that knowledge. If the administrator or executor is not a natural person, actual knowledge of a pending suit against the decedent shall be limited to the actual knowledge of the person charged with the primary responsibility of administering the estate of the decedent. Failure to file the notice within the ten-day period does not extend the claim period established by this section.

(F) This section applies to any person who is required to give written notice to the executor or administrator of a motion or application to revive an action pending against the decedent at the date of the death of the decedent.

(G) Nothing in this section or in section 2117.07 of the Revised Code shall be construed to reduce the time mentioned in section 2125.02, 2305.09, 2305.10, 2305.11, 2305.113, or 2305.12 of the Revised Code, provided that no portion of any recovery on a claim brought pursuant to any of those sections shall come from the assets of an estate unless the claim has been presented against the estate in accordance with Chapter 2117. of the Revised Code.

(H) Any person whose claim has been presented and has not been rejected after presentment is a creditor as that term is used in Chapters 2113. to 2125. of the Revised Code. Claims that are contingent need not be presented except as provided in sections 2117.37 to 2117.42 of the Revised Code, but, whether presented pursuant to those sections or this section, contingent claims may be presented in any of the manners described in division (A) of this section.

(I) If a creditor presents a claim against an estate in accordance with division (A)(2)(1)(b) of this section, the probate court shall not close the administration of the estate until that claim is allowed or rejected.

(J) The probate court shall not require an executor or administrator to make and return into the court a schedule of claims against the estate.

(K) If the executor or administrator makes a distribution of the assets of the estate pursuant to section 2113.53 of the Revised Code and prior to the expiration of the time for the filing presentation of claims as set forth in this section, the executor or administrator shall provide notice on the account delivered to each distributee that the distributee may be liable to the estate if a claim is presented prior to the filing of the final account and may be liable to the claimant if the claim is presented after the filing of the final account up to the value of the distribution and may be required to return all or any part of the value of the distribution if a valid claim is subsequently made against the estate within the time permitted under this section.

Sec. 2117.07. An executor or administrator may accelerate the bar against claims against the estate established by section 2117.06 of the Revised Code by giving written notice to a potential claimant that identifies the decedent by name, states the date of the death of the decedent, identifies the executor or administrator by name and mailing address, and informs the potential claimant that any claims he the claimant may have against the estate are required to be presented to the executor or administrator in a writing within the earlier of thirty days after receipt of the notice by the potential claimant or one-year six months after the date of the death of the decedent. A claim of that potential claimant that is not presented in the manner provided by section 2117.06 of the Revised Code within the earlier of thirty days after receipt of the notice by the potential claimant or one-year six months after the date of the death of the decedent is barred by section 2117.06 of the Revised Code in the same manner as if it was not presented within one-year six months after the date of the death of the decedent.

Sec. 2117.11. An executor or administrator, or a distributee who receives the presentation of a claim as provided in division (A)(2) of section 2117.06 of the Revised Code, shall reject a creditor's claim against the estate he represents by giving the claimant written notice of the disallowance thereof of the claim. Such The notice shall be given to the claimant personally or by registered mail with return receipt requested, addressed to the claimant at the address given on the claim pursuant to Civil Rule 73. Notice by mail shall be effective on delivery of the mail at the address given. A claim may be rejected in whole or in part. A claim which that has been allowed may be rejected at any time thereafter after allowance of the claim.

A claim is rejected if the executor or administrator, or a distributee who receives the presentation of a claim as provided in division (A)(2) of section 2117.06 of the Revised Code, on demand in writing by the claimant for an allowance thereof of the claim within five days, which demand may be made at presentation or at any time thereafter after presentation, fails to give to the claimant, within such that five-day period, a written statement of the allowance of such the claim. Such The rejection shall become effective at the expiration of such that period.

Sec. 2117.12. When a claim against an estate has been rejected in whole or in part but not referred to referees, or when a claim has been allowed in whole or in part and thereafter rejected, the claimant must commence an action on the claim, or that part thereof of the claim that was rejected, within two months after such the rejection if the debt or that part thereof of the debt that was rejected is then due, or within two months after the same that debt or part of the debt that was rejected becomes due, or be forever barred from maintaining an action thereon on the claim or part of the claim that was rejected. If the executor or administrator dies, resigns, or is removed within such two months that two-month period and before action is commenced thereon on the claim or part of the claim that was rejected, the action may be commenced within two months after the appointment of a successor.

For the purposes of this section, the action of a claimant is commenced when the petition complaint and praecipe for service of summons on the executor or administrator, or on the distributee who received the presentation of the claim as provided in division (A)(2) of section 2117.06 of the Revised Code, have been filed.

SECTION 2. That existing sections 2106.01, 2106.02, 2107.19, 2109.301, 2109.32, 2113.53, 2117.06, 2117.07, 2117.11, and 2117.12 of the Revised Code are hereby repealed.

SECTION 3. (A) Sections 2106.01, 2106.02, 2107.19, 2109.301, 2109.32, 2113.53, 2117.06, 2117.07, 2117.11, and 2117.12 of the Revised Code, as amended by this act, apply to estates that are in existence or are initiated on or after the effective date of this act.

(B) Section 2101.163 of the Revised Code, as enacted by this act, applies to civil actions and proceedings that are pending in or brought before the probate court on or after the effective date of this act.

SECTION 4. It is hereby declared that it was the intent of the General Assembly that the sections of the Revised Code described in Section 2 of Sub. H.B. 85 of the 124th General Assembly were to be repealed effective December 31, 2001, to coincide with Section 5 of Sub. H.B. 85 of the 124th General Assembly, and that the repeal of such Revised Code sections in Section 2 of Sub. H.B. 85 of the 124th General Assembly was not to be effective October 31, 2001.

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(126th General Assembly)
(Amended Substitute House Bill Number 95)

AN ACT

To amend sections 2152.17, 2901.08, 2903.11, 2907.01, 2907.03, 2907.05, 2919.26, 2929.01, 2929.13, 2929.14, 2941.149, 2953.08, and 3113.31 and to enact section 2152.192 of the Revised Code relative to the sentences imposed on repeat violent offenders, to the appeal of repeat violent offender sentences, to the penalty for sexual battery and gross sexual imposition when the victim of the offense is under 13 years of age, to the issuance of temporary protection orders and civil protection orders for victims of sexually oriented offenses, the notification of JFS-certified facilities regarding children adjudicated delinquent for acts that are sexually oriented offenses, and to the Sex Offense Law definition of "sexual conduct."

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2152.17, 2901.08, 2903.11, 2907.01, 2907.03, 2907.05, 2919.26, 2929.01, 2929.13, 2929.14, 2941.149, 2953.08, and 3113.31 be amended and section 2152.192 of the Revised Code be enacted to read as follows:

Sec. 2152.17. (A) Subject to division (D) of this section, if a child is adjudicated a delinquent child for committing an act, other than a violation of section 2923.12 of the Revised Code, that would be a felony if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of a specification of the type set forth in section 2941.141, 2941.144, 2941.145, 2941.146, 2941.1412, 2941.1414, or 2941.1415 of the Revised Code, in addition to any commitment or other disposition the court imposes for the underlying delinquent act, all of the following apply:

(1) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.141 of the Revised Code, the court may commit the child to the department of youth services for the specification for a definite period of up to one year.

(2) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.145 of the Revised Code or if the delinquent act is a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and the court determines that the child would be guilty of a specification of the type set forth in section 2941.1415 of the Revised Code, the court shall commit the child to the department of youth services for the specification for a definite period of not less than one and not more than three years, and the court also shall commit the child to the department for the underlying delinquent act under sections 2152.11 to 2152.16 of the Revised Code.

(3) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.144, 2941.146, or 2941.1412 of the Revised Code or if the delinquent act is a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and the court determines that the child would be guilty of a specification of the type set forth in section 2941.1414 of the Revised Code, the court shall commit the child to the department of youth services for the specification for a definite period of not less than one and not more than five years, and the court also shall commit the child to the department for the underlying delinquent act under sections 2152.11 to 2152.16 of the Revised Code.

(B) Division (A) of this section also applies to a child who is an accomplice to the same extent the firearm specifications would apply to an adult accomplice in a criminal proceeding.

(C) If a child is adjudicated a delinquent child for committing an act that would be aggravated murder, murder, or a first, second, or third degree felony offense of violence if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of a specification of the type set forth in section 2941.142 of the Revised Code in relation to the act for which the child was adjudicated a delinquent child, the court shall commit the child for the specification to the legal custody of the department of youth services for institutionalization in a secure facility for a definite period of not less than one and not more than three years, subject to division (D)(2) of this section, and the court also shall commit the child to the department for the underlying delinquent act.

(D)(1) If the child is adjudicated a delinquent child for committing an act that would be an offense of violence that is a felony if committed by an adult and is committed to the legal custody of the department of youth services pursuant to division (A)(1) of section 2152.16 of the Revised Code and if the court determines that the child, if the child was an adult, would be guilty of a specification of the type set forth in section 2941.1411 of the Revised Code in relation to the act for which the child was adjudicated a delinquent child, the court may commit the child to the custody of the department of youth services for institutionalization in a secure facility for up to two years, subject to division (D)(2) of this section.

