

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellant, :
 :
 v. :
 :
 MARIO HARRIS, :
 :
 Defendant-Appellee. :

Case Nos. 2011-0008 & 2011-0010
On Appeal and Certified Conflict
from the Cuyahoga County Court of
Appeals, Eighth Appellate District
Court of Appeals
Case No. 95128

BRIEF OF APPELLEE MARIO HARRIS

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STATEMENT OF THE CASE AND FACTS

In Case No. CR-510551, Mr. Harris pled guilty to drug trafficking, a violation of R.C. 2925.03(A)(2). *State v. Harris*, 190 Ohio App.3d 417, 2010-Ohio-5374. He was sentenced to a prison term of six months and ordered to forfeit the vehicle used in the commission of the offense. *Id.* The trial court neglected to impose the statutorily-mandated driver's license suspension of six months to five years. R.C. 2925.03(G).

In Case No. CR-506498, Mr. Harris was charged with drug trafficking, drug possession, possession of criminal tools, and having a weapon under disability. *Id.* The trafficking offense included a forfeiture specification for cash, cell phones and a revolver. *Id.* The weapons offense included a forfeiture specification for the revolver. *Id.* Mr. Harris pled guilty to one count of drug trafficking and one count of having a weapon under disability. *Id.* On June 3, 2008, the court sentenced Mr. Harris to a total of five years imprisonment, but neglected to impose the statutorily-mandated driver's license suspension or a fine. *Id.* In an order dated June 4, 2008, the trial court ordered the forfeiture of the property listed in the indictment. *Id.*

Mr. Harris moved pro se for resentencing, arguing that the failure to impose the mandatory driver's license suspensions in both cases rendered the sentences void. *Id.* The trial court denied the motion. *Id.* The Eighth District Court of Appeals reversed. In Case No. CR-510551, it held that the sentence was void because it did not contain the statutorily-mandated term, and remanded for resentencing. *Id.* In Case No. CR-506498, it noted that the two entries recording Mr. Harris' plea and sentence did not comply with *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 693, and dismissed for the lack of a final appealable order. *Id.*

This Court certified a conflict in Case No. CR-510551 on the following issue: "Does the failure to include a mandatory driver's license suspension in a criminal sentence render that

sentence void?” This Court also accepted the State’s proposition of law: “Because forfeiture of items contemplates actions and issues that extend beyond the criminal case and sentence, Crim.R. 32(C) does not require the forfeiture of items be listed in the sentencing entry.”

ARGUMENT

Appellant’s Proposition of Law:

Because forfeiture of items contemplates actions and issues that extend beyond the criminal case and sentence, Crim.R. 32(C) does not require the forfeiture of items be listed in the sentencing entry.

A. A judgment entry must include forfeiture as part of a sentence in order to comply with Crim.R. 32(C).

In Case No. CR-506498, the Court of Appeals appropriately addressed a common procedural error. *State v. Harris*, 190 Ohio App.3d 417. It noted that the trial court employed two separate journal entries to record the appellant’s plea and sentence. *Id.* at 419. According to this Court’s decision in *State v. Baker*, 119 Ohio St.3d 197 at 201, only one document can constitute a final appealable order. Since the second journal entry failed to account for the order of forfeiture recorded in the first entry, the court ruled, it is not a final appealable order. *Harris*, 190 Ohio App.3d at 419. The court therefore dismissed the appeal for the lack of a final appealable order. *Id.* at 420.

The State argues that this Court must determine whether an order of forfeiture is a conviction, such that it must be included as part of the judgment of conviction. But the conviction at issue in this case is the conviction for the underlying offenses of drug trafficking and having a weapon under disability. A judgment of conviction for those offenses must comply with Crim.R. 32(C).

In order to comply with Crim.R. 32(C), a judgment entry must include “(1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry of the journal by the clerk of court.” *Baker* at syllabus. Those four elements must be contained in one document. *Id.* at 201. In this case, the Eighth District Court of Appeals held that a single document did not contain the entire sentence because the forfeiture of cash, cell phones and a revolver, listed in a different document, is part of the sentence for drug trafficking and having a weapon under disability.

R.C. 2981.04 refers to an order of forfeiture as a sentence: “If the court enters a verdict of forfeiture under this section, the court imposing sentence or disposition, *in addition to any other sentence* authorized by Chapter 2929. of the Revised Code or any disposition authorized by Chapter 2152. of the Revised Code, shall order that the offender or delinquent child forfeit to the state or political subdivision the offender’s or delinquent child’s interest in the property.” (Emphasis added.) R.C. 2981.04(C).

According to R.C. 2929.01(E), a sentence is “the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.” A sanction is “any penalty imposed on an offender who is convicted of or pleads guilty to an offense, as punishment for the offense,” and includes sanctions imposed pursuant to any provision of R.C. 2929.14 to 2929.18 or 2929.24 to 2929.28. R.C. 2929.01(DD). The State acknowledges that sanctions are not limited to the sections of the revised code enumerated in R.C. 2929.01(DD). State’s brief, p. 9. If they were, the statute’s first sentence, defining the word “sanction,” would be superfluous.

This Court has expressly considered whether an order of forfeiture is punishment for a specified offense. In *State v. Hill*, 70 Ohio St.3d 25, 1994-Ohio-12, 635 N.E.2d 1248, former

R.C. 2925.42(A)(1)(b) permitted forfeiture of property used in the commission of a felony drug offense. The defendant argued that forfeiture of his apartment complex violated the excessive fines clauses of Section 9, Article I of the Ohio Constitution and the Eighth Amendment to the United States Constitution. Relying on two then-recent United States Supreme Court cases, *Austin v. United States* (1993), 509 U.S. 602, 113 S.Ct. 2801, 125 L.Ed.2d 488, and *Alexander v. United States* (1993), 509 U.S. 544, 113 S.Ct. 2776, 125 L.Ed.2d 441, this Court held that forfeiture is a monetary punishment: “Forfeiture of property, pursuant to R.C. 2925.42, is a form of punishment for a specified offense and, therefore, is a ‘fine’ for purposes of *Section 9, Article I of the Ohio Constitution and Eighth Amendment to the United States Constitution.*” *Hill* at syllabus.

Former R.C. 2925.42(A)(1)(b) permits forfeiture if “the property was used or intended to be used in any manner to commit, or to facilitate the commission of, the felony drug abuse offense or act.” Current R.C. 2981.02(A)(3)(a) permits forfeiture of “an instrumentality that is used in or intended to be used in the commission or facilitation of . . . a felony.” The current forfeiture statute expands offenses subject to forfeiture proceedings from drug offenses to all felonies. But the language and the effect of the statute at issue in *State v. Hill* are otherwise equivalent to the language and effect of the statute at issue in this case.

State v. Hill holds that forfeiture is a punishment. The Revised Code refers to an order of forfeiture as a sentence, and has defined “sentence” to encompass monetary punishment such as forfeiture. Therefore, *Baker* requires the judgment entry to include forfeiture as part of the sentence in order to comply with Crim.R. 32(C).

B. Public Policy

This Court need not consider the public policy underlying the nature of the forfeiture specification. The Court need only look to the plain language of the relevant rule and statute. The General Assembly is free to modify the requirement that a judgment entry must include an order of forfeiture, if it determines that such action is in the best interest of the State of Ohio.

In addition, the State is incorrect in its assertion that an order of forfeiture cannot be fully completed until all the issues concerning any forfeited property are resolved. An order of forfeiture becomes final and appealable once the order is entered pursuant to R.C. 2981.04. According to R.C. 2981.04(C), a court that enters a verdict of forfeiture shall order the offender to forfeit his or her interest in the property. The following subsection requires the prosecutor to attempt to identify the interests of other parties *after* an entry of forfeiture, indicating that the forfeiture is complete when it is entered. R.C. 2981.04(D). Those ancillary proceedings concerning interest in the forfeited property do not affect the finality or appealability of the judgment against the defendant.

Certified conflict question:

Does the failure to include a mandatory driver's license suspension in a criminal sentence render that sentence void?

In response to the certified conflict question, the State appears to make two contradictory assertions. Initially, the State relies on *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, 926 N.E.2d 278, to argue that the failure to impose a driver's license suspension does not render the sentence void. ("The failure to impose a driver's license suspension should not rise to the level of an error creating a void sentence that requires a de novo resentencing." State's brief, p. 20.) Subsequently, the State acknowledges that the portion of the sentence that fails to impose a

driver's license suspension is in fact void, but argues that Mr. Harris is only entitled to a resentencing that addresses the void portion of the sentence. ("The trial court failed to impose the driver's license suspension. Only that portion of the statute is void and subject to correction." State's brief, p. 21.)

The certified conflict question asks whether the entire sentence, not a portion of it, is void. It refers to the failure to include a mandatory driver's license suspension *in* a criminal sentence, asking whether the failure renders that *criminal* sentence void. And neither of the cases in conflict considered partial voidness. See *Harris*, 190 Ohio App.3d 417, *State v. Thomas*, 1st Dist. Nos. C-090716, C-090463, 2010-Ohio-4856. Similarly, *State v. Joseph*, 125 Ohio St.3d at 76, considered whether an error in imposing court costs would "void the defendant's entire sentence." In addition, it is logically impossible for a part of a sentence that does not exist to be void. The proper consideration, therefore, is whether the entire sentence is void.

The State argues that *State v. Joseph* identified three conditions that a sentencing error must meet in order for the sentence to be void and subject to resentencing. "The decision in *State v. Joseph* is interpreted as reducing the likelihood that a sentence is void. In *State v. Jones*, the Ninth District held that in determining whether a sentencing error creates a void sentence three conditions must be met, 1) did the trial court have authority to waive the particular sanction, 2) are other branches of government affected by a courts [sic] failure to impose a particular sanction, and 3) is the particular sentencing error actually a punishment." (Internal citations omitted.) State's brief, p. 18. The State concedes that the second and third conditions are met. *Id.* at fn.22.

A driver's license suspension is a statutorily-mandated sanction. In *Joseph*, the Court held that court costs were not statutorily-mandated because they are waivable. See *Joseph*, 125 Ohio St.3d at 79. But a driver's license suspension is mandatory. "The court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to any violation of this section" R.C. 2925.03(G). The State identifies one statute that allows a trial court to provide limited driving privileges to certain license suspensions, but there is no statutory provision that allows a trial court to waive a suspension.

In *State v. Rowe*, 118 Ohio App.3d 121, 1997 Ohio App. LEXIS 380, the Ninth District Court of Appeals reversed a trial court's restoration of a defendant's driver's license, when the license had been permanently revoked pursuant to R.C. 2903.06(B). The court emphasized the mandatory nature of a driver's license suspension: "The word 'shall' is an imperative, indicating a mandatory directive to the subject addressed. It may be 'used in laws, regulations, or directives to express what is mandatory.'" *Id.* at 126, *citing* Webster's New Collegiate Dictionary (1981) 1056. "Ohio trial courts do not possess the inherent authority to suspend, cancel, or modify a criminal sentence once that sentence has been executed, absent specific statutory authority to do so." (Internal citations omitted.) *Id.* at 123.

A sentence that does not include a mandatory term is void. *State v. Jordan*, 104 Ohio St.3d 21, 28, 2004-Ohio-6085, 817 N.E.2d 864. The State acknowledges as much, but argues that only the part of the sentence that was not imposed is void: "The trial court failed to impose the driver's license suspension. Only that portion of the sentence is void and subject to correction." State's brief, p. 21. As discussed above, however, only the voidness of the entire sentence is at issue in this case.

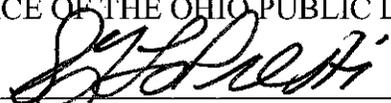
State v. Fischer, 128 Ohio St.3d 92, 99, 2010-Ohio-6238, 942 N.E.2d 332, declared that only the part of a sentence that does not include postrelease control is void. The State argues that this Court should apply the *Fischer* remedy to the failure to include a mandatory driver's license suspension. But *Fischer* does not pertain to this particular sentencing error. The opinion explicitly limits itself to cases involving postrelease control: "Our decision today is limited to a discrete vein of cases: those in which a court does not properly impose a statutorily mandated period of postrelease control." *Id.* at 100. This Court's jurisprudence concerning voidness and the remedy for a void sentence remains good law as to sentencing errors that do not involve the improper imposition of postrelease control.

CONCLUSION

Because forfeiture is part of a criminal sentence, a judgment entry must include forfeiture in order to comply with Crim.R. 32(C). And because a sentence that does not include a statutorily-mandated term is void, the failure to include a driver's license suspension in a criminal sentence renders that sentence void and subject to resentencing. This Court should therefore affirm the holding of the Eighth District Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Brief of Appellee Mario Harris was forwarded by regular U.S. Mail to Matthew Meyer, Cuyahoga County Prosecutor's Office, 1200 Ontario Street, Cleveland, OH 44113, on this 22nd day of July, 2011.



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APPENDIX TO BRIEF OF APPELLEE MARIO HARRIS

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I. BILL OF RIGHTS

§ 9 BAIL; CRUEL AND UNUSUAL PUNISHMENTS

All persons shall be bailable by sufficient sureties, except for capital offences where the proof is evident, or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

PAGE'S OHIO REVISED CODE ANNOTATED

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* CURRENT THROUGH THE LEGISLATION PASSED BY THE 129TH OHIO GENERAL
ASSEMBLY

AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 21 AND 23

The provisions of 2011 SB 5 are subject to referendum and will not become effective unless ap-
proved

at the November 2011 general election. *

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2903. HOMICIDE AND ASSAULT

HOMICIDE

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ORC Ann. 2903.06 (2011)

§ 2903.06. Aggravated vehicular homicide; vehicular homicide; vehicular manslaughter

(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause the death of another or the unlawful termination of another's pregnancy in any of the following ways:

(1) (a) As the proximate result of committing a violation of division (A) of *section 4511.19 of the Revised Code* or of a substantially equivalent municipal ordinance;

(b) As the proximate result of committing a violation of division (A) of *section 1547.11 of the Revised Code* or of a substantially equivalent municipal ordinance;

(c) As the proximate result of committing a violation of division (A)(3) of *section 4561.15 of the Revised Code* or of a substantially equivalent municipal ordinance.

(2) In one of the following ways:

(a) Recklessly;

(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this division applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply as described in division (F) of this section.

(3) In one of the following ways:

(a) Negligently;

(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that this division applies only if the person whose death is caused or whose pregnancy is unlawfully termi-

nated is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in division (F) of this section.

(4) As the proximate result of committing a violation of any provision of any section contained in Title XLV of the Revised Code that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any provision of any section contained in Title XLV of the Revised Code that is a minor misdemeanor.

(B) (1) Whoever violates division (A)(1) or (2) of this section is guilty of aggravated vehicular homicide and shall be punished as provided in divisions (B)(2) and (3) of this section.

(2) (a) Except as otherwise provided in division (B)(2)(b) or (c) of this section, aggravated vehicular homicide committed in violation of division (A)(1) of this section is a felony of the second degree and the court shall impose a mandatory prison term on the offender as described in division (E) of this section.

(b) Except as otherwise provided in division (B)(2)(c) of this section, aggravated vehicular homicide committed in violation of division (A)(1) of this section is a felony of the first degree, and the court shall impose a mandatory prison term on the offender as described in division (E) of this section, if any of the following apply:

(i) At the time of the offense, the offender was driving under a suspension or cancellation imposed under Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under *section 4507.10 of the Revised Code*.

(ii) The offender previously has been convicted of or pleaded guilty to a violation of this section.

(iii) The offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.

(c) Aggravated vehicular homicide committed in violation of division (A)(1) of this section is a felony of the first degree, and the court shall sentence the offender to a mandatory prison term as provided in *section 2929.142 [2929.14.2] of the Revised Code* and described in division (E) of this section if any of the following apply:

(i) The offender previously has been convicted of or pleaded guilty to three or more prior violations of *section 4511.19 of the Revised Code* or of a substantially equivalent municipal ordinance within the previous six years.

(ii) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A) of *section 1547.11 of the Revised Code* or of a substantially equivalent municipal ordinance within the previous six years.

(iii) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(3) of *section 4561.15 of the Revised Code* or of a substantially equivalent municipal ordinance within the previous six years.

(iv) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of this section within the previous six years.

(v) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of *section 2903.08 of the Revised Code* within the previous six years.

(vi) The offender previously has been convicted of or pleaded guilty to three or more prior violations of *section 2903.04 of the Revised Code* within the previous six years in circumstances in which division (D) of that section applied regarding the violations.

(vii) The offender previously has been convicted of or pleaded guilty to three or more violations of any combination of the offenses listed in division (B)(2)(c)(i), (ii), (iii), (iv), (v), or (vi) of this section within the previous six years.