(2) A court that imposes a period of commitment under division (A) of this section is not precluded from imposing an additional period of commitment under division (C) or (D)(1) of this section, a court that imposes a period of commitment under division (C) of this section is not precluded from imposing an additional period of commitment under division (A) or (D)(1) of this section, and a court that imposes a period of commitment under division (D)(1) of this section is not precluded from imposing an additional period of commitment under division (A) or (C) of this section.

(E) The court shall not commit a child to the legal custody of the department of youth services for a specification pursuant to this section for a period that exceeds five years for any one delinquent act. Any commitment imposed pursuant to division (A), (B), (C), or (D)(1) of this section shall be in addition to, and shall be served consecutively with and prior to, a period of commitment ordered under this chapter for the underlying delinquent act, and each commitment imposed pursuant to division (A), (B), (C), or (D)(1) of this section shall be in addition to, and shall be served consecutively with, any other period of commitment imposed under those divisions. If a commitment is imposed under division (A) or (B) of this section and a commitment also is imposed under division (C) of this section, the period imposed under division (A) or (B) of this section shall be served prior to the period imposed under division (C) of this section.

In each case in which a court makes a disposition under this section, the court retains control over the commitment for the entire period of the commitment.

The total of all the periods of commitment imposed for any specification under this section and for the underlying offense shall not exceed the child's attainment of twenty-one years of age.

(F) If a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the court entering the delinquent child adjudication orders the commitment of the child for two or more of those acts to the legal custody of the department of youth services for institutionalization in a secure facility pursuant to section 2152.13 or 2152.16 of the Revised Code, the court may order that all of the periods of commitment imposed under those sections for those acts be served consecutively in the legal custody of the department of youth services, provided that those periods of commitment shall be in addition to and commence immediately following the expiration of a period of commitment that the court imposes pursuant to division (A), (B), (C), or (D)(1) of this section. A court shall not commit a delinquent child to the legal custody of the department of youth services under this division for a period that exceeds the child's attainment of twenty-one years of age.

~~(G) If a child is adjudicated a delinquent child for committing an act that if committed by an adult would be aggravated murder, murder, rape, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, involuntary manslaughter, a felony of the first or second degree resulting in the death of or physical harm to a person, complicity in or an attempt to commit any of those offenses, or an offense under an existing or former law of this state that is or was substantially equivalent to any of those offenses and if the court in its order of disposition for that act commits the child to the custody of the department of youth services, the adjudication shall be considered a conviction for purposes of a future determination pursuant to Chapter 2929 of the Revised Code as to whether the child, as an adult, is a repeat violent offender.~~

Sec. 2152.192. If a court or child welfare agency places a delinquent child in an institution or association, as defined in section 5103.02 of the Revised Code, that is certified by the department of job and family services pursuant to section 5103.03 of the Revised Code and if that child has been adjudicated delinquent for committing an act that is a sexually oriented offense in either a prior delinquency adjudication or in the most recent delinquency adjudication, the court or child welfare agency shall notify the operator of the institution or association and the sheriff of the county in which the institution or association is located that the child has been adjudicated delinquent for committing an act that is a sexually oriented offense.

Sec. 2901.08. (A) If a person is alleged to have committed an offense and if the person previously has been adjudicated a delinquent child or juvenile traffic offender for a violation of a law or ordinance, except as provided in division (B) of this section, the adjudication as a delinquent child or as a juvenile traffic offender is a conviction for a violation of the law or ordinance for purposes of determining the offense with which the person should be charged and, if the person is convicted of or pleads guilty to an offense, the sentence to be imposed upon the person relative to the conviction or guilty plea.

(B) A previous adjudication of a person as a delinquent child or juvenile traffic offender for a violation of a law or ordinance is not a conviction for a violation of the law or ordinance for purposes of determining whether the person is a repeat violent offender, as defined in section 2929.01 of the Revised Code, or whether the person should be sentenced as a repeat violent offender under division (D)(2) of section 2929.14 and section 2941.149 of the Revised Code.

Sec. 2903.11. (A) No person shall knowingly do either of the following:

- (1) Cause serious physical harm to another or to another's unborn;
- (2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordinance.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly do any of the following:

- (1) Engage in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;
- (2) Engage in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome;
- (3) Engage in sexual conduct with a person under eighteen years of age who is not the spouse of the offender.

(C) The prosecution of a person under this section does not preclude prosecution of that person under section 2907.02 of the Revised Code.

(D) Whoever violates this section is guilty of felonious assault, a felony of the second degree. If the victim of a violation of division (A) of this section is a peace officer, felonious assault is a felony of the first degree. If the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, and if the victim suffered serious physical harm as a result of the commission of the offense, felonious assault is a felony of the first degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(E) 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) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.
- (3) "Sexual conduct" has the same meaning as in section 2907.01 of the Revised Code, except that, as used in this section, it does not include the insertion of an instrument, apparatus, or other object that is not a part of the body into the vaginal or anal cavity opening of another, unless the offender knew at the time of the insertion that the instrument, apparatus, or other object carried the offender's bodily fluid.

Sec. 2907.01. As used in sections 2907.01 to 2907.37 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact, or both.

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

- (1) The material or performance, when considered as a whole, appeals to the prurient interest in sex of juveniles.
- (2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.
- (3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

- (1) Its dominant appeal is to prurient interest;
- (2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;
- (3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;
- (4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

(G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(I) "Juvenile" means an unmarried person under the age of eighteen.

(J) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

(K) "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

(L) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the Revised Code;

(2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

(M) "Minor" means a person under the age of eighteen.

(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.

(O) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.

(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

Sec. 2907.03. (A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.

(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(B) Whoever violates this section is guilty of sexual battery. Except as otherwise provided in this division, sexual battery is a felony of the third degree. If the other person is less than thirteen years of age, sexual battery is a felony of the second degree, and the court shall impose upon the offender a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the second degree.

(C) As used in this section:

(1) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(2) "Institution of higher education" means a state institution of higher education defined in section 3345.011 of the Revised Code, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, or a school certified under Chapter 3332. of the Revised Code.

Sec. 2907.05. (A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

(2) For the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(3) The offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.

(5) The ability of the other person to resist or consent or the ability of one of the other persons to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.

(B) Whoever violates this section is guilty of gross sexual imposition. **Except**

(1) Except as otherwise provided in this section, a gross sexual imposition committed in violation of division (A)(1), (2), (3), or (5) of this section is a felony of the fourth degree. If the offender under division (A)(2) of this section substantially impairs the judgment or control of the other person or one of the other persons by administering any controlled substance described in section 3719.41 of the Revised Code to the person surreptitiously or by force, threat of force, or deception, a gross sexual imposition committed in violation of division (A)(2) of this section is a felony of the third degree. *

(2) Gross sexual imposition committed in violation of division (A)(4) of this section is a felony of the third degree. Except as otherwise provided in this division, for gross sexual imposition committed in violation of division (A)(4) of this section there is a presumption that a prison term shall be imposed for the offense. The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) of this section a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the third degree if either of the following applies:

(a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation;

(b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was under thirteen years of age.

(C) A victim need not prove physical resistance to the offender in prosecutions under this section.

(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court

finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

Sec. 2919.26. (A)(1) Upon the filing of a complaint that alleges a violation of section 2909.06, 2909.07, 2911.12, or 2911.211 of the Revised Code if the alleged victim of the violation was a family or household member at the time of the violation, a violation of a municipal ordinance that is substantially similar to any of those sections if the alleged victim of the violation was a family or household member at the time of the violation, or any offense of violence if the alleged victim of the offense was a family or household member at the time of the commission of the offense, or any sexually oriented offense, the complainant, the alleged victim, or a family or household member of an alleged victim may file, or, if in an emergency the alleged victim is unable to file, a person who made an arrest for the alleged violation or offense under section 2935.03 of the Revised Code may file on behalf of the alleged victim, a motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender, in addition to any bail set under Criminal Rule 46. The motion shall be filed with the clerk of the court that has jurisdiction of the case at any time after the filing of the complaint.

(2) For purposes of section 2930.09 of the Revised Code, all stages of a proceeding arising out of a complaint alleging the commission of a violation or offense of violence described in division (A)(1) of this section, including all proceedings on a motion for a temporary protection order, are critical stages of the case, and a victim may be accompanied by a victim advocate or another person to provide support to the victim as provided in that section.

(B) The motion shall be prepared on a form that is provided by the clerk of the court, which form shall be substantially as follows:

"MOTION FOR TEMPORARY PROTECTION ORDER
..... Court
Name and address of court

State of Ohio

v.

No.

.....

Name of Defendant

(name of person), moves the court to issue a temporary protection order containing terms designed to ensure the safety and protection of the complainant, alleged victim, and other family or household members, in relation to the named defendant, pursuant to its authority to issue such an order under section 2919.26 of the Revised Code.

A complaint, a copy of which has been attached to this motion, has been filed in this court charging the named defendant with (name of the specified violation or the offense of violence charged) in circumstances in which the victim was a family or household member in violation of (section of the Revised Code designating the specified violation or offense of violence charged), or charging the named defendant with a violation of a municipal ordinance that is substantially similar to (section of the Revised Code designating the specified violation or offense of violence charged) involving a family or household member.

I understand that I must appear before the court, at a time set by the court within twenty-four hours after the filing of this motion, for a hearing on the motion or that, if I am unable to appear because of hospitalization or a medical condition resulting from the offense alleged in the complaint, a person who can provide information about my need for a temporary protection order must appear before the court in lieu of my appearing in court. I understand that any temporary protection order granted pursuant to this motion is a pretrial condition of release and is effective only until the disposition of the criminal proceeding arising out of the attached complaint, or the issuance of a civil protection order or the approval of a consent agreement, arising out of the same activities as those that were the basis of the complaint, under section 3113.31 of the Revised Code.

.....

Signature of person

(or signature of the arresting officer who filed the motion on behalf of the alleged victim)

.....

Address of person (or office address of the arresting officer who filed the motion on behalf of the alleged victim)"

(C)(1) As soon as possible after the filing of a motion that requests the issuance of a temporary protection order, but not later than twenty-four hours after the filing of the motion, the court shall conduct a hearing to determine

whether to issue the order. The person who requested the order shall appear before the court and provide the court with the information that it requests concerning the basis of the motion. If the person who requested the order is unable to appear and if the court finds that the failure to appear is because of the person's hospitalization or medical condition resulting from the offense alleged in the complaint, another person who is able to provide the court with the information it requests may appear in lieu of the person who requested the order. If the court finds that the safety and protection of the complainant, alleged victim, or any other family or household member of the alleged offender victim may be impaired by the continued presence of the alleged offender, the court may issue a temporary protection order, as a pretrial condition of release, that contains terms designed to ensure the safety and protection of the complainant, alleged victim, or the family or household member, including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant, alleged victim, or the family or household member.

(2)(a) If the court issues a temporary protection order that includes a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant, the alleged victim, or the family or household member, the order shall state clearly that the order cannot be waived or nullified by an invitation to the alleged offender from the complainant, alleged victim, or family or household member to enter the residence, school, business, or place of employment or by the alleged offender's entry into one of those places otherwise upon the consent of the complainant, alleged victim, or family or household member.

(b) Division (C)(2)(a) of this section does not limit any discretion of a court to determine that an alleged offender charged with a violation of section 2919.27 of the Revised Code, with a violation of a municipal ordinance substantially equivalent to that section, or with contempt of court, which charge is based on an alleged violation of a temporary protection order issued under this section, did not commit the violation or was not in contempt of court.

(D)(1) Upon the filing of a complaint that alleges a violation of section 2909.06, 2909.07, 2911.12, or 2911.211 of the Revised Code if the alleged victim of the violation was a family or household member at the time of the violation, a violation of a municipal ordinance that is substantially similar to any of those sections if the alleged victim of the violation was a family or household member at the time of the violation, ~~or~~ any offense of violence if the alleged victim of the offense was a family or household member at the time of the commission of the offense, or any sexually oriented offense, the court, upon its own motion, may issue a temporary protection order as a pretrial condition of release if it finds that the safety and protection of the complainant, alleged victim, or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender.

(2) If the court issues a temporary protection order under this section as an ex parte order, it shall conduct, as soon as possible after the issuance of the order, a hearing in the presence of the alleged offender not later than the next day on which the court is scheduled to conduct business after the day on which the alleged offender was arrested or at the time of the appearance of the alleged offender pursuant to summons to determine whether the order should remain in effect, be modified, or be revoked. The hearing shall be conducted under the standards set forth in division (C) of this section.

(3) An order issued under this section shall contain only those terms authorized in orders issued under division (C) of this section.

(4) If a municipal court or a county court issues a temporary protection order under this section and if, subsequent to the issuance of the order, the alleged offender who is the subject of the order is bound over to the court of common pleas for prosecution of a felony arising out of the same activities as those that were the basis of the complaint upon which the order is based, notwithstanding the fact that the order was issued by a municipal court or county court, the order shall remain in effect, as though it were an order of the court of common pleas, while the charges against the alleged offender are pending in the court of common pleas, for the period of time described in division (E)(2) of this section, and the court of common pleas has exclusive jurisdiction to modify the order issued by the municipal court or county court. This division applies when the alleged offender is bound over to the court of common pleas as a result of the person waiving a preliminary hearing on the felony charge, as a result of the municipal court or county court having determined at a preliminary hearing that there is probable cause to believe that the felony has been committed and that the alleged offender committed it, as a result of the alleged offender having been indicted for the felony, or in any other manner.

(E) A temporary protection order that is issued as a pretrial condition of release under this section:

(1) Is in addition to, but shall not be construed as a part of, any bail set under Criminal Rule 46;

(2) Is effective only until the occurrence of either of the following:

(a) The disposition, by the court that issued the order or, in the circumstances described in division (D)(4) of this section, by the court of common pleas to which the alleged offender is bound over for prosecution, of the criminal proceeding arising out of the complaint upon which the order is based;

(b) The issuance of a protection order or the approval of a consent agreement, arising out of the same activities as those that were the basis of the complaint upon which the order is based, under section 3113.31 of the Revised Code;

(3) Shall not be construed as a finding that the alleged offender committed the alleged offense, and shall not be introduced as evidence of the commission of the offense at the trial of the alleged offender on the complaint upon which the order is based.

(F) A person who meets the criteria for bail under Criminal Rule 46 and who, if required to do so pursuant to that rule, executes or posts bond or deposits cash or securities as bail, shall not be held in custody pending a hearing before the court on a motion requesting a temporary protection order.

(G)(1) A copy of any temporary protection order that is issued under this section shall be issued by the court to the complainant, to the alleged victim, to the person who requested the order, to the defendant, and to all law enforcement agencies that have jurisdiction to enforce the order. The court shall direct that a copy of the order be delivered to the defendant on the same day that the order is entered. If a municipal court or a county court issues a temporary protection order under this section and if, subsequent to the issuance of the order, the defendant who is the subject of the order is bound over to the court of common pleas for prosecution as described in division (D)(4) of this section, the municipal court or county court shall direct that a copy of the order be delivered to the court of common pleas to which the defendant is bound over.

(2) All law enforcement agencies shall establish and maintain an index for the temporary protection orders delivered to the agencies pursuant to division (G)(1) of this section. With respect to each order delivered, each agency shall note on the index, the date and time of the receipt of the order by the agency.

(3) A complainant, alleged victim, or other person who obtains a temporary protection order under this section may provide notice of the issuance of the temporary protection order to the judicial and law enforcement officials in any county other than the county in which the order is issued by registering that order in the other county in accordance with division (N) of section 3113.31 of the Revised Code and filing a copy of the registered protection order with a law enforcement agency in the other county in accordance with that division.

(4) Any officer of a law enforcement agency shall enforce a temporary protection order issued by any court in this state in accordance with the provisions of the order, including removing the defendant from the premises, regardless of whether the order is registered in the county in which the officer's agency has jurisdiction as authorized by division (G)(3) of this section.

(H) Upon a violation of a temporary protection order, the court may issue another temporary protection order, as a pretrial condition of release, that modifies the terms of the order that was violated.

(I)(1) As used in divisions (I)(1) and (2) of this section, "defendant" means a person who is alleged in a complaint to have committed a violation or offense of violence of the type described in division (A) of this section.

(2) If a complaint is filed that alleges that a person committed a violation or offense of violence of the type described in division (A) of this section, the court may not issue a temporary protection order under this section that requires the complainant, the alleged victim, or another family or household member of the defendant to do or refrain from doing an act that the court may require the defendant to do or refrain from doing under a temporary protection order unless both of the following apply:

(a) The defendant has filed a separate complaint that alleges that the complainant, alleged victim, or other family or household member in question who would be required under the order to do or refrain from doing the act committed a violation or offense of violence of the type described in division (A) of this section.

(b) The court determines that both the complainant, alleged victim, or other family or household member in question who would be required under the order to do or refrain from doing the act and the defendant acted primarily as aggressors, that neither the complainant, alleged victim, or other family or household member in question who would be required under the order to do or refrain from doing the act nor the defendant acted primarily in self-defense, and, in accordance with the standards and criteria of this section as applied in relation to the separate complaint filed by the defendant, that it should issue the order to require the complainant, alleged victim, or other family or household member in question to do or refrain from doing the act.

(J) Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or a court of another state, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of a motion pursuant to this section, in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining a certified copy of a protection order or consent agreement.

(K) As used in this section, "victim":

(1) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(2) "Victim advocate" means a person who provides support and assistance for a victim of an offense during court proceedings.

Sec. 2929.01. As used in this chapter:

(A)(1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Bad time" means the time by which the parole board administratively extends an offender's stated prison term or terms pursuant to section 2967.11 of the Revised Code because the parole board finds by clear and convincing

evidence that the offender, while serving the prison term or terms, committed an act that is a criminal offense under the law of this state or the United States, whether or not the offender is prosecuted for the commission of that act.

(C) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

(D) "Cocaine," "crack cocaine," "hashish," "L.S.D.," and "unit dose" have the same meanings as in section 2925.01 of the Revised Code.

(E) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to sections 2301.51 to 2301.56 of the Revised Code.