(viii) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony violation of division (A) of *section 4511.19 of the Revised Code*.

(d) In addition to any other sanctions imposed pursuant to division (B)(2)(a), (b), or (c) of this section for aggravated vehicular homicide committed in violation of division (A)(1) of this section, the court shall impose upon the offender a class one suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(1) of *section 4510.02 of the Revised Code*.

(3) Except as otherwise provided in this division, aggravated vehicular homicide committed in violation of division (A)(2) of this section is a felony of the third degree. Aggravated vehicular homicide committed in violation of division (A)(2) of this section is a felony of the second degree if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under *section 4507.10 of the Revised Code* or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense. The

court shall impose a mandatory prison term on the offender when required by division (E) of this section.

In addition to any other sanctions imposed pursuant to this division for a violation of division (A)(2) of this section, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of *section 4510.02 of the Revised Code* or, if the offender previously has been convicted of or pleaded guilty to a traffic-related murder, felonious assault, or attempted murder offense, a class one suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(1) of that section.

(C) Whoever violates division (A)(3) of this section is guilty of vehicular homicide. Except as otherwise provided in this division, vehicular homicide is a misdemeanor of the first degree. Vehicular homicide committed in violation of division (A)(3) of this section is a felony of the fourth degree if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under *section 4507.10 of the Revised Code* or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense. The court shall impose a mandatory jail term or a mandatory prison term on the offender when required by division (E) of this section.

In addition to any other sanctions imposed pursuant to this division, the court shall impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of *section 4510.02 of the Revised Code*, or, if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense, a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of that section, or, if the offender previously has been convicted of or pleaded guilty to a traffic-related murder, felonious assault, or attempted murder offense, a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of that section.

(D) Whoever violates division (A)(4) of this section is guilty of vehicular manslaughter. Except as otherwise provided in this division, vehicular manslaughter is a misdemeanor of the second degree. Vehicular manslaughter is a misdemeanor of the first degree if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under *section 4507.10 of the Revised Code* or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense.

In addition to any other sanctions imposed pursuant to this division, the court shall impose upon the offender a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of *section 4510.02 of the Revised Code* or, if the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or a traffic-related murder, felonious assault, or attempted murder offense, a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of that section.

(E) The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(1) of this section. If division (B)(2)(c)(i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) of this section applies to an offender who is convicted of or pleads guilty to the violation of division (A)(1) of this section, the court shall impose the mandatory prison term pursuant to *section 2929.142 [2929.14.2] of the Revised Code*. The court shall impose a mandatory jail term of at least fifteen days on an offender who is convicted of or pleads guilty to a misdemeanor violation of division (A)(3)(b) of this section and may impose upon the offender a longer jail term as authorized pursuant to *section 2929.24 of the Revised Code*. The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(2) or (3)(a) of this section or a felony violation of division (A)(3)(b) of this section if either of the following applies:

(1) The offender previously has been convicted of or pleaded guilty to a violation of this section or *section 2903.08 of the Revised Code*.

(2) At the time of the offense, the offender was driving under suspension or cancellation under Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under *section 4507.10 of the Revised Code*.

(F) Divisions (A)(2)(b) and (3)(b) of this section do not apply in a particular construction zone unless signs of the type described in *section 2903.081 [2903.08.1] of the Revised Code* are erected in that construction zone in accordance with the guidelines and design specifications established by the director of transportation under *section 5501.27 of the Revised Code*. The failure to erect signs of the type described in *section 2903.081 [2903.08.1] of the Revised Code* in a particular construction zone in accordance with those guidelines and design specifications does not limit or affect the application of division (A)(1), (A)(2)(a), (A)(3)(a), or (A)(4) of this section in that construction zone or the prosecution of any person who violates any of those divisions in that construction zone.

(G) (1) As used in this section:

(a) "Mandatory prison term" and "mandatory jail term" have the same meanings as in *section 2929.01 of the Revised Code*.

(b) "Traffic-related homicide, manslaughter, or assault offense" means a violation of *section 2903.04 of the Revised Code* in circumstances in which division (D) of that section applies, a violation of *section 2903.06 or 2903.08 of the Revised Code*, or a violation of *section 2903.06, 2903.07, or 2903.08 of the Revised Code* as they existed prior to March 23, 2000.

(c) "Construction zone" has the same meaning as in *section 5501.27 of the Revised Code*.

(d) "Reckless operation offense" means a violation of *section 4511.20 of the Revised Code* or a municipal ordinance substantially equivalent to *section 4511.20 of the Revised Code*.

(e) "Speeding offense" means a violation of *section 4511.21 of the Revised Code* or a municipal ordinance pertaining to speed.

(f) "Traffic-related murder, felonious assault, or attempted murder offense" means a violation of *section 2903.01 or 2903.02 of the Revised Code* in circumstances in which the offender used a motor vehicle as the means to commit the violation, a violation of division (A)(2) of *section 2903.11 of the Revised Code* in circumstances in which the deadly weapon used in the commission of the violation is a motor vehicle, or an attempt to commit aggravated murder or murder in violation of *section 2923.02 of the Revised Code* in circumstances in which the offender used a motor vehicle as the means to attempt to commit the aggravated murder or murder.

(g) "Motor vehicle" has the same meaning as in *section 4501.01 of the Revised Code*.

(2) For the purposes of this section, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former law of this state, or current or former law of another state or the United States.

HISTORY:

134 v H 511 (Eff 1-1-74); 135 v H 716 (Eff 1-1-74); 139 v S 432 (Eff 3-16-83); 141 v H 265 (Eff 7-24-86); 141 v S 356 (Eff 9-24-86); 141 v S 262 (Eff 3-20-87); 141 v H 428 (Eff 12-23-86); 143 v H 381 (Eff 7-1-89); 143 v S 49 (Eff 11-3-89); 143 v S 131 (Eff 7-25-90); 144 v S 275 (Eff 7-1-93) *; 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 239 (Eff 9-6-96); 148 v S 107.

Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04; 150 v H 50, § 1, eff. 10-21-03; 150 v H 50, § 4, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 151 v H 461, § 1, eff. 4-4-07; 152 v H 215, § 1, eff. 4-7-09.

PAGE'S OHIO REVISED CODE ANNOTATED

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* CURRENT THROUGH THE LEGISLATION PASSED BY THE 129TH OHIO GENERAL
ASSEMBLY

AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 21 AND 23

The provisions of 2011 SB 5 are subject to referendum and will not become effective unless ap-
proved

at the November 2011 general election. *

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2925. DRUG OFFENSES

CORRUPTING; TRAFFICKING

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ORC Ann. 2925.03 (2011)

Legislative Alert: LEXSEE 2011 Ohio HB 86 -- See sections 1 and 2.

§ 2925.03. Trafficking in drugs

(A) No person shall knowingly do any of the following:

(1) Sell or offer to sell a controlled substance;

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," *52 Stat. 1040 (1938), 21 U.S.C.A. 301*, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L S.D., heroin, and hashish, whoever violates division (A) of this section is guilty of aggravated trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), (e), or (f) of this section, aggravated trafficking in drugs is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(1)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated trafficking in drugs is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of

the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional prison term prescribed for a major drug offender under division (D)(3)(b) of *section 2929.14 of the Revised Code*.

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), (d), or (e) of this section, trafficking in drugs is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(2)(c), (d), or (e) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is

a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, trafficking in drugs is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty times the bulk amount, trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds fifty times the bulk amount and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of trafficking in marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), (f), or (g) of this section, trafficking in marihuana is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(3)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, trafficking in marihuana is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, trafficking in marihuana is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a

juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, trafficking in marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

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

(g) Except as otherwise provided in this division, if the offense involves a gift of twenty grams or less of marihuana, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense. If the offense involves a gift of twenty grams or less of marihuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of trafficking in cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), (f), or (g) of this section, trafficking in cocaine is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(4)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine that is not crack cocaine or equals or exceeds one gram but is less than five grams of crack cocaine, trafficking in cocaine is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than one hundred grams of cocaine that is not crack cocaine or equals or exceeds five grams but is less than ten grams of crack cocaine, trafficking in cocaine is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one hundred grams but is less than five hundred grams of cocaine that is not crack cocaine or equals or exceeds ten grams but is less than twenty-five grams of crack cocaine, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds five hundred grams but is less than one thousand grams of cocaine that is not crack cocaine or equals or exceeds twenty-five grams but is less than one hundred grams of crack cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds one thousand grams of cocaine that is not crack cocaine or equals or exceeds one hundred grams of crack cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of *section 2929.14 of the Revised Code*.

(5) If the drug involved in the violation is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., whoever violates division (A) of this section is guilty of trafficking in L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), (f), or (g) of this section, trafficking in L.S.D. is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(5)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was

committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty-five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term

the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of *section 2929.14 of the Revised Code*.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of trafficking in heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), (f), or (g) of this section, trafficking in heroin is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(6)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, trafficking in heroin is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that

range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, trafficking in heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than two thousand five hundred unit doses or equals or exceeds fifty grams but is less than two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an

additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of *section 2929.14 of the Revised Code*.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of trafficking in hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), or (f) of this section, trafficking in hashish is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(7)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than fifty grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or

equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams of hashish in a solid form or equals or exceeds two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

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

(1) If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of *section 2929.18 of the Revised Code* unless, as specified in that division, the court determines that the offender is indigent. Except as otherwise provided in division (H)(1) of this section, a mandatory fine or any other fine imposed for a violation of this section is subject to division (F) of this section. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk of the court shall pay the forfeited bail pursuant to divisions (D)(1) and (F) of this section, as if the forfeited bail was a fine imposed for a violation of this section. If any amount of the forfeited bail remains after that payment and if a fine is imposed under division (H)(1) of this section, the clerk of the court shall pay the remaining amount of the forfeited bail pursuant to divisions (H)(2) and (3) of this section, as if that remaining amount was a fine imposed under division (H)(1) of this section.

(2) The court shall suspend the driver's or commercial driver's license or permit of the offender in accordance with division (G) of this section.

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

(E) When a person is charged with the sale of or offer to sell a bulk amount or a multiple of a bulk amount of a controlled substance, the jury, or the court trying the accused, shall determine the

amount of the controlled substance involved at the time of the offense and, if a guilty verdict is returned, shall return the findings as part of the verdict. In any such case, it is unnecessary to find and return the exact amount of the controlled substance involved, and it is sufficient if the finding and return is to the effect that the amount of the controlled substance involved is the requisite amount, or that the amount of the controlled substance involved is less than the requisite amount.

(F) (1) Notwithstanding any contrary provision of *section 3719.21 of the Revised Code* and except as provided in division (H) of this section, the clerk of the court shall pay any mandatory fine imposed pursuant to division (D)(1) of this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant to division (A) or (B)(5) of *section 2929.18 of the Revised Code* to the county, township, municipal corporation, park district, as created pursuant to *section 511.18 or 1545.04 of the Revised Code*, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section.

(2) (a) Prior to receiving any fine moneys under division (F)(1) of this section or division (B) of *section 2925.42 of the Revised Code*, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general

type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under *section 149.43 of the Revised Code*. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(b) Each law enforcement agency that receives in any calendar year any fine moneys under division (F)(1) of this section or division (B) of *section 2925.42 of the Revised Code* shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (F)(2)(a) of this section for that calendar year, and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each report received by the attorney general is a public record open for inspection under *section 149.43 of the Revised Code*. Not later than the fifteenth day of April in the calendar year in which the reports are received, the attorney general shall send to the president of the senate and the speaker of the house of representatives a written notification that does all of the following:

(i) Indicates that the attorney general has received from law enforcement agencies reports of the type described in this division that cover the previous calendar year and indicates that the reports were received under this division;

(ii) Indicates that the reports are open for inspection under *section 149.43 of the Revised Code*;

(iii) Indicates that the attorney general will provide a copy of any or all of the reports to the president of the senate or the speaker of the house of representatives upon request.

(3) As used in division (F) of this section:

(a) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

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

(G) When required under division (D)(2) of this section or any other provision of this chapter, the court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to any violation of this section or any other specified provision of this chapter. If an offender's driver's or commercial driver's license or permit is suspended pursuant to this division, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed or from the day on which the offender finally was released from a prison term under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the suspension; upon the filing of such a motion and the court's finding of good cause for the termination, the court may terminate the suspension.

(H) (1) In addition to any prison term authorized or required by division (C) of this section and *sections 2929.13 and 2929.14 of the Revised Code*, in addition to any other penalty or sanction imposed for the offense under this section or *sections 2929.11 to 2929.18 of the Revised Code*, and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may impose upon the offender an additional fine specified for the offense in division (B)(4) of *section 2929.18 of the Revised Code*. A fine imposed under division (H)(1) of this section is not subject to division (F) of this section and shall be used solely for

the support of one or more eligible alcohol and drug addiction programs in accordance with divisions (H)(2) and (3) of this section.

(2) The court that imposes a fine under division (H)(1) of this section shall specify in the judgment that imposes the fine one or more eligible alcohol and drug addiction programs for the support of which the fine money is to be used. No alcohol and drug addiction program shall receive or use money paid or collected in satisfaction of a fine imposed under division (H)(1) of this section unless the program is specified in the judgment that imposes the fine. No alcohol and drug addiction program shall be specified in the judgment unless the program is an eligible alcohol and drug addiction program and, except as otherwise provided in division (H)(2) of this section, unless the program is located in the county in which the court that imposes the fine is located or in a county that is immediately contiguous to the county in which that court is located. If no eligible alcohol and drug addiction program is located in any of those counties, the judgment may specify an eligible alcohol and drug addiction program that is located anywhere within this state.

(3) Notwithstanding any contrary provision of *section 3719.21 of the Revised Code*, the clerk of the court shall pay any fine imposed under division (H)(1) of this section to the eligible alcohol and drug addiction program specified pursuant to division (H)(2) of this section in the judgment. The eligible alcohol and drug addiction program that receives the fine moneys shall use the moneys only for the alcohol and drug addiction services identified in the application for certification under *section 3793.06 of the Revised Code* or in the application for a license under *section 3793.11 of the Revised Code* filed with the department of alcohol and drug addiction services by the alcohol and drug addiction program specified in the judgment.

(4) Each alcohol and drug addiction program that receives in a calendar year any fine moneys under division (H)(3) of this section shall file an annual report covering that calendar year with the

court of common pleas and the board of county commissioners of the county in which the program is located, with the court of common pleas and the board of county commissioners of each county from which the program received the moneys if that county is different from the county in which the program is located, and with the attorney general. The alcohol and drug addiction program shall file the report no later than the first day of March in the calendar year following the calendar year in which the program received the fine moneys. The report shall include statistics on the number of persons served by the alcohol and drug addiction program, identify the types of alcohol and drug addiction services provided to those persons, and include a specific accounting of the purposes for which the fine moneys received were used. No information contained in the report shall identify, or enable a person to determine the identity of, any person served by the alcohol and drug addiction program. Each report received by a court of common pleas, a board of county commissioners, or the attorney general is a public record open for inspection under *section 149.43 of the Revised Code*.

(5) As used in divisions (H)(1) to (5) of this section:

(a) "Alcohol and drug addiction program" and "alcohol and drug addiction services" have the same meanings as in *section 3793.01 of the Revised Code*.

(b) "Eligible alcohol and drug addiction program" means an alcohol and drug addiction program that is certified under *section 3793.06 of the Revised Code* or licensed under *section 3793.11 of the Revised Code* by the department of alcohol and drug addiction services.

(I) As used in this section, "drug" includes any substance that is represented to be a drug.

HISTORY:

136 v H 300 (Eff 7-1-76); 141 v S 67 (Eff 8-29-86); 143 v H 215 (Eff 4-11-90); 143 v H 261 (Eff 7-18-90); 143 v H 266 (Eff 9-6-90); 143 v S 258 (Eff 11-20-90); 144 v H 62 (Eff 5-21-91); 144

v S 174 (Eff 7-31-92); 144 v H 591 (Eff 11-2-92); 145 v H 377 (Eff 9-30-93); 145 v H 391 (Eff 7-21-94); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 147 v S 164 (Eff 1-15-98); 147 v S 66 (Eff 7-22-98); 148 v S 107 (Eff 3-23-2000); 148 v H 241 (Eff 5-17-2000); 148 v H 528. Eff 2-13-2001; 149 v S 123, § 1, eff. 1-1-04; 151 v S 154, § 1, eff. 5-17-06; 151 v H 241, § 1, eff. 7-1-07; 152 v H 195, § 1, eff. 9-30-08.