(F) "Community control sanction" means a sanction that is not a prison term and that is described in section 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code or a sanction that is not a jail term and that is described in section 2929.26, 2929.27, or 2929.28 of the Revised Code. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

(G) "Controlled substance," "marihuana," "schedule I," and "schedule II" have the same meanings as in section 3719.01 of the Revised Code.

(H) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.

(I) "Day reporting" means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

(J) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(K) "Drug and alcohol use monitoring" means a program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(L) "Drug treatment program" means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

(M) "Economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(N) "Education or training" includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy curricula or their equivalent.

(O) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(P) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to section 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.

(Q) "House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:

(1) The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.

(2) The offender is required to report periodically to a person designated by the court or parole board.

(3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

(R) "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28 of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(S) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of

alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.

(T) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(U) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (E) of section 2929.24 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

(V) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(W) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to section 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

(X) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of crack cocaine; at least one thousand grams of cocaine that is not crack cocaine; at least two thousand five hundred unit doses or two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; or at least one hundred times the amount of any other schedule I or II controlled substance other than marijuana that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(Y) "Mandatory prison term" means any of the following:

(1) Subject to division (Y)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (14) of section 2929.13 and division (D) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code.

(3) The term in prison imposed pursuant to section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Z) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

(AA) "Offender" means a person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor.

(BB) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(CC) "Prison term" includes any of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073 of the Revised Code;

(3) A term in prison extended by bad time imposed pursuant to section 2967.11 of the Revised Code or imposed for a violation of post-release control pursuant to section 2967.28 of the Revised Code.

(DD) "Repeat violent offender" means a person about whom both of the following apply:

(1) The person ~~has been convicted of or has pleaded guilty to, and is being sentenced for committing; or for complicity in committing; or for an attempt to commit; aggravated~~ any of the following:

(a) Aggravated murder, murder, involuntary manslaughter, or any felony of the first or second degree other than one set forth in Chapter 2925. of the Revised Code, a felony of the first degree set forth in Chapter 2925. of the Revised Code that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person, or a felony of the second degree that involved an attempt to cause serious physical harm to a person or

~~that resulted in serious physical harm to a person that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;~~

~~(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (DD)(1)(a) of this section.~~

(2) ~~Either of the following applies:~~

~~(a) The person previously was convicted of or pleaded guilty to, and previously served or, at the time of the offense was serving, a prison term for, any of the following:~~

~~(i) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the Revised Code prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of these offenses;~~

~~(ii) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense listed under division (DD)(2)(a)(i) of this section and that resulted in the death of a person or in physical harm to a person.~~

~~(b) The person previously was adjudicated a delinquent child for committing an act that if committed by an adult would have been an offense listed in division (DD)(2)(a)(i) or (ii) of this section, the person was committed to the department of youth services for that delinquent act an offense described in division (DD)(1)(a) or (b) of this section.~~

(EE) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of sections 2929.14 to 2929.18 or 2929.24 to 2929.28 of the Revised Code.

(FF) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(GG) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14 or 2971.03 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 of the Revised Code.

(HH) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(II) "Fourth degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree.

(JJ) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.

(KK) "Designated homicide, assault, or kidnapping offense," "violent sex offense," "sexual motivation specification," "sexually violent offense," "sexually violent predator," and "sexually violent predator specification" have the same meanings as in section 2971.01 of the Revised Code.

(LL) "Habitual sex offender," "sexually oriented offense," "sexual predator," "registration-exempt sexually oriented offense," "child-victim oriented offense," "habitual child-victim offender," and "child-victim predator" have the same meanings as in section 2950.01 of the Revised Code.

(MM) An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

(NN) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(OO) "Motor vehicle" and "manufactured home" have the same meanings as in section 4501.01 of the Revised Code.

(PP) "Detention" and "detention facility" have the same meanings as in section 2921.01 of the Revised Code.

(QQ) "Third degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree.

(RR) "Random drug testing" has the same meaning as in section 5120.63 of the Revised Code.

(SS) "Felony sex offense" has the same meaning as in section 2967.28 of the Revised Code.

(TT) "Body armor" has the same meaning as in section 2941.1411 of the Revised Code.

(UU) "Electronic monitoring" means monitoring through the use of an electronic monitoring device.

(VV) "Electronic monitoring device" means any of the following:

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (VV)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (VV)(1)(a) of this section, can transmit continuously those signals by telephone to a central monitoring computer of the type described in division (VV)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the receiver is turned off or altered without prior court approval or otherwise tampered with.

(c) The device has a central monitoring computer that can receive continuously the signals transmitted by telephone by a receiver of the type described in division (VV)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (VV)(1)(a) of this section is attached.

(2) Any device that is not a device of the type described in division (VV)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(3) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

(WW) "Non-economic loss" means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

(XX) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(YY) "Continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(ZZ) A person is "adjudicated a sexually violent predator" if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

Sec. 2929.13. (A) Except as provided in division (E), (F), or (G) of this section and unless a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, a court that imposes a sentence upon an offender for a felony may impose any sanction or combination of sanctions on the offender that are provided in sections 2929.14 to 2929.18 of the Revised Code. The sentence shall not impose an unnecessary burden on state or local government resources.

If the offender is eligible to be sentenced to community control sanctions, the court shall consider the appropriateness of imposing a financial sanction pursuant to section 2929.18 of the Revised Code or a sanction of community service pursuant to section 2929.17 of the Revised Code as the sole sanction for the offense. Except as otherwise provided in this division, if the court is required to impose a mandatory prison term for the offense for which sentence is being imposed, the court also may impose a financial sanction pursuant to section 2929.18 of the Revised Code but may not impose any additional sanction or combination of sanctions under section 2929.16 or 2929.17 of the Revised Code.

If the offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, in

addition to the mandatory term of local incarceration or the mandatory prison term required for the offense by division (G)(1) or (2) of this section, the court shall impose upon the offender a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code and may impose whichever of the following is applicable:

(1) For a fourth degree felony OVI offense for which sentence is imposed under division (G)(1) of this section, an additional community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code. If the court imposes upon the offender a community control sanction and the offender violates any condition of the community control sanction, the court may take any action prescribed in division (B) of section 2929.15 of the Revised Code relative to the offender, including imposing a prison term on the offender pursuant to that division.

(2) For a third or fourth degree felony OVI offense for which sentence is imposed under division (G)(2) of this section, an additional prison term as described in division (D)(4) of section 2929.14 of the Revised Code or a community control sanction as described in division (G)(2) of this section.

(B)(1) Except as provided in division (B)(2), (E), (F), or (G) of this section, in sentencing an offender for a felony of the fourth or fifth degree, the sentencing court shall determine whether any of the following apply:

(a) In committing the offense, the offender caused physical harm to a person.

(b) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon.

(c) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person.

(d) The offender held a public office or position of trust and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others.

(e) The offender committed the offense for hire or as part of an organized criminal activity.

(f) The offense is a sex offense that is a fourth or fifth degree felony violation of section 2907.03, 2907.04, 2907.05, 2907.22, 2907.31, 2907.321, 2907.322, 2907.323, or 2907.34 of the Revised Code.

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

(h) The offender committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance.

(i) The offender committed the offense while in possession of a firearm.

(2)(a) If the court makes a finding described in division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section and if the court, after considering the factors set forth in section 2929.12 of the Revised Code, finds that a prison term is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code and finds that the offender is not amenable to an available community control sanction, the court shall impose a prison term upon the offender.

(b) Except as provided in division (E), (F), or (G) of this section, if the court does not make a finding described in division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section and if the court, after considering the factors set forth in section 2929.12 of the Revised Code, finds that a community control sanction or combination of community control sanctions is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code, the court shall impose a community control sanction or combination of community control sanctions upon the offender.

(C) Except as provided in division (D), (E), (F), or (G) of this section, in determining whether to impose a prison term as a sanction for a felony of the third degree or a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to this division for purposes of sentencing, the sentencing court shall comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code and with section 2929.12 of the Revised Code.

(D)(1) Except as provided in division (E) or (F) of this section, for a felony of the first or second degree ~~and~~ for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, and for a violation of division (A)(4) of section 2907.05 of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code. Notwithstanding Division (D)(2) of this section does not apply to a presumption established under this division for a violation of division (A)(4) of section 2907.05 of the Revised Code.

(2) Notwithstanding the presumption established under this division (D)(1) of this section for the offenses listed in that division other than a violation of division (A)(4) of section 2907.05 of the Revised Code, the sentencing court may impose a community control sanction or a combination of community control sanctions instead of a prison term on an offender for a felony of the first or second degree or for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable if it makes both of the following findings:

~~(1)(a)~~ A community control sanction or a combination of community control sanctions would adequately punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.

~~(2)(b)~~ A community control sanction or a combination of community control sanctions would not demean the seriousness of the offense, because one or more factors under section 2929.12 of the Revised Code that indicate that the offender's conduct was less serious than conduct normally constituting the offense are applicable, and they outweigh the applicable factors under that section that indicate that the offender's conduct was more serious than conduct normally constituting the offense.

(E)(1) Except as provided in division (F) of this section, for any drug offense that is a violation of any provision of Chapter 2925. of the Revised Code and that is a felony of the third, fourth, or fifth degree, the applicability of a presumption under division (D) of this section in favor of a prison term or of division (B) or (C) of this section in determining whether to impose a prison term for the offense shall be determined as specified in section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the Revised Code, whichever is applicable regarding the violation.

(2) If an offender who was convicted of or pleaded guilty to a felony violates the conditions of a community control sanction imposed for the offense solely by reason of producing positive results on a drug test, the court, as punishment for the violation of the sanction, shall not order that the offender be imprisoned unless the court determines on the record either of the following:

(a) The offender had been ordered as a sanction for the felony to participate in a drug treatment program, in a drug education program, or in narcotics anonymous or a similar program, and the offender continued to use illegal drugs after a reasonable period of participation in the program.

(b) The imprisonment of the offender for the violation is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code.

(F) Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under sections 2929.02 to 2929.06, section 2929.14, or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20 or 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code shall not reduce the terms pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code for any of the following offenses:

(1) Aggravated murder when death is not imposed or murder;

(2) Any rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape if, had the offender completed the rape that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the rape;

(3) Gross sexual imposition or sexual battery, if the victim is under thirteen years of age, if and if any of the following applies:

(a) Regarding gross sexual imposition, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and if the victim of the previous offense was under thirteen years of age;

(b) Regarding gross sexual imposition, the offense was committed on or after the effective date of this amendment, and evidence other than the testimony of the victim was admitted in the case corroborating the violation.

(c) Regarding sexual battery, either of the following applies:

(i) The offense was committed prior to the effective date of this amendment, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was under thirteen years of age.

(ii) The offense was committed on or after the effective date of this amendment.

(4) A felony violation of section 2903.04, 2903.06, 2903.08, 2903.11, 2903.12, or 2903.13 of the Revised Code if the section requires the imposition of a prison term;

(5) A first, second, or third degree felony drug offense for which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, or 4729.99 of the Revised Code, whichever is applicable regarding the violation, requires the imposition of a mandatory prison term;

(6) Any offense that is a first or second degree felony and that is not set forth in division (F)(1), (2), (3), or (4) of this section, if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses;

(7) Any offense that is a third degree felony and ~~that is listed in division (DD)(1) of section 2929.01 of the Revised Code either is a violation of section 2903.04 of the Revised Code or an attempt to commit a felony of the second degree that is an offense of violence and involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person~~ if the offender previously was convicted of or pleaded guilty to any ~~offense that is listed in division (DD)(2)(a)(i) or (ii) of section 2929.01 of the Revised Code; of the following offenses:~~

(a) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the Revised Code prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense listed in division (F)(7)(a) of this section that resulted in the death of a person or in physical harm to a person.

(8) Any offense, other than a violation of section 2923.12 of the Revised Code, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to a portion of the sentence imposed pursuant to division (D)(1)(a) of section 2929.14 of the Revised Code for having the firearm;

(9) Any offense of violence that is a felony, if the offender wore or carried body armor while committing the felony offense of violence, with respect to the portion of the sentence imposed pursuant to division (D)(1)(d) of section 2929.14 of the Revised Code for wearing or carrying the body armor;

(10) Corrupt activity in violation of section 2923.32 of the Revised Code when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree;

(11) Any violent sex offense or designated homicide, assault, or kidnapping offense if, in relation to that offense, the offender is adjudicated a sexually violent predator;

(12) A violation of division (A)(1) or (2) of section 2921.36 of the Revised Code, or a violation of division (C) of that section involving an item listed in division (A)(1) or (2) of that section, if the offender is an officer or employee of the department of rehabilitation and correction;

(13) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, with respect to the portion of the sentence imposed pursuant to division (D)(5) of section 2929.14 of the Revised Code;

(14) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the offender 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, with respect to the portion of the sentence imposed pursuant to division (D)(6) of section 2929.14 of the Revised Code.

(G) Notwithstanding divisions (A) to (E) of this section, if an offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, the court shall impose upon the offender a mandatory term of local incarceration or a mandatory prison term in accordance with the following:

(1) If the offender is being sentenced for a fourth degree felony OVI offense and if the offender has not been convicted of and has not pleaded guilty to a specification of the type described in section 2941.1413 of the Revised Code, the court may impose upon the offender a mandatory term of local incarceration of sixty days or one hundred twenty days as specified in division (G)(1)(d) of section 4511.19 of the Revised Code. The court shall not reduce the term pursuant to section 2929.20, 2967.193, or any other provision of the Revised Code. The court that imposes a mandatory term of local incarceration under this division shall specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender shall serve the term in the type of facility specified by the court. A mandatory term of local incarceration imposed under division (G)(1) of this section is not subject to extension under section 2967.11 of the Revised Code, to a period of post-release control under section 2967.28 of the Revised Code, or to any other Revised Code provision that pertains to a prison term except as provided in division (A)(1) of this section.

(2) If the offender is being sentenced for a third degree felony OVI offense, or if the offender is being sentenced for a fourth degree felony OVI offense and the court does not impose a mandatory term of local incarceration under division (G)(1) of this section, the court shall impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or shall impose upon the offender a mandatory prison term of sixty days or one hundred twenty days as specified in division (G)(1)(d) or (e) of section 4511.19 of the Revised Code if the offender has not been convicted of and has not pleaded guilty to a specification of that type. The court shall not reduce the term pursuant to section 2929.20, 2967.193, or any other provision of the Revised Code. The offender shall serve the one-, two-, three-, four-, or five-year mandatory prison term consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense. In no case shall an offender who once has been sentenced to a mandatory term of local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OVI offense be sentenced to another mandatory term of local incarceration under that division for any violation of division (A) of section 4511.19 of the Revised Code. In addition to the mandatory prison term described in division (G)(2) of this section, the court 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 the prison term prior to serving the community control sanction. The department of rehabilitation and correction may place an offender sentenced to a mandatory prison term under this division in an intensive program prison established pursuant to section 5120.033 of the Revised Code if the department gave the sentencing judge prior notice of its intent to place the offender in an intensive program prison established under that section and if the judge did not notify the department that the judge disapproved the placement. Upon the establishment of the initial intensive program prison pursuant to section 5120.033 of the Revised Code that is privately operated and managed by a contractor pursuant to a contract entered into under section 9.06 of the Revised Code, both of the following apply:

(a) The department of rehabilitation and correction shall make a reasonable effort to ensure that a sufficient number of offenders sentenced to a mandatory prison term under this division are placed in the privately operated and managed prison so that the privately operated and managed prison has full occupancy.

(b) Unless the privately operated and managed prison has full occupancy, the department of rehabilitation and correction shall not place any offender sentenced to a mandatory prison term under this division in any intensive program prison established pursuant to section 5120.033 of the Revised Code other than the privately operated and managed prison.

(H) If an offender is being sentenced for a sexually oriented offense committed on or after January 1, 1997, the judge shall require the offender to submit to a DNA specimen collection procedure pursuant to section 2901.07 of the Revised Code if either of the following applies:

(1) The offense was a violent sex offense or a designated homicide, assault, or kidnapping offense and, in relation to that offense, the offender was adjudicated a sexually violent predator.

(2) The judge imposing sentence for the sexually oriented offense determines pursuant to division (B) of section 2950.09 of the Revised Code that the offender is a sexual predator.

(I) If an offender is being sentenced for a sexually oriented offense that is not a registration-exempt sexually oriented offense or for a child-victim oriented offense committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration and, if required under division (A)(2) of section 2950.03 of the Revised Code, shall perform the duties specified in that section.

(J)(1) Except as provided in division (J)(2) of this section, when considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit an offense in violation of section 2923.02 of the Revised Code, the sentencing court shall consider the factors applicable to the felony category of the violation of section 2923.02 of the Revised Code instead of the factors applicable to the felony category of the offense attempted.

(2) When considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense, the sentencing court shall consider the factors applicable to the felony category that the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt.

(K) As used in this section, "drug abuse offense" has the same meaning as in section 2925.01 of the Revised Code.

(L) At the time of sentencing an offender who is a sexual predator for any sexually oriented offense, if the offender does not serve a prison term or jail term, the court may require that the offender be monitored by means of a global positioning device. If the court requires such monitoring, the cost of monitoring shall be borne by the offender. If the offender is indigent, the cost of compliance shall be paid by the crime victims reparations fund.

Sec. 2929.14. (A) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(4), (D)(5), (D)(6), or (G) of this section and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a definite prison term that shall be one of the following:

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

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

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

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

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

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

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

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

(C) Except as provided in division (G) of this section or in Chapter 2925. of the Revised Code, the court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of the offense, upon offenders who

pose the greatest likelihood of committing future crimes, upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section.

(D)(1)(a) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.141, 2941.144, 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. 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) 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. A court shall not impose more than one additional prison term on an offender under division (D)(1)(f) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (D)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (D)(1)(a) or (c) of this section relative to the same offense.

~~(2)(a) If 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 2941.149 of the Revised Code that the offender is a repeat violent~~

offender division (D)(2)(b) of this section does not apply, the court shall may impose on an offender, in addition to the longest prison term from the range of terms authorized or required for the offense under division (A) of this section that may be the longest term in the range and 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 the court finds that the repeat violent offender, in committing the offense, caused any physical harm that carried a substantial risk of death to a person or that involved substantial permanent incapacity or substantial permanent disfigurement of a person, the court shall impose the longest prison term from the range of terms authorized for the offense under division (A) of this section.