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* CURRENT THROUGH THE LEGISLATION PASSED BY THE 129TH OHIO GENERAL
ASSEMBLY

AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 21 AND 23

The provisions of 2011 SB 5 are subject to referendum and will not become effective unless ap-
proved

at the November 2011 general election. *

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2925. DRUG OFFENSES

FORFEITURE OF PROPERTY RELATING TO FELONY DRUG ABUSE OFFENSE

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ORC Ann. 2925.42 (2011)

§ 2925.42. Fines

(A) If a person is convicted of or pleads guilty to a felony drug abuse offense, or a juvenile is found by a juvenile court to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense, and derives profits or other proceeds from the offense or act, the court that imposes sentence or an order of disposition upon the offender or delinquent child, in lieu of any fine that the court is otherwise authorized or required to impose, may impose upon the offender or delinquent child a fine of not more than twice the gross profits or other proceeds so derived.

(B) Notwithstanding any contrary provision of *section 3719.21 of the Revised Code*, all fines imposed pursuant to this section shall be paid by the clerk of the court to the county, municipal corporation, township, park district, as created pursuant to *section 511.18 or 1545.01 of the Revised Code*, or state law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender. However, no fine so imposed shall be paid to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of *section 2925.03 of the Revised Code* that addresses the use of the fine moneys that it receives under this division and division (F)(1) of *section 2925.03 of the Revised Code*. The fines imposed and paid pursuant to this division shall be used by the law enforcement agencies to subsidize their efforts pertaining to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of *section 2925.03 of the Revised Code*.

(C) As used in this section:

(1) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

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

HISTORY:

143 v S 258 (Eff 11-20-90); 144 v S 174 (Eff 7-31-92); 146 v S 2 (Eff 7-1-96); 148 v S 179, § 3.
Eff 1-1-2002; 151 v H 241, § 1, eff. 7-1-07.

of this section shall be disbursed by the clerk of the court as otherwise provided by law.

(4) If a person is charged with any violation of this section and posts bail pursuant to sections 3937, 3938 and 3937.46 of the Revised Code or Criminal Rule 46, and if the person forfeits the bail, the forfeited bail shall be paid by the clerk of the court in accordance with and subject to the requirements of this section.

(5) No court shall impose a mandatory fine pursuant to division (1)-(4) of this section upon a defendant who alleges, in an affidavit filed with the court prior to the sentencing, that he is indigent and is unable to pay any mandatory fine imposed pursuant to that division, if the court determines the offender is an indigent person and is unable to pay the fine.

(M) In addition to any other penalty imposed for a violation of this section, the court may suspend for up to five years the driver's or commercial driver's license of any person who is convicted of or has pleaded guilty to any other violation of this section, if the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed rules, in addition to any other penalty imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code.

The effective date is set by section 15 of SB 258.

1 Per enrolled bill. Apparently, "of" was included inad- vertently.

Cross-References to Related Sections
 Felonies, for, RC § 2925.11.
 Misdemeanors, for, RC § 2929.21.
 Organizational penalties, RC § 2929.31.
 Certain offenders disqualified from professional employ- ment, RC § 2921.54.
 Convictions to be reported to professional licensing author- ities, RC § 2925.38.
 Corrupt activity defined, RC § 2923.31.
 Disposition of fines and forfeited bail, RC § 3719.21.
 Drug abuse offense, nonusing, RC § 2925.01.
 Emergency paroles, RC § 3087.18.
 Notification to state medical board of conviction of certi- fied health practitioner, RC § 4731.22.3.
 Organized criminal activity, RC § 177.01.
 Prior conviction—
 Pleading, RC § 2941.11
 Proof, RC § 2943.75.
 Suspension or revocation of license by trial judge, RC § 4307.16.

Comparative Legislation
 CA—Health & S § 11265
 FL—Stat Ann § 817.5663, 817.564
 IL—Ann Stat ch 38½ § 1406

IN—Code § 35-48-4.5
 KY—Rev Stat Ann § 218A.250
 MI—Comp Laws Ann § 303.7402
 PA—CSA tit 35 § 780-113

Forms
 Counterfeit controlled substances, 4 OJI 925.37
Research Aids
 Counterfeit controlled substances
 O-Jur'dic Crim L § 2301.3
 C.J.S.: Drugs&N § 168
 West Key No. Reference
 Drugs & N 68

ALN
 Validity, construction, and effect of state statute regulat- ing sale of counterfeit or imitation controlled sub- stances, 84 ALR4th 536.

CASE NOTES AND OAC

1. (1987) The offenses of knowingly selling or offering to sell a controlled substance, as proscribed by RC § 2925.03(A)(1), and knowingly selling or offering to sell a counterfeit controlled substance, in violation of RC § 2925.37(B), are not aided offenses, in similar import: State v. Mudgett, 33 OS6 85; 314 N.E.2d 670.
 2. (1992) A person who is convicted of violating RC § 2925.37(B) offering to sell counterfeit controlled sub- stances where the evidence shows that counterfeit con- trolled substances were obtained pursuant to a telephone call to the corporation where the person answering the telephone call responded with the corporate name: State v. Alroy Distributors, 34 OApp3d 176, 517 N.E.2d 1042.
 3. (1986) Revised Code § 2925.37(B), unconstitutionally counterfeit controlled substances, is not unconstitutionally overbroad on its face: State v. Patterson, 36 OApp3d 14, 519 N.E.2d 412.
 4. (1991) Revised Code § 1.51 which mandates that a specific statute prevail over a general statute is inapplica- ble to a charge of aggravated trafficking under RC § 2925.03 where the substance is a counterfeit because the import: State v. Bureman, CA 19273 (3rd Dist.).
 5. (1989) Fines and penalties collected under presen- tly repealed provisions of RC Chapters 2923, and 2925.53 and, pursuant to RC § 3719.21, are paid to the executive director of the State Board of Pharmacy and by him paid into the state treasury to the credit of the general revenue fund with the exception of mandatory drug fines, which are disbursed pursuant to RC § 2925.03(J); OAG No.89-102.

§ 2925.38 Convictions to be reported to professional licensing authorities.

If a person who is convicted of or pleads guilty to a violation of section 2925.02, 2925.03, 2925.11, 2925.12, 2925.13, 2925.14, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, or 2925.37 of the Revised Code is a professionally licensed person, in addition to any other penalty imposed for a viola- tion of the section, the court forthwith shall trans- mit a certified copy of the judgment entry of convic-

tion to the regulatory or licensing board or agency that has the administrative authority to suspend or revoke the offender's professional license. If a per- son who is convicted of or pleads guilty to a viola- tion of any such section is a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other penalties imposed for a violation of the section, the court forthwith shall transmit a certified copy of the judgment entry of conviction to the secretary of the board of commis- sioners on grievance and discipline of the supreme court and to either the disciplinary counsel or the president, secretary, and chairman of each certified grievance committee.

HISTORY: 143 v. S 235, Eff 11-26-90.

Cross-References to Related Sections
 The effective date is set by section 15 of SB 278.
 Disposition of delinquent child, RC § 2151.35.5.
 Disposition of property held by law enforcement agency, RC § 2933.41.
 Perforation and disposition of controlled substances, RC § 3719.11.
 Seizure and forfeiture of contraband, RC § 2933.43.

Research Aids

Definitions:
 O-Jur'dic Crim L § 2307.1
 At-Jur'dic Drugs § 1.6
 C.J.S.: Drugs&N § 139 et seq
 Forfeiture of property connected to a felony drug abuse offense
 O-Jur'dic Crim L § 2307.1
 O-Jur'dic Drugs § 37.24-37.26, 48.7
 C.J.S.: Drugs&N § 141
 West Key No. Reference
 Drugs & N 181, 180, 191, 192

ALN

Delay in setting hearing date or in holding hearing as af- fecting forfeitability under Uniform Controlled Sub- stances Act or similar statute, 6 ALR5th 711.
 Forfeitability of property under Uniform Controlled Sub- stances Act or similar statute where amount of con- trolled substance seized is small, 6 ALR5th 892.
 Forfeiture of money to state or local authorities based on its association with or proximity to other contraband, 38 ALR4th 498.
 Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 ALR3d 473.
 Necessity of conviction of offense associated with property seized in order to support forfeiture of property to state or local authorities, 36 ALR4th 315.
 Uniform Controlled Substances Act or similar statute, 86 ALR4th 385.

Research Aids

Convictions to be reported to professional licensing author- ities
 O-Jur'dic Crim L § 2308, 2309, 2388, 2390, 2392, 2398.
 O-Jur'dic Drugs §§ 14, 24, 27
 At-Jur'dic Drugs §§ 14, 24, 27
 C.J.S.: Drugs&N §§ 81-80
 West Key No. Reference
 Drugs & N 24, 22, 30

ALR

Narcotics conviction as crime of moral turpitude justifying disbarment or other disciplinary action against attor- ney, 39 ALR4th 349.
 Physician's services rendered, or conviction of of- fense, not directly related to medical practice, as ground for disciplinary action, 34 ALR4th 659.

[FORFEITURE OF PROPERTY RELATING TO FELDNY DRUG ABUSE OFFENSE]

§ 2925.41 Definitions.

As used in sections 2925.42 to 2925.45 of the Re- vised Code:

(A) "Financial institution" means a bank, credit union, savings and loan association, or a licensee or registrant under Chapter 1321 of the Revised Code.
 (B) "Property" includes both of the following:
 (1) Real property, including, but not limited to, things growing on, affixed to, and found in the real property.
 (2) Tangible and intangible personal property, including, but not limited to, rights, privileges, in- terests, claims, and securities.
 The effective date is set by section 15 of SB 278.

Cross-References to Related Sections
 Disposition of delinquent child, RC § 2151.35.5.
 Disposition of property held by law enforcement agency, RC § 2933.41.
 Perforation and disposition of controlled substances, RC § 3719.11.
 Seizure and forfeiture of contraband, RC § 2933.43.

Research Aids

Definitions:
 O-Jur'dic Crim L § 2307.1
 At-Jur'dic Drugs § 1.6
 C.J.S.: Drugs&N § 139 et seq
 Forfeiture of property connected to a felony drug abuse offense
 O-Jur'dic Crim L § 2307.1
 O-Jur'dic Drugs § 37.24-37.26, 48.7
 C.J.S.: Drugs&N § 141
 West Key No. Reference
 Drugs & N 181, 180, 191, 192

ALN

Delay in setting hearing date or in holding hearing as af- fecting forfeitability under Uniform Controlled Sub- stances Act or similar statute, 6 ALR5th 711.
 Forfeitability of property under Uniform Controlled Sub- stances Act or similar statute where amount of con- trolled substance seized is small, 6 ALR5th 892.
 Forfeiture of money to state or local authorities based on its association with or proximity to other contraband, 38 ALR4th 498.
 Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 ALR3d 473.
 Necessity of conviction of offense associated with property seized in order to support forfeiture of property to state or local authorities, 36 ALR4th 315.
 Uniform Controlled Substances Act or similar statute, 86 ALR4th 385.

§ 2925.42 Forfeiture of property in con- nection with felony drug abuse offense or act.

(A)(1) In accordance with division (B) of this sec- tion, a person who is convicted of or pleads guilty to a felony drug abuse offense, and any juvenile who is found by a juvenile court to be a delinquent child, for an act that, if committed by an adult, would be a felony drug abuse offense, loses any

§ 2925.42 Forfeiture of property in con- nection with felony drug abuse offense or act.

(A)(1) In accordance with division (B) of this sec- tion, a person who is convicted of or pleads guilty to a felony drug abuse offense, and any juvenile who is found by a juvenile court to be a delinquent child, for an act that, if committed by an adult, would be a felony drug abuse offense, loses any

right to the possession of property and forfeits to the state any right, title, and interest he may have in that property if either of the following applies:

- (a) The property constitutes, or is derived directly or indirectly from, any proceeds that the person obtained directly or indirectly from the commission of the felony drug abuse offense or act.
(b) The property was used or intended to be used in any manner to commit, or to facilitate the commission of, the felony drug abuse offense or act.
(2) All right, title, and interest of a person in property described in division (A)(1) of this section vests in the state upon the person's commission of the felony drug abuse offense of which he is convicted or to which he pleads guilty and that is the basis of the forfeiture, or upon the juvenile's commission of the act that, if committed by an adult, would be a felony drug abuse offense, that is the basis of his being found to be a delinquent child, and that is the basis of the forfeiture. Subject to divisions (F)(2)(b) and (5)(b) and (C)(2) of this section, if any right, title, or interest in property is vested in this state under this division and subsequently is transferred to a person other than the offender who forfeits the right, title, or interest under division (A)(1) of this section, then, in accordance with division (B) of this section, the right, title, or interest in the property may be the subject of a special verdict of forfeiture and, after any special verdict of forfeiture, shall be ordered forfeited to this state, unless the transferee establishes in a hearing held pursuant to division (F) of this section that he is a bona fide purchaser for value of the right, title, or interest in the property and that, at the time of its purchase, he was reasonably without cause to believe that it was subject to forfeiture under this section.

(3) The provisions of section 2025.43 of the Revised Code that relate to the forfeiture of any right, title, or interest in property associated with a felony drug abuse offense pursuant to a civil action to obtain a civil forfeiture do not apply to the forfeiture of any right, title, or interest in property described in division (A)(1) of this section that occurs pursuant to division (B) of this section upon a person's conviction or guilty plea to a felony drug abuse offense or upon a juvenile being found by a juvenile court to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense.

(4) Nothing in this section precludes a financial institution that has or purports to have a security interest in or lien on property described in division (A)(1) of this section from commencing a civil action or taking other appropriate legal action in connection with the property, prior to its disposition in accordance with section 2025.44 of the Revised Code, for the purpose of obtaining possession of the property in order to foreclose or otherwise enforce the security interest or lien. A financial institution may commence a civil action or take other appropriate legal action for that purpose prior to the disposition of the property in accordance with section 2025.44 of the Revised Code, even if a felony drug abuse offense proceeding or a delinquent child proceeding for an act that, if committed, would be a felony drug abuse offense has been or could be commenced, even if the property is or could be the subject of an order of forfeiture issued under division (B)(5) of this section, and even if the property has been seized or is subject to seizure pursuant to division (D) or (E) of this section.

private legal action for that purpose prior to the disposition of the property in accordance with section 2025.44 of the Revised Code; even if a felony drug abuse offense proceeding or a delinquent child proceeding for an act that, if committed by an adult, would be a felony drug abuse offense has been or could be commenced, even if the property is or could be the subject of an order of forfeiture issued under division (B)(5) of this section, and even if the property has been seized or is subject to seizure pursuant to division (D) or (E) of this section.

If a financial institution commences a civil action or takes any other appropriate legal action as described in this division, if the financial institution subsequently causes the sale of the property prior to its seizure pursuant to division (D) or (E) of this section, and its disposition pursuant to section 2025.44 of the Revised Code, and if the person responsible for the conduct of the sale has actual knowledge of the commencement of a felony drug abuse offense proceeding or of a delinquent child proceeding for an act that, if committed by an adult, would be a felony drug abuse offense, actual knowledge of a pending forfeiture proceeding under division (B) of this section, or actual knowledge of an order of forfeiture issued under division (B)(5) of this section, then the person responsible for the conduct of the sale shall dispose of the proceeds of the sale in the following order:

- (a) First, to the payment of the costs of the sale and to the payment of the costs incurred by law enforcement agencies and financial institutions in connection with the seizure of, storage of, maintenance of, and provision of security for the property. As used in this division, "costs" of a financial institution do not include attorney's fees incurred by that institution in connection with the property.

(b) Second, the remaining proceeds of the sale after compliance with division (A)(4)(a) of this section, to the payment of valid security interests and liens pertaining to the property that, at the time of the vesting of the right, title, or interest of the adult or juvenile in the state under division (A)(2) of this section, are held by known secured parties and lienholders, in the order of priority of those security interests and liens;

(c) Third, the remaining proceeds of the sale after compliance with division (A)(4)(b) of this section, to the court that has or would have jurisdiction in a felony drug abuse offense proceeding or a delinquent child proceeding for an act that, if committed by an adult, would be a felony drug abuse offense, for disposition in accordance with section 2025.44 of the Revised Code.

(3)(A) A criminal forfeiture of any right, title, or interest in property described in division (A)(1) of this section is precluded unless one of the following applies:
(a) The indictment, count in the indictment, or information charging the felony drug abuse offense specifies the nature of the right, title, or interest of

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right to the possession of property and forfeits to the state any right, title, and interest he may have in that property if either of the following applies: (a) The property constitutes, or is derived directly or indirectly from, any proceeds that the person obtained directly or indirectly from the commission of the felony drug abuse offense or act.

(b) The property was used or intended to be used in any manner to commit, or to facilitate the commission of, the felony drug abuse offense or act.

(2) All right, title, and interest of a person in property described in division (A)(1) of this section vests in the state upon the person's commission of the felony drug abuse offense of which he is convicted or to which he pleads guilty and that is the basis of the forfeiture, or upon the juvenile's commission of the act that, if committed by an adult, would be a felony drug abuse offense, that is the basis of his being found to be a delinquent child, and that is the basis of the forfeiture. Subject to divisions F(3)(b) and (5)(b) and (C)(2) of this section, if any right, title, or interest in property vested in this state under this division and subsequently is transferred to a person other than the offender who forfeits the right, title, or interest under division (A)(1) of this section, then, in accordance with division (B) of this section, the right, title, or interest in the property may be the subject of a special verdict of forfeiture and, after any special verdict of forfeiture, shall be ordered forfeited to this state, unless the transferee establishes in a hearing held pursuant to division (F) of this section that he is a bona fide purchaser for value of the right, title, or interest in the property and that, at the time of its purchase, he was reasonably without cause to believe that it was subject to forfeiture under this section.

(3) The provisions of section 2925.43 of the Revised Code that relate to the forfeiture of any right, title, or interest in property associated with a felony drug abuse offense pursuant to a civil action to obtain a civil forfeiture do not apply to the forfeiture in division (A)(1) of this section that occurs pursuant to division (B) of this section upon a person's conviction or guilty plea to a felony drug abuse offense or upon a juvenile being found by a juvenile court to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense.

(4) Nothing in this section precludes a financial institution that has or purports to have a security interest in or lien on property described in division (A)(1) of this section from commencing a civil action or taking other appropriate legal action in connection with the property, prior to its disposition in accordance with section 2925.44 of the Revised Code, for the purpose of obtaining possession of the property in order to foreclose or otherwise enforce the security interest or lien. A financial institution may commence a civil action or take other appropriate legal action for that purpose prior to the disposition of the property under this section, or after the disposition of the property, if the institution has a security interest or lien on the property and the disposition of the property is in accordance with section 2925.44 of the Revised Code.

(5) If a financial institution commences a civil action or takes any other appropriate legal action as described in this section, the sale of the property pursuant to division (D) or (E) of this section shall be subject to the provisions of section 2925.44 of the Revised Code, and if the person responsible for the conduct of the sale has actual knowledge of the commencement of a felony drug abuse offense prosecution or of a delinquent child proceeding for an act that, if committed by an adult, would be a felony drug abuse offense, actual knowledge of a pending forfeiture proceeding under division (B) of this section, or actual knowledge of an order of forfeiture issued under division (B)(5) of this section, then the person responsible for the conduct of the sale shall dispose of the proceeds of the sale in the following order:

(a) First, to the payment of the costs of the sale and to the payment of the costs incurred by law enforcement agencies and financial institutions in connection with the seizure of, storage of, maintenance of, and provision of security for the property. As used in this division, "costs" of a financial institution do not include attorney's fees incurred by that institution in connection with the property.

(b) Second, the remaining proceeds of the sale after compliance with division (A)(4)(a) of this section, to the payment of valid security interests and liens pertaining to the property that, at the time of the vesting of the right, title, or interest of the adult or juvenile in the state under division (A)(2) of this section, are held by known secured parties and lenders, in the order of priority of those security interests and liens.

(c) Third, the remaining proceeds of the sale after compliance with division (A)(4)(b) of this section, to the court that has or would have jurisdiction in a felony drug abuse offense prosecution or a delinquent child proceeding for an act that, if committed by an adult, would be a felony drug abuse offense, for allocation in accordance with section 2925.44 of the Revised Code.

(d) If a criminal forfeiture of any right, title, or interest in property described in division (A)(1) of this section is precluded unless one of the following applies:

(a) The indictment, count in the indictment, or information charging the felony drug abuse offense specifies the nature of the right, title, or interest of

the alleged offender in the property described in division (A)(1) of this section that is potentially subject to forfeiture under this section, or a description of the property of the alleged offender that is potentially subject to forfeiture under this section, to the extent the right, title, or interest in the property or the property reasonably is known at the time of the filing of the indictment or information; or the complaint charging a juvenile with being a delinquent child for the commission of an act that, if committed by an adult, would be a felony drug abuse offense specifies the nature of the right, title, or interest of the juvenile in the property described in division (A)(1) of this section that is potentially subject to forfeiture under this section, or a description of the property of the juvenile that is potentially subject to forfeiture under this section, to the extent the right, title, or interest in the property or the property reasonably is known at the time of the filing of the complaint.

(b) The property in question was not reasonably foreseen to be subject to forfeiture under this section at the time of the filing of the indictment, information, or complaint, the prosecuting attorney gave prompt notice to the alleged offender or juvenile of that property when it was discovered to be subject to forfeiture under this section, and a verdict of forfeiture described in division (B)(5) of this section requires the forfeiture of that property.

(2) The specifications described in division (B)(1) of this section shall be stated at the end of the body of the indictment, count in the indictment, information, or complaint.

(3)(a) If a person is convicted of or pleads guilty to a felony drug abuse offense, or a juvenile is found to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense, then a special proceeding shall be conducted in accordance with this division to determine whether any property described in division (B)(1)(a) or (b) of this section will be the subject of an order of forfeiture under this section, except as otherwise provided in division (B)(3)(b) of this section, the jury in the felony drug abuse offense criminal action or in the delinquent child action or, if that action was a nonjury action, the judge in that action shall hear and consider testimony and other evidence in the proceeding relative to whether any property described in division (B)(1)(a) or (b) of this section is subject to forfeiture under this section. If the jury or judge determines that the prosecuting attorney has established, by a preponderance of the evidence, that any property so described is subject to forfeiture under this section, the judge or juvenile judge shall render a verdict of forfeiture that specifically describes the right, title, or interest in property that is subject to forfeiture and apply under this section. The Rules of Evidence shall apply in the proceeding.

(b) If the trial of fact in a felony drug abuse offense criminal action or in a delinquent child ac-

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tion was a jury, then, upon the filing of a motion by the person who was convicted of or pleaded guilty to the felony drug abuse offense or upon the filing of a motion by the juvenile who was found to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense, the determination in the proceeding described in this division instead shall be made by the judge in the felony drug abuse offense criminal action or the juvenile judge.

(4) In a felony drug abuse offense criminal action or in a delinquent child action, if the trial of fact is a jury, the jury shall not be informed of any specification described in division (B)(1)(a) of this section or of any property described in that division or division (B)(1)(b) of this section prior to the alleged offender being convicted of or pleading guilty to the felony drug abuse offense or prior to the juvenile being found to be a delinquent child for the commission of an act that, if committed by an adult, would be a felony drug abuse offense.

(5)(a) If a verdict of forfeiture is entered pursuant to division (B)(3) of this section, then the court that imposes sentence upon a person who is convicted of or pleads guilty to a felony drug abuse offense, or the juvenile court that finds a juvenile to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense, in addition to any other sentence imposed upon the offender or order of disposition imposed upon the delinquent child, shall order that he forfeit, to the state all of his right, title, and interest in the property described in division (A)(1) of this section. If a person is convicted of or pleads guilty to a felony drug abuse offense, or a juvenile is found by a juvenile court to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense, and derives profits or other proceeds from the offense or act, the court that imposes sentence or an order of disposition upon him, in lieu of any fine that the court is otherwise authorized or required to impose, may impose a fine upon him or not more than twice the gross profits or other proceeds so derived.

(b) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, all fines imposed pursuant to this division shall be paid by the clerk of the court to the county, municipal corporation, township, park district, or created pursuant to section 511.18 or 1545.01 of the Revised Code, or state law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender. However, no fine so imposed shall be paid to a law enforcement agency unless the agency has adopted a written internal control policy under division (1)(2) of section 2925.03 of the Revised Code that addresses the use of the fine monies that it receives under this division and division (1)(1) of section 2925.03 of the Revised Code. The fines imposed and paid pursuant to this division shall be used by

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the law enforcement agencies to subsidize their efforts pertaining to drug offenses. In accordance with the written internal control policy adopted by the recipient agency under division (J)(4) of section 2925.03 of the Revised Code.

(c) As used in division (B)(5) of this section: (i) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

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

(6) If any of the property that is described in division (A)(1) of this section and that is the subject of an order of forfeiture issued under division (B)(5) of this section, because of an act or omission of the person who is convicted of or pleads guilty to the felony drug abuse offense that is the basis of the order of forfeiture, or an act or omission of the juvenile found by a juvenile court to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense and that is the basis of the forfeiture, cannot be located upon the exercise of due diligence, has been transferred, sold to, or deposited with a third party, has been placed beyond the jurisdiction of the court, has been substantially diminished in value, or has been commingled with other property that cannot be divided without difficulty, the court that issues the order of forfeiture shall order the forfeiture of any other property of the offender up to the value of any forfeited property described in this division.

(C) There shall be a rebuttable presumption that any right, title, or interest of a person in property described in division (A)(1) of this section is subject to forfeiture under division (B) of this section, if the state proves both of the following by a preponderance of the evidence:

(1) The right, title, or interest in the property was acquired by the offender during the period of the commission of the felony drug abuse offense or act that, if committed by an adult, would be a felony drug abuse offense, or within a reasonable time after that period.

(2) There is no likely source for the right, title, or interest in the property other than proceeds obtained from the commission of the felony drug abuse offense or act.

(D)(1) Upon the application of the prosecuting attorney who is prosecuting or has jurisdiction to prosecute the felony drug abuse offense or act, the court of common pleas or juvenile court of the county in which property subject to forfeiture under division (B) of this section is located, whichever is applicable, may issue a restraining order or injunction, an order requiring the execution of a satisfactory performance bond, or an order taking any other reasonable action necessary to preserve the availability of the property, at either of the following times:

(a) Upon the filing of an indictment, complaint, or information charging a person who has any

right, title, or interest in the property with the commission of a felony drug abuse offense and alleging that the property with respect to which the order is sought will be subject to forfeiture under division (B) of this section if the person is convicted of or pleads guilty to the offense, or upon the filing of a complaint alleging that a juvenile who has any right, title, or interest in the property is a delinquent child because of the commission of an act that, if committed by an adult, would be a felony drug abuse offense and alleging that the property with respect to which the order is sought will be subject to forfeiture under division (B) of this section if the juvenile is found to be a delinquent child because of the commission of that act;

(b) Except as provided in division (P)(3) of this section, prior to the filing of an indictment, complaint, or information charging a person who has any right, title, or interest in the property with the commission of a felony drug abuse offense, or prior to the filing of a complaint alleging that a juvenile who has any right, title, or interest in the property is a delinquent child because of the commission of an act that, if committed by an adult, would be a felony drug abuse offense, if, after notice is given to all persons known to have any right, title, or interest in the property and an opportunity to have a hearing on the order is given to these persons, the court determines both of the following:

(1) There is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property subject to forfeiture being destroyed, removed from the jurisdiction of the court, or otherwise being made unavailable for forfeiture.

(2) The need to preserve the availability of the property subject to forfeiture through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(3) Except as provided in division (D)(3) of this section, an order issued under division (D)(1) of this section is effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment, complaint, or information charging the commission of a felony drug abuse offense or a complaint alleging that a juvenile is a delinquent child because of the commission of an act that, if committed by an adult, would be a felony drug abuse offense, is filed against any alleged adult offender or alleged delinquent child within any right, title, or interest in the property that is the subject of the order.

(4) A court may issue an order under division (D)(1)(b) of this section without giving notice or an opportunity for a hearing to persons known to have any right, title, or interest in property, if the prosecuting attorney who is prosecuting or has jurisdiction to prosecute the felony drug abuse offense or act demonstrates that there is probable cause to believe that the property will be subject to forfeiture under division (B) of this section if a person with

under this section, the court shall order an appropriate law enforcement officer to seize all of the forfeited property upon the terms and conditions that the court determines are proper. In addition, upon the request of the prosecuting attorney who prosecuted the felony drug abuse offense or act, the court shall enter any appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the state in the forfeited property. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses related to the property that are required by law or that are necessary to protect the interest of the state or third parties.

After forfeited property is seized, the prosecuting attorney who prosecuted the felony drug abuse offense or act shall direct its disposition in accordance with section 2935.44 of the Revised Code, making due provision for the rights of any innocent persons. Any right, title, or interest in property not executable by or transferable for value to the state shall expire and shall not revert to the offender whose conviction or plea of guilty or act as a delinquent child is the basis of the order of forfeiture. Neither the adult offender or delinquent child nor any person acting in concert with him or on his behalf is eligible to purchase forfeited property at any sale held pursuant to section 2935.44 of the Revised Code.

Upon the application of any person other than the adult offender or delinquent child whose right, title, or interest in the property is the subject of the order of forfeiture or any person acting in concert with him or on his behalf, the court may restrain or stay the sale or other disposition of the property pursuant to section 2935.44 of the Revised Code pending the conclusion of any appeal of the felony drug abuse offense conviction or of the delinquent child adjudication that is the basis of the order of forfeiture. If the applicant demonstrates that proceeding with the sale or other disposition of the property will result in irreparable injury or loss to him.

(3) With respect to property that is the subject of an order of forfeiture issued under this section, the court that issued the order, upon the petition of the prosecuting attorney who prosecuted the felony drug abuse offense or act, may do any of the following:

- (a) Grant petitions for mitigation or remission of forfeitures, restore forfeited property to victims of a felony drug abuse offense, or take any other action to protect the rights of innocent persons that is in the interest of justice and that is not inconsistent with this section;
- (b) Compromise claims that arise under this section;
- (c) Award compensation to persons who provide

any right, title, or interest in the property is convicted or pleads guilty to a felony drug abuse offense or a juvenile with any right, title, or interest in the property is found by a juvenile court to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense, and that giving notice or an opportunity for a hearing to persons with any right, title, or interest in the property will jeopardize its availability for forfeiture. The order shall be a temporary order and which it is entered, unless it is extended for good cause shown or unless a person with any right, title, or interest in the property that is the subject of the order consents to an extension for a longer period.

A hearing concerning an order issued under this division may be requested, and, if it is requested, the court shall hold the hearing at the earliest possible time prior to the expiration of the order.

(4) At any hearing held under division (D) of this section, the court may receive and consider evidence and information that is inadmissible under the Rules of Evidence. However, each hearing held under division (D) of this section shall be recorded by shorthand, by stenotype, or by any other means, electronic, or video recording device. If, as a result of a hearing under division (D) of this section, property would be seized, the recording of and any transcript of the recording of that hearing shall not be a public record for purposes of section 149.43 of the Revised Code until that property has been seized pursuant to division (D) of this section.

Division (D)(4) of this section shall not be construed as requiring, authorizing, or permitting, and does not require, enforcement, or the copying, under section 149.43 of the Revised Code of any confidential law enforcement investigatory record or trial preparation record, as defined in that section.

(5) A prosecuting attorney or other law enforcement officer may request the court of common pleas of the county in which property subject to forfeiture under this section is located to issue a warrant authorizing the seizure of that property. The request shall be made in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized will be subject to forfeiture under this section when a person with any right, title, or interest in the property is convicted or pleads guilty to a felony drug abuse offense or when a juvenile with any right, title, or interest in the property is found by a juvenile court to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense, and if the court determines that any order issued under division (D)(1), (2), or (3) of this section may not be sufficient to ensure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of the property.

(E)(1) Upon the entry of an order of forfeiture

the law enforcement agencies to subsidize their efforts pertaining to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (J)(2) of section 2925.03 of the Revised Code.

(6) As used in division (B)(3) of this section:

- (a) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor;
- (b) "Procurator" has the same meaning as in section 2953.01 of the Revised Code.

(5) If any of the property that is the subject of an order of forfeiture issued under division (B)(5) of this section, because of an act or omission of the person who is convicted of or pleads guilty to the felony drug abuse offense that is the basis of the order of forfeiture, or an act or omission of the juvenile found by a juvenile court to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense and that is the basis of the forfeiture, cannot be located upon the exercise of due diligence, has been transferred, sold to, or deposited with a third party, has been placed beyond the jurisdiction of the court, or has been substantially diminished in value, or has been commingled without difficulty, the court that issues the order of forfeiture shall order the forfeiture of any other property of the offender up to the value of any forfeited property described in this division.

(C) There shall be a rebuttable presumption that any right, title, or interest of a person in property described in division (A)(1) of this section is subject to forfeiture under division (B) of this section, if the state proves both of the following by a preponderance of the evidence:

- (1) The right, title, or interest in the property was acquired by the offender during the period of the commission of the felony drug abuse offense or act that, if committed by an adult, would be a felony drug abuse offense, or within a reasonable time after that period.
- (2) There is no likely source for the right, title, or interest in the property other than proceeds obtained from the commission of the felony drug abuse offense or act.