(b) If the court imposing a prison term on a repeat violent offender imposes the longest prison term from the range of terms authorized for the offense under division (A) of this section, the court may impose on the offender an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if the court finds that both of the following apply with respect to the prison terms imposed on the offender pursuant to division (D)(2)(a) of this section and, if applicable, divisions (D)(1) and (3) of this section:

(i) 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 terms so imposed 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 terms so imposed 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 (DD)(1) of section 2929.01 of the Revised Code, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.

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

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

(d) A sentence imposed under division (D)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20 or section 2967.193, 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 marijuana, 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)(~~b~~)(~~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 2929.15 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, 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.

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

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

consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

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

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

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

(F) If a court imposes a prison term of a type described in division (B) of section 2967.28 of the Revised Code, 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 prison term of a type described in division (C) of that 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.

(G) If 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, 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.

(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 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) 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.

(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.

Sec. 2941.149. (A) The determination by a court that an offender is a repeat violent offender is precluded unless the indictment, count in the indictment, or information charging the offender specifies that the offender is a repeat violent offender. The specification shall be stated at the end of the body of the indictment, count, or information, and shall be stated in substantially the following form:

"SPECIFICATION (or, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or prosecuting attorney's name when appropriate) further find and specify that (set forth that the offender is a repeat violent offender)."

(B) The court shall determine the issue of whether an offender is a repeat violent offender.

(C) At the arraignment of the defendant or as soon thereafter as is practicable, the prosecuting attorney may give notice to the defendant of the prosecuting attorney's intention to use a certified copy of the entry of judgment of a prior conviction as proof of that prior conviction. The defendant must then give notice to the prosecuting attorney of the defendant's intention to object to the use of the entry of judgment. If the defendant pursuant to Criminal Rule 12 does not give notice of that intention to the prosecuting attorney before trial, the defendant waives the objection to the use of an entry of judgment as proof of the defendant's prior conviction, as shown on the entry of judgment.

(D) As used in this section, "repeat violent offender" has the same meaning as in section 2929.01 of the Revised Code.

Sec. 2953.08. (A) In addition to any other right to appeal and except as provided in division (D) of this section, a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant on one of the following grounds:

(1) The sentence consisted of or included the maximum prison term allowed for the offense by division (A) of section 2929.14 of the Revised Code, the sentence was not imposed pursuant to division (D)(3)(b) of section 2929.14 of the Revised Code, the maximum prison term was not required for the offense pursuant to Chapter 2925, or any other provision of the Revised Code, and the court imposed the sentence under one of the following circumstances:

(a) The sentence was imposed for only one offense.

(b) The sentence was imposed for two or more offenses arising out of a single incident, and the court imposed the maximum prison term for the offense of the highest degree.

(2) The sentence consisted of or included a prison term, the offense for which it was imposed is a felony of the fourth or fifth degree or is a felony drug offense that is a violation of a provision of Chapter 2925, of the Revised Code and that is specified as being subject to division (B) of section 2929.13 of the Revised Code for purposes of sentencing, and the court did not specify at sentencing that it found one or more factors specified in divisions (B)(1) (a) to (i) of section 2929.13 of the Revised Code to apply relative to the defendant. If the court specifies that it

found one or more of those factors to apply relative to the defendant, the defendant is not entitled under this division to appeal as a matter of right the sentence imposed upon the offender.

(3) The person was convicted of or pleaded guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense, was adjudicated a sexually violent predator in relation to that offense, and was sentenced pursuant to division (A)(3) of section 2971.03 of the Revised Code, if the minimum term of the indefinite term imposed pursuant to division (A)(3) of section 2971.03 of the Revised Code is the longest term available for the offense from among the range of terms listed in section 2929.14 of the Revised Code. As used in this division, "designated homicide, assault, or kidnapping offense" and "violent sex offense" have the same meanings as in section 2971.01 of the Revised Code. As used in this division, "adjudicated a sexually violent predator" has the same meaning as in section 2929.01 of the Revised Code, and a person is "adjudicated a sexually violent predator" in the same manner and the same circumstances as are described in that section.

(4) The sentence is contrary to law.

(5) The sentence consisted of an additional prison term of ten years imposed pursuant to division (D)(2)(b)(a) of section 2929.14 of the Revised Code.

(6) The sentence consisted of an additional prison term of ten years imposed pursuant to division (D)(3)(b) of section 2929.14 of the Revised Code.

(B) In addition to any other right to appeal and except as provided in division (D) of this section, a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony or, in the circumstances described in division (B)(3) of this section the modification of a sentence imposed upon such a defendant, on any of the following grounds:

(1) The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed, as set forth in section 2929.13 or Chapter 2925. of the Revised Code.

(2) The sentence is contrary to law.

(3) The sentence is a modification under section 2929.20 of the Revised Code of a sentence that was imposed for a felony of the first or second degree.

(C)(1) In addition to the right to appeal a sentence granted under division (A) or (B) of this section, a defendant who is convicted of or pleads guilty to a felony may seek leave to appeal a sentence imposed upon the defendant on the basis that the sentencing judge has imposed consecutive sentences under division (E)(3) or (4) of section 2929.14 of the Revised Code and that the consecutive sentences exceed the maximum prison term allowed by division (A) of that section for the most serious offense of which the defendant was convicted. Upon the filing of a motion under this division, the court of appeals may grant leave to appeal the sentence if the court determines that the allegation included as the basis of the motion is true.

(2) A defendant may seek leave to appeal an additional sentence imposed upon the defendant pursuant to division (D)(2)(a) or (b) of section 2929.14 of the Revised Code if the additional sentence is for a definite prison term that is longer than five years.

(D)(1) A sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.

(2) Except as provided in division (C)(2) of this section, a sentence imposed upon a defendant is not subject to review under this section if the sentence is imposed pursuant to division (D)(2)(b) of section 2929.14 of the Revised Code. Except as otherwise provided in this division, a defendant retains all rights to appeal as provided under this chapter or any other provision of the Revised Code. A defendant has the right to appeal under this chapter or any other provision of the Revised Code the court's application of division (D)(2)(c) of section 2929.14 of the Revised Code.

(3) A sentence imposed for aggravated murder or murder pursuant to sections 2929.02 to 2929.06 of the Revised Code is not subject to review under this section.

(E) A defendant, prosecuting attorney, city director of law, village solicitor, or chief municipal legal officer shall file an appeal of a sentence under this section to a court of appeals within the time limits specified in Rule 4(B) of the Rules of Appellate Procedure, provided that if the appeal is pursuant to division (B)(3) of this section, the time limits specified in that rule shall not commence running until the court grants the motion that makes the sentence modification in question. A sentence appeal under this section shall be consolidated with any other appeal in the case. If no other appeal is filed, the court of appeals may review only the portions of the trial record that pertain to sentencing.

(F) On the appeal of a sentence under this section, the record to be reviewed shall include all of the following, as applicable:

(1) Any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed. An appellate court that reviews a presentence investigation report prepared pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 in connection with the appeal of a sentence under this section shall comply with division (D)(3) of section 2951.03 of the Revised Code when the appellate court is not using the presentence investigation report, and the appellate court's use of a presentence investigation report of that nature in connection with the appeal of a sentence under this section does not affect the otherwise

confidential character of the contents of that report as described in division (D)(1) of section 2951.03 of the Revised Code and does not cause that report to become a public record, as defined in section 149.43 of the Revised Code, following the appellate court's use of the report.

(2) The trial record in the case in which the sentence was imposed;

(3) Any oral or written statements made to or by the court at the sentencing hearing at which the sentence was imposed;

(4) Any written findings that the court was required to make in connection with the modification of the sentence pursuant to a judicial release under division (H) of section 2929.20 of the Revised Code.

(G)(1) If the sentencing court was required to make the findings required by division (B) or (D) of section 2929.13, division (D)(2)(e) or (E)(4) of section 2929.14, or division (H) of section 2929.20 of the Revised Code relative to the imposition or modification of the sentence, and if the sentencing court failed to state the required findings on the record, the court hearing an appeal under division (A), (B), or (C) of this section shall remand the case to the sentencing court and instruct the sentencing court to state, on the record, the required findings.

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (D)(2)(e) or (E)(4) of section 2929.14, or division (H) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

(H) A judgment or final order of a court of appeals under this section may be appealed, by leave of court, to the supreme court.

(I)(1) There is hereby established the felony sentence appeal cost oversight committee, consisting of eight members. One member shall be the chief justice of the supreme court or a representative of the court designated by the chief justice, one member shall be a member of the senate appointed by the president of the senate, one member shall be a member of the house of representatives appointed by the speaker of the house of representatives, one member shall be the director of budget and management or a representative of the office of budget and management designated by the director, one member shall be a judge of a court of appeals, court of common pleas, municipal court, or county court appointed by the chief justice of the supreme court, one member shall be the state public defender or a representative of the office of the state public defender designated by the state public defender, one member shall be a prosecuting attorney appointed by the Ohio prosecuting attorneys association, and one member shall be a county commissioner appointed by the county commissioners association of Ohio. No more than three of the appointed members of the committee may be members of the same political party.