(D)(1) Upon the application of the prosecuting attorney who is prosecuting or has jurisdiction to prosecute the felony drug abuse offense or act, the court of common pleas or juvenile court of the county in which property subject to forfeiture under division (B) of this section is located, whichever is applicable, may issue a restraining order or injunction, an order requiring the execution of a satisfactory performance bond, or an order taking any other reasonable action necessary to preserve the availability of the property, at either of the following times:

- (a) Upon the filing of an indictment, complaint, or information charging a person who has any

right, title, or interest in the property with the commission of a felony drug abuse offense and alleging that the property with respect to which the order is sought will be subject to forfeiture under division (B) of this section, if the person is convicted of or pleads guilty to the offense, or upon the filing of a complaint alleging that a juvenile who has any right, title, or interest in the property is a delinquent child because of the commission of an act that, if committed by an adult, would be a felony drug abuse offense and alleging that the property with respect to which the order is sought will be subject to forfeiture under division (B) of this section, if the juvenile is found to be a delinquent child because of the commission of that act;

(b) Except as provided in division (D)(3) of this section, prior to the filing of an indictment, complaint, or information charging a person who has any right, title, or interest in the property with the commission of a felony drug abuse offense, or prior to the filing of a complaint alleging that a juvenile who has any right, title, or interest in the property is a delinquent child because of the commission of an act that, if committed by an adult, would be a felony drug abuse offense, if after notice is given to all persons known to have any right, title, or interest in the property and an opportunity to have a hearing on the order is given to those persons, the court determines both of the following:

- (1) There is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property subject to forfeiture being destroyed, removed from the jurisdiction of the court, or otherwise being made unavailable for forfeiture.
- (2) The need to preserve the availability of the property subject to forfeiture through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(3) Except as provided in division (D)(3) of this section, an order issued under division (D)(1) of this section is effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment, complaint, or information charging the commission of a felony drug abuse offense or a complaint alleging that a juvenile is a delinquent child because of the commission of an act that, if committed by an adult, would be a felony drug abuse offense, is filed against any alleged adult offender or alleged delinquent child with any right, title, or interest in the property that is the subject of the order.

(4) A court may issue an order under division (D)(1)(b) of this section without giving notice or an opportunity for a hearing to persons known to have any right, title, or interest in property, if the prosecuting attorney who is prosecuting or has jurisdiction to prosecute the felony drug abuse offense or act demonstrates that there is probable cause to believe that the property will be subject to forfeiture under division (B) of this section if a person with

information resulting in a forfeiture under this section;

(c) Direct the disposition by the prosecuting attorney who prosecuted the felony drug abuse offense or act, in accordance with section 2025.44 of the Revised Code, of all property ordered forfeited under this section, making due provision for the rights of innocent persons;

(e) Pending the disposition of any property that is the subject of an order of forfeiture under this section, take any appropriate measures that are necessary to safeguard and maintain the property.

(3) To facilitate the identification and location of property that is the subject of an order of forfeiture under this section and to facilitate the disposition of petition for remission or mitigation issued under division (E)(3) of this section, after the issuance of an order of forfeiture under this section and upon application by the prosecuting attorney who prosecuted the felony drug abuse offense or act, the court may order that the testimony of any witness relating to the forfeited property be taken by deposition, and that any assigned book, paper, document, record, recording, or other material that is not privileged be produced at the same time and place as the testimony, in the same manner as provided for the taking of depositions under the Rules of Civil Procedure.

(F)(1) Except as provided in divisions (F)(3) to (5) of this section, no person claiming any right, title, or interest in property subject to forfeiture under this section or section 2025.43 of the Revised Code may intervene in a criminal trial or appeal, or a delinquent child proceeding or appeal, involving the forfeiture of the property under this section as a civil action for a civil forfeiture under section 2025.43 of the Revised Code, or may commence an action in law or equity against the state concerning the validity of his alleged right, title, or interest in the property subsequent to the filing of an indictment, complaint, or information alleging that the property is subject to forfeiture under this section or subsequent to the filing of a complaint alleging that a juvenile who has any right, title, or interest in the property is a delinquent child because of the commission of an act that, if committed by an adult, would be a felony drug abuse offense; and alleging that the property is subject to forfeiture under this section.

(2) After the entry of an order of forfeiture under this section, the prosecuting attorney who prosecuted the felony drug abuse offense or act shall conduct or cause to be conducted a search of the appropriate public records that relate to the property, and make or cause to be made reasonably diligent inquiries, for the purpose of identifying persons who have any right, title, or interest in the property. The prosecuting attorney shall cause a notice of the order of forfeiture, of his intent to dispose of the property in accordance with section 2025.44 of the Revised Code, and of the manner of

the proposed disposal, to be given to each person who is known, because of the conduct of the search, the making of the inquiries, or otherwise, to have any right, title, or interest in the property, by certified mail, return receipt requested, or by personal service. Additionally, the prosecuting attorney shall cause a similar notice to be published once a week for two consecutive weeks in a newspaper of general circulation in the county in which the property was seized.

(3)(a) Any person, other than the adult offender whose conviction or guilty plea or the delinquent child whose adjudication is the basis of the order of forfeiture, who asserts a legal right, title, or interest in the property that is the subject of the order may petition the court that issued the order, within thirty days after the receipt of the final publication of notice or his receipt of notices under division (F)(2) of this section, for a hearing to adjudicate the validity of his alleged right, title, or interest in the property. The petition shall be signed by the petitioner under the penalties for falsification as specified in section 2921.13 of the Revised Code and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of his acquisition of that right, title, or interest, any additional facts supporting his claim, and the relief sought.

(b) In lieu of filing a petition as described in division (F)(3)(a) of this section, a secured party or other lienholder of record that asserts a legal right, title, or interest in the property that is the subject of the order, including, but not limited to, a mortgage, security interest, or other type of lien, may file an affidavit as described in this division to establish the validity of the alleged right, title, or interest in the property. The affidavit shall be filed within thirty days after the earlier of the final publication of notice or the receipt of notice under division (F)(2) of this section and, except as otherwise provided in this section, shall constitute prima-facie evidence of the validity of the secured party's or other lienholder's alleged right, title, or interest in the property. Unless the prosecuting attorney files a motion challenging the affidavit within ten days after its filing and unless the prosecuting attorney establishes, by a preponderance of the evidence, at a subsequent hearing before the court that issued the forfeiture order, that the secured party or other lienholder does not possess the alleged right, title, or interest in the property or that the secured party or other lienholder had actual knowledge of facts pertaining to the felony drug abuse offense or act that was the basis of the forfeiture order, the affidavit shall constitute conclusive evidence of the validity of the secured party's or other lienholder's right, title, or interest in the property and shall have the legal effect described in division (C)(2) of this section. To the extent practicable and consistent with the interests of justice, any such hearing shall be held within thirty days after the prosecuting attorney

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without cause to believe that it was subject to forfeiture under this section.

(6) The court also shall amend its order of forfeiture to reflect any right, title, or interest of a secured party or other lienholder of record in the property subject to the order that was established pursuant to division (F)(3)(b) of this section, by means of an affidavit, or that was established pursuant to that division by its failure of a presenting attorney to establish, in a hearing as described in that division, that the secured party or other lienholder did not possess the alleged right, title, or interest in the property or that the secured party or other lienholder had actual knowledge of facts pertaining to the felony drug abuse offense or act that was the basis of the order.

(G)(1) Subject to division (C)(2) of this section, if the court has disposed of all petitions filed under division (F) of this section or if no petitions are filed under that division and the time for filing petitions under that division has expired, the state shall have clear title to all property that is the subject of an order of forfeiture issued under this section and may warrant good title to any subsequent purchaser or other transferee.

(2) If an affidavit as described in division (F)(3)(b) of this section is filed in accordance with that division, if the affidavit constitutes, under the circumstances described in that division, conclusive evidence of the validity of the right, title, or interest of a secured party or other lienholder of record in the property, subject to a forfeiture order, and if any mortgage, security interest, or other type of lien possessed by the secured party or other lienholder in connection with the property is not satisfied prior to a sale or other disposition of the property pursuant to section 2925.44 of the Revised Code, then the right, title, or interest of the secured party or other lienholder in the property remains valid for purposes of sections 2925.41 to 2925.43 of the Revised Code and any subsequent purchaser or other transferee of the property pursuant to section 2925.44 of the Revised Code shall take the property subject to the continued validity of the right, title, or interest of the secured party or other lienholder in the property.

RISY081: 16Y S 285 (6611.29-090); 144 S 174, BE17-21-92.

Cross-References to Related Sections
Civil forfeiture action prior to possession, RC § 2925.43.
Defendant's right to a hearing, RC § 2925.41.
Disposal of secured party's excess fees, RC § 4729.05.
Disposition of delinquent child, RC § 2151.36.5.
Disposition of fines and forfeited bail, RC § 3719.21.
Disposition of property held by law enforcement agency, RC § 2925.41.
Perfection and disposition of controlled substances, RC § 3719.11.

Motion alleging seizure was unlawful; return of property, RC § 2925.46.
Procedure for seizure, forfeiture, and disposition of controlled property, RC § 2925.40.

ney files the motion. At any such hearing, the prosecuting attorney and the secured party or other lienholder may present evidence and witnesses and cross-examine witnesses.

In order to be valid for the purposes of this division and division (C)(2) of this section, the affidavit of a secured party or other lienholder shall contain averments that the secured party or other lienholder acquired its alleged right, title, or interest in the property in the regular course of its business, for a specified valuable consideration, without actual knowledge of any facts pertaining to the felony drug abuse offense or act that was the basis of the forfeiture order, in good faith and without the intent to prevent or otherwise impede the state from seizing or obtaining a forfeiture of the property under sections 2925.41 to 2925.45 of the Revised Code, and prior to the seizure or forfeiture of the property under these sections.

(4) Upon receipt of a petition filed under division (F)(3)(b) of this section, the court shall hold a hearing to determine the validity of the petitioner's right, title, or interest in the property that is the subject of the order of forfeiture. To the extent practicable and consistent with the interests of justice, the hearing shall be held within thirty days after the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the petitioner whose conviction or guilty plea or adjudication as a delinquent child is the basis of the order of forfeiture. At the hearing, the petitioner may testify, present evidence and witnesses on his behalf, and cross-examine witnesses for the state. The state may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses for the petitioner. In addition to the evidence and testimony presented at the hearing, the court shall consider the relevant portions of the record in the felony drug abuse offense or delinquent child case that resulted in the order of forfeiture.

(5)(a) The court shall amend its order of forfeiture in accordance with its determination if it determines, at the hearing, that the petitioner has established either of the following by a preponderance of the evidence:

(i) The petitioner has a legal right, title, or interest in the property that renders the order of forfeiture completely or partially invalid because it was vested in the petitioner, rather than the adult offender whose conviction or guilty plea or the delinquent child whose adjudication is the basis of the order, or was superior to any right, title, or interest of that offender, at the time of the commission of the felony drug abuse offense or act that is the basis of the order.

(ii) The petitioner is a bona fide purchaser in value of the right, title, or interest in the property and was at the time of the purchase reasonably

the proposed disposal, to be given to each person who is known, because of the conduct of the search, the making of the inquiries, or otherwise, to have any right, title, or interest in the property, by certified mail, return receipt requested, or by personal service. Additionally, the prosecuting attorney shall cause a similar notice to be published once a week for two consecutive weeks in a newspaper of general circulation in the county in which the property was seized.

(3)(a) Any person, other than the adult offender whose conviction or guilty plea or the delinquent child whose adjudication is the basis of the order of forfeiture, who asserts a legal right, title, or interest in the property that is the subject of the order may petition the court that issued the order, within thirty days after the earlier of the final publication of notice or his receipt of notice under division (F)(2) of this section, for a hearing to adjudicate the validity of his alleged right, title, or interest in the property. The petition shall be signed by the petitioner under the penalties for falsification as specified in section 2921.13 of the Revised Code and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of his acquisition of that right, title, or interest, any additional facts supporting his claim, and the relief sought.

(b) In lieu of filing a petition as described in division (F)(3)(a) of this section, a secured party or other lienholder of record that asserts a legal right, title, or interest in the property that is the subject of the order, including, but not limited to, a mortgage, security interest, or other type of lien, may file an affidavit as described in this division to establish the validity of the alleged right, title, or interest in the property. The affidavit shall be filed within thirty days after the earlier of the final publication of notice or the receipt of notice under division (F)(2) of this section and, except as otherwise provided in this section, shall constitute prima-facie evidence of the validity of the secured party's or other lienholder's alleged right, title, or interest in the property. Unless the prosecuting attorney files a motion challenging the affidavit within ten days after its filing and unless the prosecuting attorney establishes, by a preponderance of the evidence, at a subsequent hearing before the court that issued the forfeiture order, that the secured party or other lienholder does not possess the alleged right, title, or interest in the property or that the secured party or other lienholder had actual knowledge of facts pertaining to the felony drug abuse offense or act that was the basis of the forfeiture order, the affidavit shall constitute conclusive evidence of the validity of the secured party's or other lienholder's right, title, or interest in the property and shall have the legal effect described in division (C)(2) of this section. To the extent practicable and consistent with the interests of justice, any such hearing shall be held within thirty days after the prosecuting attorney

Information resulting in a forfeiture under this section;

(d) Direct the disposition by the prosecuting attorney who prosecuted the felony drug abuse offense or act, in accordance with section 2925.44 of the Revised Code, of all property ordered forfeited under this section, making due provision for the rights of innocent persons;

(e) Pending the disposition of any property that is the subject of an order of forfeiture under this section, take any appropriate measures that are necessary to safeguard and maintain the property.

(3) To facilitate the identification and location of property that is the subject of an order of forfeiture under this section and to facilitate the disposition of petitions for remission or mitigation issued under division (E)(2) of this section, after the issuance of an order of forfeiture under this section and upon application by the prosecuting attorney who prosecuted the felony drug abuse offense or act, the court may order that the testimony of any witness relating to the forfeited property be taken by deposition, and that any designated book, paper, document, record, recording, or other material that is not privileged be produced at the same time and place as the testimony, in the same manner as provided for the taking of depositions under the Rules of Civil Procedure.

(F)(1) Except as provided in divisions (F)(2) to (5) of this section, no person claiming any right, title, or interest in property subject to forfeiture under this section or section 2925.43 of the Revised Code may intervene in a criminal trial or appeal, or a delinquent child proceeding or appeal, involving the forfeiture of the property under this section in an appeal or a civil forfeiture under section 2925.46 of the Revised Code, or may commence an action at law or equity against the state concerning the validity of his alleged right, title, or interest in the property subsequent to the filing of an indictment, complaint, or information alleging that the property is subject to forfeiture under this section or subsequent to the filing of a complaint alleging that a juvenile who has any right, title, or interest in the property is a delinquent child because of the commission of an act that, if committed by an adult, would be a felony drug abuse offense and alleging that the property is subject to forfeiture under this section.

(2) After the entry of an order of forfeiture under this section, the prosecuting attorney who prosecuted the felony drug abuse offense or act shall conduct or cause to be conducted a search of the appropriate public records that relate to the property, and make or cause to be made reasonably diligent inquiries, for the purpose of identifying persons who have any right, title, or interest in the property. The prosecuting attorney then shall cause a notice of the order of forfeiture, of his intent to dispose of the property in accordance with section 2925.44 of the Revised Code, and of the manner of

Records for information as to drug-related offenses, RC § 309.06.
 Rights of law enforcement agency seizing property, disposition of forfeited property, RC § 2925.44.
 Trafficking in drugs, PC § 2925.02.
 Comprehensive Legislation
 Forfeiture of property for drug offense,
 18 USC § 983.
 CA—Health & S Code § 11470 et seq
 FL—Stat Ann Const Art 1 § 17
 IL—Ann Stat ch 38½ § 1071
 IN—Code § 16-6-5-5.1
 KY—Rev Stat Ann § 218A.410
 MI—Comp Laws Ann § 333.7331
 NY—CPLR Law § 3340 et seq
 PA—CSA tit 42 § 6801.

Research Aids
 Forfeiture of property connected to a felony drug abuse offense:
 O-Judic: Crim L § 2307.1
 Ann-Judic: Drugs §§ 27.24, 27.26, 28.7
 C.J.S.: Drugs&N § 141
 West Key No. References
 Drugs & N 101, 192

ALLR
 Delay in setting hearing date or in holding hearing as affecting forfeitability, under Uniform Controlled Substances Act or similar statute, 6 ALR2d 711.
 Forfeitability of property under Uniform Controlled Substances Act or similar statute where amount of controlled substance seized is small, 6 ALR2d 952.
 Real property as subject of forfeiture under Uniform Controlled Substances Act or similar statute, 26 ALR2d 995.
 Validity and construction of provisions of Uniform Controlled Substances Act providing for forfeiture by seizing before law enforcement officer, 54 ALR2d 837.