The president of the senate, the speaker of the house of representatives, the chief justice of the supreme court, the Ohio prosecuting attorneys association, and the county commissioners association of Ohio shall make the initial appointments to the committee of the appointed members no later than ninety days after July 1, 1996. Of those initial appointments to the committee, the members appointed by the speaker of the house of representatives and the Ohio prosecuting attorneys association shall serve a term ending two years after July 1, 1996, the member appointed by the chief justice of the supreme court shall serve a term ending three years after July 1, 1996, and the members appointed by the president of the senate and the county commissioners association of Ohio shall serve terms ending four years after July 1, 1996. Thereafter, terms of office of the appointed members shall be for four years, with each term ending on the same day of the same month as did the term that it succeeds. Members may be reappointed. Vacancies shall be filled in the same manner provided for original appointments. A member appointed to fill a vacancy occurring prior to the expiration of the term for which that member's predecessor was appointed shall hold office as a member for the remainder of the predecessor's term. An appointed member shall continue in office subsequent to the expiration date of that member's term until that member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

If the chief justice of the supreme court, the director of the office of budget and management, or the state public defender serves as a member of the committee, that person's term of office as a member shall continue for as long as that person holds office as chief justice, director of the office of budget and management, or state public defender. If the chief justice of the supreme court designates a representative of the court to serve as a member, the director of budget and management designates a representative of the office of budget and management to serve as a member, or the state public defender designates a representative of the office of the state public defender to serve as a member, the person so designated shall serve as a member of the commission for as long as the official who made the designation holds office as chief justice, director of the office of budget and management, or state public defender or until that official revokes the designation.

The chief justice of the supreme court or the representative of the supreme court appointed by the chief justice shall serve as chairperson of the committee. The committee shall meet within two weeks after all appointed members have been appointed and shall organize as necessary. Thereafter, the committee shall meet at least once every six months or more often upon the call of the chairperson or the written request of three or more members, provided that the committee shall not meet unless moneys have been appropriated to the judiciary budget administered by the supreme court specifically for the purpose of providing financial assistance to counties under division (I)(2) of

this section and the moneys so appropriated then are available for that purpose.

The members of the committee shall serve without compensation, but, if moneys have been appropriated to the judiciary budget administered by the supreme court specifically for the purpose of providing financial assistance to counties under division (1)(2) of this section, each member shall be reimbursed out of the moneys so appropriated that then are available for actual and necessary expenses incurred in the performance of official duties as a committee member.

(2) The state criminal sentencing commission periodically shall provide to the felony sentence appeal cost oversight committee all data the commission collects pursuant to division (A)(5) of section 181.25 of the Revised Code. Upon receipt of the data from the state criminal sentencing commission, the felony sentence appeal cost oversight committee periodically shall review the data; determine whether any money has been appropriated to the judiciary budget administered by the supreme court specifically for the purpose of providing state financial assistance to counties in accordance with this division for the increase in expenses the counties experience as a result of the felony sentence appeal provisions set forth in this section or as a result of a postconviction relief proceeding brought under division (A)(2) of section 2953.21 of the Revised Code or an appeal of a judgment in that proceeding; if it determines that any money has been so appropriated, determine the total amount of moneys that have been so appropriated specifically for that purpose and that then are available for that purpose; and develop a recommended method of distributing those moneys to the counties. The committee shall send a copy of its recommendation to the supreme court. Upon receipt of the committee's recommendation, the supreme court shall distribute to the counties, based upon that recommendation, the moneys that have been so appropriated specifically for the purpose of providing state financial assistance to counties under this division and that then are available for that purpose.

Sec. 3113.31. (A) As used in this section:

(1) "Domestic violence" means the occurrence of one or more of the following acts against a family or household member:

(a) Attempting to cause or recklessly causing bodily injury;

(b) Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of section 2903.211 or 2911.211 of the Revised Code;

(c) Committing any act with respect to a child that would result in the child being an abused child, as defined in section 2151.031 of the Revised Code.

(2) "Court" means the domestic relations division of the court of common pleas in counties that have a domestic relations division, and the court of common pleas in counties that do not have a domestic relations division.

(3) "Family or household member" means any of the following:

(a) Any of the following who is residing with or has resided with the respondent:

(i) A spouse, a person living as a spouse, or a former spouse of the respondent;

(ii) A parent or a child of the respondent, or another person related by consanguinity or affinity to the respondent;

(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the respondent, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the respondent.

(b) The natural parent of any child of whom the respondent is the other natural parent or is the putative other natural parent.

(4) "Person living as a spouse" means a person who is living or has lived with the respondent in a common law marital relationship, who otherwise is cohabiting with the respondent, or who otherwise has cohabited with the respondent within five years prior to the date of the alleged occurrence of the act in question.

(5) "Victim advocate" means a person who provides support and assistance for a person who files a petition under this section.

(6) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(B) The court has jurisdiction over all proceedings under this section. The petitioner's right to relief under this section is not affected by the petitioner's leaving the residence or household to avoid further domestic violence.

(C) A person may seek relief under this section on the person's own behalf, or any parent or adult household member may seek relief under this section on behalf of any other family or household member, by filing a petition with the court. The petition shall contain or state:

(1) An allegation that the respondent engaged in domestic violence against a family or household member of the respondent, including a description of the nature and extent of the domestic violence, or committed a sexually oriented offense against the petitioner or the victim if other than the petitioner;

(2) The relationship of the respondent to the petitioner, and to the victim if other than the petitioner;

(3) A request for relief under this section.

(D)(1) If a person who files a petition pursuant to this section requests an ex parte order, the court shall hold an ex parte hearing on the same day that the petition is filed. The court, for good cause shown at the ex parte hearing, may enter any temporary orders, with or without bond, including, but not limited to, an order described in division (E)(1)(a), (b), or (c) of this section, that the court finds necessary to protect the family or household member from domestic violence or to protect the petitioner or victim from a sexually oriented offense. Immediate and present danger of domestic violence to the family or household member or of a sexually oriented offense to the petitioner or victim constitutes good cause for purposes of this section. Immediate and present danger includes, but is not limited to, situations in which the respondent has threatened the family or household member with bodily harm, in which the respondent has threatened the petitioner or victim with a sexually oriented offense, or in which the respondent previously has been convicted of or pleaded guilty to an offense that constitutes domestic violence against the family or household member or a sexually oriented offense against the petitioner or victim.

(2)(a) If the court, after an ex parte hearing, issues an order described in division (E)(1)(b) or (c) of this section, the court shall schedule a full hearing for a date that is within seven court days after the ex parte hearing. If any other type of protection order that is authorized under division (E) of this section is issued by the court after an ex parte hearing, the court shall schedule a full hearing for a date that is within ten court days after the ex parte hearing. The court shall give the respondent notice of, and an opportunity to be heard at, the full hearing. The court shall hold the full hearing on the date scheduled under this division unless the court grants a continuance of the hearing in accordance with this division. Under any of the following circumstances or for any of the following reasons, the court may grant a continuance of the full hearing to a reasonable time determined by the court:

(i) Prior to the date scheduled for the full hearing under this division, the respondent has not been served with the petition filed pursuant to this section and notice of the full hearing.

(ii) The parties consent to the continuance.

(iii) The continuance is needed to allow a party to obtain counsel.

(iv) The continuance is needed for other good cause.

(b) An ex parte order issued under this section does not expire because of a failure to serve notice of the full hearing upon the respondent before the date set for the full hearing under division (D)(2)(a) of this section or because the court grants a continuance under that division.

(3) If a person who files a petition pursuant to this section does not request an ex parte order, or if a person requests an ex parte order but the court does not issue an ex parte order after an ex parte hearing, the court shall proceed as in a normal civil action and grant a full hearing on the matter.

(E)(1) After an ex parte or full hearing, the court may grant any protection order, with or without bond, or approve any consent agreement to bring about a cessation of domestic violence against the family or household members. The order or agreement may:

(a) Direct the respondent to refrain from abusing the family or household members, or from committing sexually oriented offenses against the petitioner or victim;

(b) Grant possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by evicting the respondent, when the residence or household is owned or leased solely by the petitioner or other family or household member, or by ordering the respondent to vacate the premises, when the residence or household is jointly owned or leased by the respondent, and the petitioner or other family or household member;

(c) When the respondent has a duty to support the petitioner or other family or household member living in the residence or household and the respondent is the sole owner or lessee of the residence or household, grant possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by ordering the respondent to vacate the premises, or, in the case of a consent agreement, allow the respondent to provide suitable, alternative housing;

(d) Temporarily allocate parental rights and responsibilities for the care of, or establish temporary parenting time rights with regard to, minor children, if no other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children or parenting time rights;

(e) Require the respondent to maintain support, if the respondent customarily provides for or contributes to the support of the family or household member, or if the respondent has a duty to support the petitioner or family or household member;

(f) Require the respondent, petitioner, victim of domestic violence, or any combination of those persons, to seek counseling;

(g) Require the respondent to refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member;

(h) Grant other relief that the court considers equitable and fair, including, but not limited to, ordering the respondent to permit the use of a motor vehicle by the petitioner or other family or household member and the apportionment of household and family personal property.

(2) If a protection order has been issued pursuant to this section in a prior action involving the respondent and the petitioner or one or more of the family or household members or victims, the court may include in a protection order that it issues a prohibition against the respondent returning to the residence or household. If it includes a prohibition

against the respondent returning to the residence or household in the order, it also shall include in the order provisions of the type described in division (E)(7) of this section. This division does not preclude the court from including in a protection order or consent agreement, in circumstances other than those described in this division, a requirement that the respondent be evicted from or vacate the residence or household or refrain from entering the residence, school, business, or place of employment of the petitioner or a family or household member, and, if the court includes any requirement of that type in an order or agreement, the court also shall include in the order provisions of the type described in division (E)(7) of this section.

(3)(a) Any protection order issued or consent agreement approved under this section shall be valid until a date certain, but not later than five years from the date of its issuance or approval.

(b) Subject to the limitation on the duration of an order or agreement set forth in division (E)(3)(a) of this section, any order under division (E)(1)(d) of this section shall terminate on the date that a court in an action for divorce, dissolution of marriage, or legal separation brought by the petitioner or respondent issues an order allocating parental rights and responsibilities for the care of children or on the date that a juvenile court in an action brought by the petitioner or respondent issues an order awarding legal custody of minor children. Subject to the limitation on the duration of an order or agreement set forth in division (E)(3)(a) of this section, any order under division (E)(1)(e) of this section shall terminate on the date that a court in an action for divorce, dissolution of marriage, or legal separation brought by the petitioner or respondent issues a support order or on the date that a juvenile court in an action brought by the petitioner or respondent issues a support order.

(c) Any protection order issued or consent agreement approved pursuant to this section may be renewed in the same manner as the original order or agreement was issued or approved.

(4) A court may not issue a protection order that requires a petitioner to do or to refrain from doing an act that the court may require a respondent to do or to refrain from doing under division (E)(1)(a), (b), (c), (d), (e), (g), or (h) of this section unless all of the following apply:

(a) The respondent files a separate petition for a protection order in accordance with this section.

(b) The petitioner is served notice of the respondent's petition at least forty-eight hours before the court holds a hearing with respect to the respondent's petition, or the petitioner waives the right to receive this notice.

(c) If the petitioner has requested an ex parte order pursuant to division (D) of this section, the court does not delay any hearing required by that division beyond the time specified in that division in order to consolidate the hearing with a hearing on the petition filed by the respondent.

(d) After a full hearing at which the respondent presents evidence in support of the request for a protection order and the petitioner is afforded an opportunity to defend against that evidence, the court determines that the petitioner has committed an act of domestic violence or has violated a temporary protection order issued pursuant to section 2919.26 of the Revised Code, that both the petitioner and the respondent acted primarily as aggressors, and that neither the petitioner nor the respondent acted primarily in self-defense.

(5) No protection order issued or consent agreement approved under this section shall in any manner affect title to any real property.

(6)(a) If a petitioner, or the child of a petitioner, who obtains a protection order or consent agreement pursuant to division (E)(1) of this section or a temporary protection order pursuant to section 2919.26 of the Revised Code and is the subject of a parenting time order issued pursuant to section 3109.051 or 3109.12 of the Revised Code or a visitation or companionship order issued pursuant to section 3109.051, 3109.11, or 3109.12 of the Revised Code or division (E)(1)(d) of this section granting parenting time rights to the respondent, the court may require the public children services agency of the county in which the court is located to provide supervision of the respondent's exercise of parenting time or visitation or companionship rights with respect to the child for a period not to exceed nine months, if the court makes the following findings of fact:

(i) The child is in danger from the respondent;

(ii) No other person or agency is available to provide the supervision.

(b) A court that requires an agency to provide supervision pursuant to division (E)(6)(a) of this section shall order the respondent to reimburse the agency for the cost of providing the supervision, if it determines that the respondent has sufficient income or resources to pay that cost.

(7)(a) If a protection order issued or consent agreement approved under this section includes a requirement that the respondent be evicted from or vacate the residence or household or refrain from entering the residence, school, business, or place of employment of the petitioner or a family or household member, the order or agreement shall state clearly that the order or agreement cannot be waived or nullified by an invitation to the respondent from the petitioner or other family or household member to enter the residence, school, business, or place of employment or by the respondent's entry into one of those places otherwise upon the consent of the petitioner or other family or household member.

(b) Division (E)(7)(a) of this section does not limit any discretion of a court to determine that a respondent charged with a violation of section 2919.27 of the Revised Code, with a violation of a municipal ordinance substantially equivalent to that section, or with contempt of court, which charge is based on an alleged violation of a protection order issued or consent agreement approved under this section, did not commit the violation or was not in contempt of court.

(F)(1) A copy of any protection order, or consent agreement, that is issued or approved under this section shall be

issued by the court to the petitioner, to the respondent, and to all law enforcement agencies that have jurisdiction to enforce the order or agreement. The court shall direct that a copy of an order be delivered to the respondent on the same day that the order is entered.

(2) All law enforcement agencies shall establish and maintain an index for the protection orders and the approved consent agreements delivered to the agencies pursuant to division (F)(1) of this section. With respect to each order and consent agreement delivered, each agency shall note on the index the date and time that it received the order or consent agreement.

(3) Regardless of whether the petitioner has registered the order or agreement in the county in which the officer's agency has jurisdiction pursuant to division (N) of this section, any officer of a law enforcement agency shall enforce a protection order issued or consent agreement approved by any court in this state in accordance with the provisions of the order or agreement, including removing the respondent from the premises, if appropriate.

(G) Any proceeding under this section shall be conducted in accordance with the Rules of Civil Procedure, except that an order under this section may be obtained with or without bond. An order issued under this section, other than an ex parte order, that grants a protection order or approves a consent agreement, or that refuses to grant a protection order or approve a consent agreement, is a final, appealable order. The remedies and procedures provided in this section are in addition to, and not in lieu of, any other available civil or criminal remedies.

(H) The filing of proceedings under this section does not excuse a person from filing any report or giving any notice required by section 2151.421 of the Revised Code or by any other law. When a petition under this section alleges domestic violence against minor children, the court shall report the fact, or cause reports to be made, to a county, township, or municipal peace officer under section 2151.421 of the Revised Code.

(I) Any law enforcement agency that investigates a domestic dispute shall provide information to the family or household members involved regarding the relief available under this section and section 2919.26 of the Revised Code.

(J) Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or a court of another state, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of a petition pursuant to this section or in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining a certified copy of a protection order or consent agreement.

(K)(1) The court shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code when it makes or modifies an order for child support under this section.

(2) If any person required to pay child support under an order made under this section on or after April 15, 1985, or modified under this section on or after December 31, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

(L)(1) A person who violates a protection order issued or a consent agreement approved under this section is subject to the following sanctions:

(a) Criminal prosecution for a violation of section 2919.27 of the Revised Code, if the violation of the protection order or consent agreement constitutes a violation of that section;

(b) Punishment for contempt of court.

(2) The punishment of a person for contempt of court for violation of a protection order issued or a consent agreement approved under this section does not bar criminal prosecution of the person for a violation of section 2919.27 of the Revised Code. However, a person punished for contempt of court is entitled to credit for the punishment imposed upon conviction of a violation of that section, and a person convicted of a violation of that section shall not subsequently be punished for contempt of court arising out of the same activity.

(M) In all stages of a proceeding under this section, a petitioner may be accompanied by a victim advocate.

(N)(1) A petitioner who obtains a protection order or consent agreement under this section or a temporary protection order under section 2919.26 of the Revised Code may provide notice of the issuance or approval of the order or agreement to the judicial and law enforcement officials in any county other than the county in which the order is issued or the agreement is approved by registering that order or agreement in the other county pursuant to division (N)(2) of this section and filing a copy of the registered order or registered agreement with a law enforcement agency in the other county in accordance with that division. A person who obtains a protection order issued by a court of another state may provide notice of the issuance of the order to the judicial and law enforcement officials in any county of this state by registering the order in that county pursuant to section 2919.272 of the Revised Code and filing a copy of the registered order with a law enforcement agency in that county.

(2) A petitioner may register a temporary protection order, protection order, or consent agreement in a county other than the county in which the court that issued the order or approved the agreement is located in the following manner:

(a) The petitioner shall obtain a certified copy of the order or agreement from the clerk of the court that issued the order or approved the agreement and present that certified copy to the clerk of the court of common pleas or the clerk of a municipal court or county court in the county in which the order or agreement is to be registered.

(b) Upon accepting the certified copy of the order or agreement for registration, the clerk of the court of common pleas, municipal court, or county court shall place an endorsement of registration on the order or agreement and give the petitioner a copy of the order or agreement that bears that proof of registration.

(3) The clerk of each court of common pleas, the clerk of each municipal court, and the clerk of each county court shall maintain a registry of certified copies of temporary protection orders, protection orders, or consent agreements that have been issued or approved by courts in other counties and that have been registered with the clerk.

SECTION 2. That existing sections 2152.17, 2901.08, 2903.11, 2907.01, 2907.03, 2907.05, 2919.26, 2929.01, 2929.13, 2929.14, 2941.149, 2953.08, and 3113.31 of the Revised Code are hereby repealed.

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