CASE NOTES AND OAC
 1. (1991) Revised Code §§ 2925.42, 2925.43 and 2925.44 do not apply where defendant was not included for a felony drug abuse offense. Section 681, 104-23 U.S. Code, however, allows seizure with a writ of habeas corpus if the seizure was made in good faith. State v. England, 62 OhioSt 130, 394 N.E.2d 191 (MCO).

§ 2925.43 Civil forfeiture action prior to prosecution.

(A) The following property is subject to forfeiture to the state in a civil action as described in division (E) of this section, and no person has any right, title, or interest in the following property:
 (1) Any property that constitutes, or is derived directly or indirectly from, any proceeds that a person obtained directly or indirectly from the commission of an act that, upon the filing of an indictment, complaint, or information, could be prosecuted as a felony drug abuse offense or that, upon the filing of a complaint, could be the basis for finding a juvenile to be a delinquent child for committing an act that, if committed by an adult, would be a felony drug abuse offense;

(2) Any property that was used or intended to be used in any manner to commit, or to facilitate the commission of, an act that, upon the filing of an indictment, complaint, or information, could be prosecuted as a felony drug abuse offense or that, upon the filing of a complaint, could be the basis for finding a juvenile to be a delinquent child for committing an act that, if committed by an adult, would be a felony drug abuse offense.

(B)(1) All right, title, and interest in property described in division (A) of this section shall vest in the state upon the commission of the act giving rise to a civil forfeiture under this section.

(2) The provisions of section 2923.43 of the Revised Code relating to the procedures for the forfeiture of contraband do not apply to a civil action to obtain a civil forfeiture under this section.

(3) Any property taken or detained pursuant to this section is not subject to replevin and is deemed to be in the custody of the head of the law enforcement agency that seized the property.

This section does not preclude the head of a law enforcement agency that seizes property from seeking the forfeiture of that property pursuant to federal law. However, if the head of a law enforcement agency that seizes property does not seek the forfeiture of that property pursuant to federal law and if the property is subject to forfeiture under this section, the property is subject only to the orders of the court of common pleas of the county in which the property is located, and it shall be disposed of in accordance with section 2925.44 of the Revised Code.

(4) Nothing in this section precludes a financial institution that has or purports to have a security interest in or lien on property described in division (A) of this section from commencing a civil action or taking other appropriate legal action in connection with the property, prior to its disposition in accordance with section 2925.44 of the Revised Code, for the purpose of obtaining possession of the property in order to foreclose or otherwise enforce the security interest or lien. A financial institution may commence a civil action or take other appropriate legal action for that purpose prior to the disposition of the property in accordance with section 2925.44 of the Revised Code, even if a civil action commenced under this section, even if the property is or could be the subject of an order of civil forfeiture issued under this section, and even if the property has been seized or is subject to seizure pursuant to this section.

If a financial institution commences a civil action or takes any other appropriate legal action as described in this division, if the financial institution subsequently causes the sale of the property prior to its seizure pursuant to this section and its disposition pursuant to section 2925.44 of the Revised Code, and if the person responsible for the conduct of the sale has actual knowledge of the commencement of

Rewards for information as to drug-related offenses. RC § 308.08. Rights of law enforcement agency seizing property. Deposition of witnesses. RC § 2925.44. Trafficking in drugs. RC § 2925.02.

Comparative Legislation

Forfeiture of property for drug offenses: 18 USC § 981 CA—Health & S Code § 11470 et seq FL—Ann Const Art I § 17 IL—Ann Stat ch 36½ § 1071 IN—Code § 16-28-7-3.1 MI—Rev Stat Ann § 21 § 410 MN—Crim Code § 293.7021 NY—CPLR Law § 131.0 et seq PA—CSA tit 43 § 6801.

Research Aids

Forfeiture of property connected to a felony drug abuse offense: O-Jur'dict: Crim L § 2377.1 Am-Jur'dict: Drugs §§ 27.24, 27.26, 48.7 C.J.S.: Drugs & N § 141 West Key No. Reference Drugs & N 191, 192

ALR

Duty in setting hearing date or in holding hearing as affecting forfeitability under Uniform Controlled Substances Act or similar statute. 6 ALR5th 711. Sub-forfeiture of property under Uniform Controlled Substances Act. 6 ALR5th 652. Controlled substances. 6 ALR5th 652. Real property as subject of forfeiture under Uniform Controlled Substances Act or similar statute. 86 ALR4th 695. Validity and construction of provisions of Uniform Controlled Substances Act providing for forfeiture hearing before law enforcement officer. 84 ALR4th 637.

CASE NOTES AND OAG

L (1991) Revised Code §§ 2925.43, 2925.43 and 2925.43 do not apply where defendant was not indicted for a felony drug abuse offense. Section 881, Title 21, U.S. Code, however, allows seizure without process issued if the seizure was incident to an arrest. State v. England, 82 O.M.S.2d 190, 584 NE2d 191 (M.C.).

§ 2925.43 Civil forfeiture action prior to prosecution.

(A) The following property is subject to forfeiture to the state in a civil action as described in division (B) of this section, and no person has any right, title, or interest in the following property:

- (1) Any property that constitutes, or is derived directly or indirectly from, any proceeds that a person obtained directly or indirectly from the commission of an act that, upon the filing of an indictment, complaint, or information, could be prosecuted as a felony drug abuse offense or that, upon the filing of a complaint, could be the basis for finding a juvenile to be a delinquent child for committing an act that, if committed by an adult, would be a felony drug abuse offense;

a civil action to obtain a civil forfeiture under this section or actual knowledge of an order of civil forfeiture issued under this section, then the person responsible for the conduct of the sale shall dispose of the proceeds of the sale in the following order:

- (a) First, to the payment of the costs of the sale and to the payment of the costs incurred by law enforcement agencies and financial institutions in connection with the seizure of, storage of, maintenance of, and provision of security for the property. As used in this division, "costs" of a financial institution do not include attorney's fees incurred by that institution in connection with the property;
- (b) Second, the remaining proceeds of the sale after compliance with division (B)(4)(a) of this section, to the payment of valid security interests and liens pertaining to the property that, at the time of the vesting of the right, title, or interest of the adult or juvenile in the state under division (B)(1) of this section, are held by known secured parties and lienholders, in the order of priority of those security interests and liens;
- (c) Third, the remaining proceeds of the sale after compliance with division (B)(4)(b) of this section, to the extent that has or would have jurisdiction in a civil action to obtain a civil forfeiture under this section, for disposition in accordance with section 2925.44 of the Revised Code.

(C)(1) Any property that is subject to civil forfeiture under this section may be seized by a law enforcement officer upon process, or a warrant as described in division (C)(2) of this section, issued by a court of common pleas that has jurisdiction over the property. Additionally, a seizure of the property, without process or a warrant being so issued, may be made by a law enforcement officer when any of the following applies:

- (a) The seizure is incident to an arrest, a search under a search warrant, a lawful search without a search warrant, or an inspection under an administrative inspection warrant.
- (b) The property is the subject of a prior judgment in favor of the state in a restraining order, injunction, or other preservation order proceeding under section 2925.42 of the Revised Code, or is the subject of a forfeiture order issued pursuant to that section.
- (c) The law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to the public health or safety.
- (d) The initial intrusion by the law enforcement officer afforded him with plain view of personal property that is subject to civil forfeiture in a civil action under this section, the initial intrusion by a law enforcement officer by lawful, the discovery of the personal property by the law enforcement officer was inadvertent, and the incriminating nature of the personal property was immediately apparent to the law enforcement officer.

(2) For purposes of division (C)(1) of this section, the state may request a court of common pleas to

issue a warrant that authorizes the seizure of property that is subject to civil forfeiture under this section, in the same manner as provided in Criminal Rule 41 and Chapter 2933 of the Revised Code for the issuance of a search warrant. Additionally, for purposes of division (C)(1) of this section, any proceeding before a court of common pleas that involves a request for the issuance of process, or a warrant as described in this division, authorizing forfeiture under this section shall be recorded by shorthand, by stenotype, or by any other mechanical, electronic, or video recording device. The recording of and any transcript of the recording of such a proceeding shall not be a public record for purposes of section 149.43 of the Revised Code until the property has been seized pursuant to the process or warrant. This division shall not be construed as requiring, authorizing, or permitting, and does not require, authorize, or permit, the making available for inspection, or the copying, under section 149.43 of the Revised Code of any confidential law enforcement investigatory record or trial preparation record, as defined in that section.

(3) If property is seized pursuant to division (C)(1) of this section and if a civil action to obtain a civil forfeiture under this section, a criminal action that would result in a criminal forfeiture under section 2925.52 of the Revised Code, or a delinquent child proceeding that could result in a criminal forfeiture under that section is not pending at the time of the seizure or previously did not occur in connection with the property, then the prosecuting attorney of the county in which the seizure occurred promptly shall commence a civil action to obtain a civil forfeiture under this section in connection with the property, unless an indictment, complaint, or information alleging the commission of a felony drug abuse offense or a complaint alleging that a juvenile is a delinquent child because of the commission of an act that, if committed by an adult, would be a felony drug abuse offense is filed prior to the commencement of the civil action. Nothing in this division precludes, or shall be construed as precluding, the filing of an indictment, complaint, or information alleging the commission of a felony drug abuse offense or the filing of a complaint alleging that a juvenile is a delinquent child because of the commission of an act that, if committed by an adult, would be a felony drug abuse offense, after the commencement of a civil action to obtain a civil forfeiture under this section.

(D)(1) The filing of an indictment, complaint, or information alleging the commission of a felony drug abuse offense that also is the basis of a civil action for a civil forfeiture under this section, or the filing of a complaint alleging that a juvenile is a delinquent child because of the commission of an act that, if committed by an adult, would be a felony drug abuse offense, and that also is the basis of a civil action for a civil forfeiture under this

section, upon the motion of the prosecuting attorney of the county in which the indictment, complaint or information or the complaint in the delinquent child proceeding is filed, shall stay the civil action.

(2) A civil action to obtain a civil forfeiture under this section may be commenced as described in division (2) of this section whether or not the adult or juvenile who committed a felony drug abuse offense or an act that, if committed by an adult, would be a felony drug abuse offense has been charged by an indictment, complaint, or information with the commission of such an offense or such an act, has pleaded guilty to or been found guilty of such an offense, has been determined to be a delinquent child for the commission of such an act, has been found not guilty of committing such an offense, or has not been determined to be a delinquent child for the alleged commission of such an act.

(E)(1) The prosecuting attorney of the county in which property described in division (A) of this section is located may commence a civil action to obtain a civil forfeiture under this section by filing in the court of common pleas of that county, a complaint that requests the issuance of an order of civil forfeiture of the property to the state. Notices of forfeiture shall be given and published in accordance with division (E)(2) of this section.

(2) Prior to or simultaneously with the commencement of the civil action as described in division (E)(1) of this section, the prosecuting attorney shall conduct or cause to be conducted a search of the appropriate public records that relate to the property subject to civil forfeiture, and make or cause to be made reasonably diligent inquiries, for the purpose of identifying persons who have any right, title, or interest in the property. The prosecuting attorney then shall cause a notice of the commencement of the civil action, together with a copy of the complaint filed in it, to be given to each person who is known, because of the conduct of the search, the making of the inquiries, or otherwise, to have any right, title, or interest in the property, by certified mail, return receipt requested, or by personal service. Additionally, the prosecuting attorney shall cause a similar notice to be published once a week for two consecutive weeks in a newspaper of general circulation in the county in which the property is located.

(3) The procedures specified in divisions (F)(3) to (5) of section 2925.42 of the Revised Code apply to persons claiming any right, title, or interest in property subject to civil forfeiture under this section. The references in those divisions to the adult offender whose conviction or guilty plea, or the delinquent child whose adjudication, is the basis of an order of criminal forfeiture shall be construed for purposes of this section to mean the adult or juvenile who committed the act that could be the basis of an order of civil forfeiture under this section, and the references in those divisions to an in-

sued order of criminal forfeiture shall be inapplicable.

(4) A hearing shall be held in the civil action described in division (E)(1) of this section at least thirty days after the final publication of notice as required by division (E)(2) of this section and after the date of completion of the service of notice by personal service or certified mail, return receipt requested, as required by that division. Following the hearing, the court shall issue the requested order of civil forfeiture if the court determines that the prosecuting attorney has proven, by clear and convincing evidence, that the property in question is property as described in division (A)(1) or (2) of this section, and if the court has disposed of all petitions filed under division (E)(3) of this section or no petitions have been so filed and the time for filing them has expired. An order of civil forfeiture so issued shall state that all right, title, and interest in the property in question of the adult or juvenile who committed the act that is the basis of the order, is forfeited to the state and shall make due provision for the right, title, or interest in that property of any other person in accordance with any determinations made by the court under division (E)(3) of this section and in accordance with divisions (F)(5)(b) and (C)(2) of section 2925.42 of the Revised Code.

(5) Subject to division (C)(2) of section 2925.42 of the Revised Code, if a court of common pleas enters an order of civil forfeiture in accordance with division (E) of this section, the state shall have clear title to the property that is the subject of the order and may warrant good title to any subsequent purchaser or other transferee.

HISTORY: 143 v. 5 293, Eff. 11-20-90.

The effective date is set by section 15 of SB 255.

Cross-References to Related Sections

- Definitions, RC § 2925.41.
- Disposition of delinquent child, RC § 2151.35.5.
- Disposition of property held by law enforcement agency, RC § 2933.41.
- Forfeiture and disposition of controlled substances, RC § 3719.11.
- Forfeiture of property in connection with felony drug abuse offense or act, RC § 2923.42.
- Motion alleging seizure was unlawful; return of property, RC § 2925.46.
- Proceedings for civil forfeiture, and disposition of counterfeited property, RC § 2933.43.
- Rights of law enforcement agency seizing property; disposition of forfeited property, RC § 2923.44.

Research Aids

- Civil forfeiture action prior to prosecution: O-Jur'dis; Crim L. § 2307.1
- Forfeiture of property connected to a felony drug abuse offense: O-Jur'dis; Crim L. § 2307.1
- Am-Jur'2d; Drugs §§ 27-24-27-26, 48-7
- C.J.S.; Drugs&N § 141
- West Key No. References: Drugs & N 191, 192

section, upon the motion of the prosecuting attorney of the county in which the indictment, complaint, or information or the complaint in the delinquent child proceeding is filed, shall stay the civil action.

(2) A civil action to obtain a civil forfeiture under this section may be commenced as described in division (E) of this section whether or not the adult or juvenile who committed a felony drug abuse offense or an act that, if committed by an adult, would be a felony drug abuse offense has been charged by an indictment, complaint, or information with the commission of such an offense or such an act, has pleaded guilty to or been found guilty of such an offense, has been determined to be a delinquent child for the commission of such an act, has been found not guilty of committing such an offense, or has not been determined to be a delinquent child for the alleged commission of such an act.

(E)(1) The prosecuting attorney of the county in which property described in division (A) of this section is located may commence a civil action to obtain a civil forfeiture under this section by filing, in the court of common pleas of that county, a complaint that requests the issuance of an order of civil forfeiture of the property to the state. Notices of civil action shall be served and published in accordance with division (E)(2) of this section.

(2) Prior or simultaneously with the commencement of the civil action as described in division (E)(1) of this section, the prosecuting attorney shall conduct or cause to be conducted a search of the appropriate public records that relate to the property subject to civil forfeiture, and make or cause to be made reasonably diligent inquiries, for the purpose of identifying persons who have any right, title, or interest in the property. The prosecuting attorney then shall cause a notice of the commencement of the civil action, together with a copy of the complaint filed in it, to be given to each person who is known, because of the conduct of the search, the making of the inquiries, or otherwise, to have any right, title, or interest in the property, by certified mail, return receipt requested, or by personal service. Additionally, the prosecuting attorney shall cause a similar notice to be published once a week for two consecutive weeks in a newspaper of general circulation in the county in which the property is located.

(3) The procedures specified in divisions (F)(3) to (5) of section 2925.42 of the Revised Code apply to persons claiming any right, title, or interest in property subject to civil forfeiture under this section. The references in those divisions to the adult offender whose conviction or guilty plea, or the delinquent child whose adjudication, is the basis of an order of criminal forfeiture shall be construed for purposes of this section to mean the adult or juvenile who committed the act that could be the basis of an order of civil forfeiture under this section, and the references in those divisions to an is-

sued order of criminal forfeiture shall be inapplicable.

(4) A hearing shall be held in the civil action described in division (E)(1) of this section at least thirty days after the final publication of notices as required by division (E)(2) of this section and after the date of completion of the service of notices by personal service or certified mail, return receipt requested, as required by that division. Following the hearing, the court shall issue the requested order of civil forfeiture if the court determines that the prosecuting attorney has proven, by clear and convincing evidence, that the property in question is property as described in division (A)(1) or (2) of this section, and if the court has disposed of all petitions filed under division (E)(3) of this section or no petitions have been so filed and the time for filing them has expired. An order of civil forfeiture so issued shall state that all right, title, and interest in the property in question of the adult or juvenile who committed the act that is the basis of the order, is forfeited to the state and shall make due provision for the right, title, or interest in that property of any other person in accordance with any determinations made by the court under division (E)(3) of this section and in accordance with divisions (F)(5)(b) and (C)(2) of section 2925.42 of the Revised Code.

(5) Subject to division (C)(2) of section 2925.42 of the Revised Code, if a court of common pleas enters an order of civil forfeiture in accordance with division (E) of this section, the state shall have clear title to the property that is the subject of the order and may warrant good title to any subsequent purchaser or other transferee.

HISTORY: 143 v. 5 SS. Eff. 11-29-90.

The effective date is set by section 15 of SB 258.

Cross-References to Related Sections
 Definitions, RC § 2925.41.
 Disposition of delinquent child, RC § 2151.35.5.
 Disposition of property held by law enforcement agency, RC § 2925.41.
 Forfeiture and disposition of controlled substances, RC § 3719.11.
 Forfeiture of property in connection with felony drug abuse offense or act, RC § 2925.42.
 Motion alleging seizure was unlawful; return of property, RC § 2925.45.
 Procedure for seizure, forfeiture, and disposition of controlled substances, RC § 2925.40.
 Rights of law enforcement agency seizing property; disposition of forfeited property, RC § 2925.44.

Research Aids
 Civil forfeiture action prior to prosecution.
 O-Jurid: Crim L § 2927.1
 Forfeiture of property connected to a felony drug abuse offense.
 O-Jurid: Crim L § 2927.1
 Anti-Jurid: Drug § 37.24-37.26, 48.7
 C.J.S.: Drugs § 41
 West Key No. Reference
 Drugs & N 191, 192

ALR
 Duly in setting hearing date or in holding hearing as affecting forfeitability under Uniform Controlled Substances Act or similar statute. 6 ALR5th 711.
 Forfeitability of property under Uniform Controlled Substances Act or similar statute where amount of controlled substance seized is small. 6 ALR5th 822.
 Real property as subject of forfeiture under Uniform Controlled Substances Act or similar statute. 80 ALR4th 376.
 Validity and construction of provisions of Uniform Controlled Substances Act providing for forfeiture hearing before law enforcement officer. 84 ALR4th 637.

CASE NOTES AND OAC
 1. (1991) Revised Code §§ 2925.42, 2925.43 and 2925.44 do not apply where defendant is indicted for a felony drug abuse offense. 881 T.2d 21, U.S. Code, however, without process issued if the seizure is without an arrest. State v. Englund, 62 OhioSt.100, 89A NE2d 181 (MC).

§ 2925.44 Rights of law enforcement agency seizing property; disposition of forfeited property.

(A) If property is seized pursuant to section 2925.42 or 2925.43 of the Revised Code, it is deemed to be in the custody of the head of the law enforcement agency that seized it, and he may do any of the following with respect to that property prior to its disposition in accordance with division (A)(4) or (B) of this section:

- (1) Place the property under seal;
- (2) Remove the property to a place that he designates;
- (3) Request the issuance of a court order that requires any other appropriate municipal corporation, county, township, park district, or created pursuant to section 511.18 or 1545.01 of the Revised Code, or state law enforcement officer or other officer to take custody of the property and, if practicable, remove it to an appropriate location for eventual disposition in accordance with division (B) of this section;
- (4) Seek forfeiture of the property pursuant to federal law. If the head of the law enforcement agency that seized the property seeks its forfeiture pursuant to federal law, the law enforcement agency shall deposit, use, and account for any proceeds from a sale of the property upon its forfeiture, any proceeds from another disposition of the property upon its forfeiture, or any forfeited moneys it receives, in accordance with the applicable federal law and otherwise shall comply with that law. Division (B) of this section and divisions (1) to (3) of section 2925.43 of the Revised Code do not apply to proceeds or forfeited moneys received pursuant to federal law.
- (5) In addition to complying with any requirements imposed by a court pursuant to section

2925.42 or 2925.43 of the Revised Code, and the requirements imposed by those sections, in relation to the disposition of property forfeited to the state under either of those sections, the prosecuting attorney who is responsible for its disposition shall dispose of the property as follows:

- (1) Any vehicle, as defined in section 4561.01 of the Revised Code, that was used in a felony drug abuse offense or in an act that, if committed by an adult, would be a felony drug abuse offense shall be given to the law enforcement agency of the municipal corporation or county in which the offense occurred if that agency desires to have the vehicle, except that, if the offense occurred in a township or in a park district created pursuant to section 511.18 or 1545.01 of the Revised Code and a law enforcement officer employed by the township or a law enforcement officer employed by the park district was involved in the seizure of the vehicle, the vehicle may be given to the law enforcement agency of that township or park district if that agency desires to have the vehicle, and except that, if the state highway patrol made the seizure of the vehicle, the vehicle may be given to the state highway patrol if it desires to have the vehicle.
- (2) Any drug paraphernalia that was used, possessed, sold, or manufactured in a violation of section 2925.14 of the Revised Code that would be a felony drug abuse offense or in a violation of that section committed by a juvenile that, if committed by an adult, would be a felony drug abuse offense, may be given to the law enforcement agency of the municipal corporation or county in which the offense occurred if that agency desires to have and can use the drug paraphernalia, except that, if the offense occurred in a township or in a park district created pursuant to section 511.18 or 1545.01 of the Revised Code and a law enforcement officer employed by the township or a law enforcement officer employed by the park district was involved in the seizure of the drug paraphernalia, the drug paraphernalia may be given to the law enforcement agency of that township or park district if that agency desires to have and can use the drug paraphernalia, if the drug paraphernalia is not so given, it shall be disposed of by sale pursuant to division (B)(8) of this section or disposed of in another manner that the court that issued the order of forfeiture considers proper under the circumstances.
- (3) Drugs shall be disposed of pursuant to section 3719.11 of the Revised Code or placed in the custody of the secretary of the treasury of the United States for disposal or use for medical or scientific purposes under applicable federal law.
- (4) Firearms and dangerous ordnance suitable for police work may be given to a law enforcement agency for that purpose. Firearms suitable for sporting use, or as museum pieces or collectors' items, may be disposed of by sale pursuant to division (B)(8) of this section. Other firearms and dangerous ordnance shall be destroyed by a law en-

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* CURRENT THROUGH THE LEGISLATION PASSED BY THE 129TH OHIO GENERAL
ASSEMBLY

AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 21 AND 23

The provisions of 2011 SB 5 are subject to referendum and will not become effective unless ap-
proved

at the November 2011 general election. *

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2929. PENALTIES AND SENTENCING

IN GENERAL

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ORC Ann. 2929.01 (2011)

Legislative Alert: LEXSEE 2011 Ohio HB 86 -- See sections 1 and 2.

§ 2929.01. Definitions

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) "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.

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

(D) "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 2301.58 of the Revised Code*.

(E) "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.

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

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

(H) "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.

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

(J) "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.

(K) "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.

(L) "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.

(M) "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.

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

(O) "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.

(P) "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.

(Q) "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.

(R) "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.

(S) "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.

(T) "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) or (G) of *section 2929.24 of the Revised Code*, division (E) of *section 2903.06* or division (D) of *section 2903.08 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.

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

(V) "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.

(W) "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 marihuana 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.

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

(1) Subject to division (X)(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 (18) 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 or 2929.142 [2929.14.2] of the Revised Code*, a man-

datory 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 division (A) of *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* or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of *section 2971.03 of the Revised Code* and that term as modified or terminated pursuant to *section 2971.05 of the Revised Code*.

(Y) "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.

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

(AA) "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*.

(BB) "Prison term" includes either 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 [5120.03.1], 5120.032 [5120.03.2], or 5120.073 [5102.07.3] of the Revised Code.*

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

(1) The person is being sentenced for committing or for complicity in committing any of the following:

(a) Aggravated murder, murder, any felony of the first or second degree 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 (CC)(1)(a) of this section.

(2) The person previously was convicted of or pleaded guilty to an offense described in division (CC)(1)(a) or (b) of this section.

(DD) "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.*

(EE) "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.

(FF) "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, 2929.142 [2929.14.2], or 2971.03 of the Revised Code* or under *section 2919.25 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 [2967.19.3] of the Revised Code*.

(GG) "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.

(HH) "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.

(II) "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*.

(JJ) "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*.

(KK) "Sexually oriented offense," "child-victim oriented offense," and "tier III sex offender/child-victim offender," have the same meanings as in *section 2950.01 of the Revised Code*.

(LL) 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.

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

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

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

(PP) "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.

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

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

(SS) "Body armor" has the same meaning as in *section 2941.1411 [2941.14.11] of the Revised Code*.

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

(UU) "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 (UU)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court ap-

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 (UU)(1)(a) of this section, can transmit continuously those signals by a wireless or landline telephone connection to a central monitoring computer of the type described in division (UU)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the device has been turned off or altered without prior court approval or otherwise tampered with. The device is designed specifically for use in electronic monitoring, is not a converted wireless phone or another tracking device that is clearly not designed for electronic monitoring, and provides a means of text-based or voice communication with the person.

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

(2) Any device that is not a device of the type described in division (UU)(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.

(VV) "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.

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

(XX) "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.

(YY) 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.

(ZZ) An offense is "committed in proximity to a school" if the offender commits the offense in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

(AAA) "Human trafficking" means a scheme or plan to which all of the following apply:

(1) Its object is to subject a victim or victims to involuntary servitude, as defined in *section 2905.31 of the Revised Code*, to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.

(2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:

(a) Each of the felony offenses is a violation of section 2905.01, 2905.02, 2905.32, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323 [2907.32.3], or division (B)(1), (2), (3), (4), or (5) of *section 2919.22 of the Revised Code* or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.

(b) At least one of the felony offenses was committed in this state.

(c) The felony offenses are related to the same scheme or plan and are not isolated instances.

(BBB) "Material," "nudity," "obscene," "performance," and "sexual activity" have the same meanings as in *section 2907.01 of the Revised Code*.

(CCC) "Material that is obscene, sexually oriented, or nudity oriented" means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

(DDD) "Performance that is obscene, sexually oriented, or nudity oriented" means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v H 480 (Eff 10-16-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 378 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 148 v S 9 (Eff 3-8-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 148 v S 222 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 327. Eff 7-8-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 162, § 1, eff. 10-12-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v S 220, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09; 152 v H 130, § 1, eff. 4-7-09; 153 v S 162, § 1, eff. 9-13-10; 153 v S 235, § 1, eff. 3-24-11.

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TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2929. PENALTIES AND SENTENCING

PENALTIES FOR FELONY

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Legislative Alert: LEXSEE 2011 Ohio HB 86 -- See sections 1 and 2.

§ 2929.14. Basic prison terms

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

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

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

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

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

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

(B) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(5), (D)(6), (D)(7), (D)(8), (G), (I), (J), or (L) of this section, in *section 2907.02, 2907.05, or 2919.25 of the Revised Code*, or in Chapter 2925. of the Revised Code, if the court imposing a sentence upon an offender for a felony

elects or is required to impose a prison term on the offender, the court shall impose the shortest prison term authorized for the offense pursuant to division (A) of this section, unless one or more of the following applies:

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

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

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

(D) (1) (a) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in *section 2941.141 [2941.14.1]*, *2941.144 [2941.14.4]*, or *2941.145 [2941.14.5]* of *the Revised Code*, the court shall impose on the offender one of the following prison terms:

(i) A prison term of six years if the specification is of the type described in *section 2941.144 [2941.14.4]* of *the Revised Code* that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony;

(ii) A prison term of three years if the specification is of the type described in *section 2941.145 [2941.14.5] of the Revised Code* that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(iii) A prison term of one year if the specification is of the type described in *section 2941.141 [2941.14.1] of the Revised Code* that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

(b) If a court imposes a prison term on an offender under division (D)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. Except as provided in division (D)(1)(g) of this section, a court shall not impose more than one prison term on an offender under division (D)(1)(a) of this section for felonies committed as part of the same act or transaction.

(c) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of *section 2923.161 [2923.16.1] of the Revised Code* or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in *section 2941.146 [2941.14.6] of the Revised Code* that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of *section 2923.161 [2923.16.1] of the Revised Code* or for the other felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of five years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of

Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (D)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (D)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (D)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in *section 2941.1411 [2941.14.11] of the Revised Code* that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a prison term of two years. The prison term so imposed shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(1)(d) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term under division (D)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (D)(1)(d) of this section.

(e) The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of *section 2923.12 or 2923.123 [2923.12.3] of the Revised Code*. The court shall not impose any of the prison terms described in division (D)(1)(a) or (b) of this section upon an offender for a violation of section 2923.122 [2923.12.2] that involves a deadly weapon that is a firearm other than a dangerous ordnance, *section 2923.16, or section 2923.121 [2923.12.1] of*

the Revised Code. The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of *section 2923.13 of the Revised Code* unless all of the following apply:

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

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

(f) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1412 [2941.14.12] of the Revised Code* that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in *section 2935.01 of the Revised Code* or a corrections officer as defined in *section 2941.1412 [2941.14.12] of the Revised Code*, the court, after imposing a prison term on the offender for the felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. If an offender is convicted of or pleads guilty to two or more felonies that include, as an essential element, causing or attempting to cause the death or physical harm to another and also is convicted of or pleads guilty to a specification of the type described under division (D)(1)(f) of this section in connection with two or more of the felonies of which the offender is convicted or to which the offender pleads guilty, the sentencing court shall impose on the offender the prison term specified under division (D)(1)(f) of this section for each of two of the

specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications. If a court imposes an additional prison term on an offender under division (D)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (D)(1)(a) or (c) of this section relative to the same offense.

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

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

(i) The offender is convicted of or pleads guilty to a specification of the type described in *section 2941.149 [2941.14.9] of the Revised Code* that the offender is a repeat violent offender.

(ii) The offense of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life

imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

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

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

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

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

(i) The offender is convicted of or pleads guilty to a specification of the type described in *section 2941.149 [2941.14.9] of the Revised Code* that the offender is a repeat violent offender.

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

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

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

(d) A sentence imposed under division (D)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20 or section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.

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

(3) (a) Except when an offender commits a violation of *section 2903.01* or *2907.02 of the Revised Code* and the penalty imposed for the violation is life imprisonment or commits a violation of *section 2903.02 of the Revised Code*, if the offender commits a violation of *section 2925.03* or *2925.11 of the Revised Code* and that section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, if the offender commits a felony violation of *section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161 [3719.16.1], 4729.37, or 4729.61, division (C) or (D) of section 3719.172 [3719.17.2], division (C) of section 4729.51, or division (J) of section 4729.54 of the Revised Code* that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of 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 [2941.14.10] of the Revised Code* charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of *section 2907.02 of the Revised Code* and, had the offender completed the violation of *section 2907.02 of the Revised Code* that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of *section 2907.02 of the Revised Code*, the court shall impose upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant to *section 2929.20 or Chapter 2967. or 5120. of the Revised Code*.

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

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

under *section 2929.16 or 2929.17 of the Revised Code*, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

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

(5) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of *section 2903.06 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1414 [2941.14.14] of the Revised Code* that charges that the victim of the offense is a peace officer, as defined in *section 2935.01 of the Revised Code*, or an investigator of the bureau of criminal identification and investigation, as defined in *section 2903.11 of the Revised Code*, the court shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (D)(5) of this section, the prison term shall not be reduced pursuant to *section 2929.20, section 2967.193 [2967.19.3]*, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(5) of this section for felonies committed as part of the same act.

(6) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of *section 2903.06 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1415 [2941.14.15] of the Revised Code* that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of *section 4511.19 of the Revised Code* or an equivalent offense, as defined in *section 2941.1415 [2941.14.15] of the Revised Code*, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (D)(6) of this section, the prison term

shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(6) of this section for felonies committed as part of the same act.

(7) (a) If an offender is convicted of or pleads guilty to a felony violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323 [2907.32.3], or division (B)(1), (2), (3), (4), or (5) of *section 2919.22 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1422 [2941.14.22] of the Revised Code* that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court shall impose on the offender a mandatory prison term that is one of the following:

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

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

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

(b) The prison term imposed under division (D)(7)(a) of this section shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(7)(a) of this section for felonies committed as part of the same act, scheme, or plan.

(8) If an offender is convicted of or pleads guilty to a felony violation of *section 2903.11, 2903.12, or 2903.13 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1423 [2941.14.23] of the Revised Code* that charges that the victim of the violation was a woman whom the offender knew was pregnant at the time of the violation, notwithstanding the range of prison terms prescribed in division (A) of this section for felonies of the same degree as the violation, the court shall impose on the offender a mandatory prison term that is either a definite prison term of six months or one of the prison terms prescribed in *section 2929.14 of the Revised Code* for felonies of the same degree as the violation.

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

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

secutively to and prior to any prison term imposed for the underlying felony under division (A), (D)(2), or (D)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

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

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

(2) If an offender who is an inmate in a jail, prison, or other residential detention facility violates *section 2917.02, 2917.03, 2921.34, or 2921.35 of the Revised Code*, if an offender who is under detention at a detention facility commits a felony violation of *section 2923.131 [2923.13.1] of the Revised Code*, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of *section 2921.34 of the Revised Code*, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.

(3) If a prison term is imposed for a violation of division (B) of *section 2911.01 of the Revised Code*, a violation of division (A) of *section 2913.02 of the Revised Code* in which the stolen property is a firearm or dangerous ordnance, or a felony violation of division (B) of *section 2921.331 [2921.33.1] of the Revised Code*, the offender shall serve that prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

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

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

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

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

(5) If a mandatory prison term is imposed upon an offender pursuant to division (D)(5) or (6) of this section, the offender shall serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of *section 2903.06 of the*

Revised Code pursuant to division (A) of this section or *section 2929.142 [2929.14.2] of the Revised Code*. If a mandatory prison term is imposed upon an offender pursuant to division (D)(5) of this section, and if a mandatory prison term also is imposed upon the offender pursuant to division (D)(6) of this section in relation to the same violation, the offender shall serve the mandatory prison term imposed pursuant to division (D)(5) of this section consecutively to and prior to the mandatory prison term imposed pursuant to division (D)(6) of this section and consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of *section 2903.06 of the Revised Code* pursuant to division (A) of this section or *section 2929.142 [2929.14.2] of the Revised Code*.

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

(F) (1) If a court imposes a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division. If a court imposes a sentence including a prison term of a type described in this division on or after July 11, 2006, the failure of a court to include a post-release control requirement in the sentence pursuant to this division does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender under division (B) of *section 2967.28 of the Revised Code*. *Section 2929.191 [2929.19.1] of the Revised Code* applies if, prior to July 11, 2006, a

court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(2) If a court imposes a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (F)(1) of this section, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division, if the parole board determines that a period of post-release control is necessary. *Section 2929.191 [2929.19.1] of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

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

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

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

(3) A person is convicted of or pleads guilty to attempted rape committed on or after January 2, 2007, and a specification of the type described in *section 2941.1418 [2941.14.18], 2941.1419 [2941.14.19], or 2941.1420 [2941.14.20] of the Revised Code.*

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

(5) A person is convicted of or pleads guilty to aggravated murder committed on or after January 1, 2008, and division (A)(2)(b)(ii) of *section 2929.022 [2929.02.2]*, division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d) of *section 2929.03*, or division (A) or (B) of *section 2929.06 of the Revised Code* requires the court to sentence the offender pursuant to division (B)(3) of *section 2971.03 of the Revised Code.*

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

(H) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a prison term or term of imprisonment under this section, *sections 2929.02 to 2929.06 of the Revised Code, section 2929.142 [2929.14.2] of the Revised Code, or section 2971.03 of the Revised Code, or any other provision of law, section 5120.163 [5120.16.3] of the Revised Code* applies regarding the person while the person is confined in a state correctional institution.

(I) If an offender who is convicted of or pleads guilty to a felony that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in *section 2941.142 [2941.14.2] of the Revised Code* that charges the offender with having committed the felony while

participating in a criminal gang, the court shall impose upon the offender an additional prison term of one, two, or three years.

(J) (1) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in *section 2941.143 [2941.14.3] of the Revised Code* that charges the offender with having committed the offense in a school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years consecutively to and prior to the prison term imposed for the underlying offense.

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

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

(ii) If the offender previously has been convicted of or pleaded guilty to one or more felony or misdemeanor violations of *section 2907.22, 2907.23, 2907.24, 2907.241 [2907.24.1], or 2907.25 of the Revised Code* and also was convicted of or pleaded guilty to a specification of the type described in *section 2941.1421 [2941.14.21] of the Revised Code* regarding one or more of those violations, an additional prison term of one, two, three, four, five, six, seven, eight, nine, ten, eleven, or twelve months.

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

(K) At the time of sentencing, the court may recommend the offender for placement in a program of shock incarceration under *section 5120.031 [5120.03.1] of the Revised Code* or for placement in an intensive program prison under *section 5120.032 [5120.03.2] of the Revised Code*, disapprove placement of the offender in a program of shock incarceration or an intensive program prison of that nature, or make no recommendation on placement of the offender. In no case shall the department of rehabilitation and correction place the offender in a program or prison of that nature unless the department determines as specified in *section 5120.031 [5120.03.1] or 5120.032*

[5120.03.2] of the Revised Code, whichever is applicable, that the offender is eligible for the placement.

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

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

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

If the court does not make a recommendation under this division with respect to an offender and if the department determines as specified in *section 5120.031 [5120.03.1]* or *5120.032 [5120.03.2]* of the Revised Code, whichever is applicable, that the offender is eligible for placement in a program or prison of that nature, the department shall screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If there is an available program of shock incarceration or an intensive program prison for which the offender is suited, the department shall notify the court of the proposed placement of the offender as specified in *section 5120.031 [5120.03.1]* or *5120.032 [5120.03.2]* of the Revised Code and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

(L) If a person is convicted of or pleads guilty to aggravated vehicular homicide in violation of division (A) (1) of *section 2903.06 of the Revised Code* and division (B)(2)(c) of that section applies, the person shall be sentenced pursuant to *section 2929.142 [2929.14.2] of the Revised Code*.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 88 (Eff 9-3-96); 146 v H 445 (Eff 9-3-96); 146 v H 154 (Eff 10-4-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 151 (Eff 9-16-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 2 (Eff 1-1-99); 148 v S 1 (Eff 8-6-99); 148 v H 29 (Eff 10-29-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 130. Eff 4-7-2003; 149 v S 123, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04*; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 137, § 1, eff. 7-11-06; 151 v H 137, § 3, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 151 v S 281, § 1, eff. 1-4-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v S 184, § 1, eff. 9-9-08; 152 v S 220, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09; 152 v H 130, § 1, eff. 4-7-09.

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ASSEMBLY

AND FILED WITH THE SECRETARY OF STATE THROUGH FILE 21 AND 23

The provisions of 2011 SB 5 are subject to referendum and will not become effective unless ap-
proved

at the November 2011 general election. *

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

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ORC Ann. 2929.18 (2011)

Legislative Alert: LEXSEE 2011 Ohio HB 5 -- See sections 1 and 2.

§ 2929.18. Financial sanctions; restitution; reimbursements

(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to *section 2947.23 of the Revised Code*, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in *section 2929.32 of the Revised Code*, may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be

credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

If the court imposes restitution, the court may order that the offender pay a surcharge of not more than five per cent of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision, or as described in division (B)(2) of this section to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense. A fine ordered under this division shall not exceed the maximum conventional fine amount authorized for the level of the offense under division (A)(3) of this section.

(3) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or as described in division (B)(2) of this section to one or more law enforcement agencies, in the following amount:

- (a) For a felony of the first degree, not more than twenty thousand dollars;
 - (b) For a felony of the second degree, not more than fifteen thousand dollars;
 - (c) For a felony of the third degree, not more than ten thousand dollars;
 - (d) For a felony of the fourth degree, not more than five thousand dollars;
 - (e) For a felony of the fifth degree, not more than two thousand five hundred dollars.
- (4) A state fine or costs as defined in *section 2949.111 of the Revised Code*.

(5) (a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:

(i) All or part of the costs of implementing any community control sanction, including a supervision fee under *section 2951.021 of the Revised Code*;

(ii) All or part of the costs of confinement under a sanction imposed pursuant to *section 2929.14, 2929.142 [2929.14.2], or 2929.16 of the Revised Code*, provided that the amount of reimbursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement;

(iii) All or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under *section 4510.13 of the Revised Code*.

(b) If the offender is sentenced to a sanction of confinement pursuant to *section 2929.14 or 2929.16 of the Revised Code* that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another local governmental entity, if, pursuant to *section 307.93, 341.14, 341.19, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code* and *section 2929.37 of the Revised Code*, the board, legislative authority, or other local governmental entity requires prisoners to reimburse the county, municipal corporation, or other entity for its expenses incurred by reason of the prisoner's confinement, and if the court does not impose a financial sanction under division (A)(5)(a)(ii) of this section, confinement costs may be assessed pursuant to *section 2929.37 of the Revised Code*. In addition, the offender may be required to pay the fees specified in *section 2929.38 of the Revised Code* in accordance with that section.

(c) Reimbursement by the offender for costs pursuant to *section 2929.71 of the Revised Code*.

(B) (1) For a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to division (A)(3) of this section. If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.

(2) Any mandatory fine imposed upon an offender under division (B)(1) of this section and any fine imposed upon an offender under division (A)(2) or (3) of this section for any fourth or fifth degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code shall be paid to law enforcement agencies pursuant to division (F) of *section 2925.03 of the Revised Code*.

(3) For a fourth degree felony OVI offense and for a third degree felony OVI offense, the sentencing court shall impose upon the offender a mandatory fine in the amount specified in division (G)(1)(d) or (e) of *section 4511.19 of the Revised Code*, whichever is applicable. The mandatory fine so imposed shall be disbursed as provided in the division pursuant to which it is imposed.

(4) Notwithstanding any fine otherwise authorized or required to be imposed under division (A)(2) or (3) or (B)(1) of this section or *section 2929.31 of the Revised Code* for a violation of *section 2925.03 of the Revised Code*, in addition to any penalty or sanction imposed for that offense under *section 2925.03* or *sections 2929.11 to 2929.18 of the Revised Code* and in addition to the

forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender for a violation of *section 2925.03 of the Revised Code* may impose upon the offender a fine in addition to any fine imposed under division (A)(2) or (3) of this section and in addition to any mandatory fine imposed under division (B)(1) of this section. The fine imposed under division (B)(4) of this section shall be used as provided in division (H) of *section 2925.03 of the Revised Code*. A fine imposed under division (B)(4) of this section shall not exceed whichever of the following is applicable:

(a) The total value of any personal or real property in which the offender has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of *section 2925.03 of the Revised Code*, including any property that constitutes proceeds derived from that offense;

(b) If the offender has no interest in any property of the type described in division (B)(4)(a) of this section or if it is not possible to ascertain whether the offender has an interest in any property of that type in which the offender may have an interest, the amount of the mandatory fine for the offense imposed under division (B)(1) of this section or, if no mandatory fine is imposed under division (B)(1) of this section, the amount of the fine authorized for the level of the offense imposed under division (A)(3) of this section.

(5) Prior to imposing a fine under division (B)(4) of this section, the court shall determine whether the offender has an interest in any property of the type described in division (B)(4)(a) of this section. Except as provided in division (B)(6) or (7) of this section, a fine that is authorized and imposed under division (B)(4) of this section does not limit or affect the imposition of the penalties and sanctions for a violation of *section 2925.03 of the Revised Code* prescribed under those sections

or *sections 2929.11 to 2929.18 of the Revised Code* and does not limit or affect a forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code.

(6) If the sum total of a mandatory fine amount imposed for a first, second, or third degree felony violation of *section 2925.03 of the Revised Code* under division (B)(1) of this section plus the amount of any fine imposed under division (B)(4) of this section does not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or *section 2929.31 of the Revised Code*, the court may impose a fine for the offense in addition to the mandatory fine and the fine imposed under division (B)(4) of this section. The sum total of the amounts of the mandatory fine, the fine imposed under division (B)(4) of this section, and the additional fine imposed under division (B)(6) of this section shall not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or *section 2929.31 of the Revised Code*. The clerk of the court shall pay any fine that is imposed under division (B)(6) of this section to the county, township, municipal corporation, park district as created pursuant to *section 511.18 or 1545.04 of the Revised Code*, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender pursuant to division (F) of *section 2925.03 of the Revised Code*.

(7) If the sum total of the amount of a mandatory fine imposed for a first, second, or third degree felony violation of *section 2925.03 of the Revised Code* plus the amount of any fine imposed under division (B)(4) of this section exceeds the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or *section 2929.31 of the Revised Code*, the court shall not impose a fine under division (B)(6) of this section.

(8) (a) If an offender who is convicted of or pleads guilty to a violation of *section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32*, division (A)(1) or (2) of *section 2907.323*, or division

(B)(1), (2), (3), (4), or (5) of *section 2919.22 of the Revised Code* also is convicted of or pleads guilty to a specification of the type described in *section 2941.1422 [2941.14.22] of the Revised Code* that charges that the offender knowingly committed the offense in furtherance of human trafficking, the sentencing court shall sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and the greater of the following:

- (i) The gross income or value to the offender of the victim's labor or services;
- (ii) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the "Federal Fair Labor Standards Act of 1938," *52 Stat. 1060, 20 U.S.C. 207*, and state labor laws.

(b) If a court imposing sentence upon an offender for a felony is required to impose upon the offender a financial sanction of restitution under division (B)(8)(a) of this section, in addition to that financial sanction of restitution, the court may sentence the offender to any other financial sanction or combination of financial sanctions authorized under this section, including a restitution sanction under division (A)(1) of this section.

(C) (1) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by the department of rehabilitation and correction in operating a prison or other facility used to confine offenders pursuant to sanctions imposed under *section 2929.14, 2929.142 [2929.14.2], or 2929.16 of the Revised Code* to the treasurer of state. The treasurer of state shall deposit the reimbursements in the confinement cost reimbursement fund that is hereby created in the state treasury. The department of rehabilitation and correction shall use the

amounts deposited in the fund to fund the operation of facilities used to confine offenders pursuant to *sections 2929.14, 2929.142 [2929.14.2], and 2929.16 of the Revised Code.*

(2) Except as provided in *section 2951.021 [2951.02.1] of the Revised Code*, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a county pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code* to the county treasurer. The county treasurer shall deposit the reimbursements in the sanction cost reimbursement fund that each board of county commissioners shall create in its county treasury. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code.*

(3) Except as provided in *section 2951.021 [2951.02.1] of the Revised Code*, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code* to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in a special fund that shall be established in the treasury of each municipal corporation. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code.*

(4) Except as provided in *section 2951.021 [2951.02.1] of the Revised Code*, the offender shall pay reimbursements imposed pursuant to division (A)(5)(a) of this section for the costs incurred by a private provider pursuant to a sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* to the provider.

(D) Except as otherwise provided in this division, a financial sanction imposed pursuant to division (A) or (B) of this section is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(5)(a)(ii) of this section upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed upon an offender pursuant to this section for costs incurred by a private provider of sanctions is a judgment in favor of the private provider, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to division (A)(1) or (B)(8) of this section is an order in favor of the victim of the offender's criminal act that can be collected through execution as described in division (D)(1) of this section or through an order as described in division (D)(2) of this section, and the offender shall be considered for purposes of the collection as the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may bring an action to do any of the following:

(1) Obtain execution of the judgment or order through any available procedure, including:

- (a) An execution against the property of the judgment debtor under Chapter 2329. of the Revised Code;
- (b) An execution against the person of the judgment debtor under Chapter 2331. of the Revised Code;
- (c) A proceeding in aid of execution under Chapter 2333. of the Revised Code, including:
- (i) A proceeding for the examination of the judgment debtor under *sections 2333.09 to 2333.12 and sections 2333.15 to 2333.27 of the Revised Code*;
 - (ii) A proceeding for attachment of the person of the judgment debtor under *section 2333.28 of the Revised Code*;
 - (iii) A creditor's suit under *section 2333.01 of the Revised Code*.
- (d) The attachment of the property of the judgment debtor under Chapter 2715. of the Revised Code;
- (e) The garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code.
- (2) Obtain an order for the assignment of wages of the judgment debtor under *section 1321.33 of the Revised Code*.
- (E) A court that imposes a financial sanction upon an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it.
- (F) Each court imposing a financial sanction upon an offender under this section or under *section 2929.32 of the Revised Code* may designate the clerk of the court or another person to collect the financial sanction. The clerk or other person authorized by law or the court to collect the financial sanction may enter into contracts with one or more public agencies or private vendors for the

collection of, amounts due under the financial sanction imposed pursuant to this section or *section 2929.32 of the Revised Code*. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this section or *section 2929.32 of the Revised Code*, a court shall comply with *sections 307.86 to 307.92 of the Revised Code*.

(G) If a court that imposes a financial sanction under division (A) or (B) of this section finds that an offender satisfactorily has completed all other sanctions imposed upon the offender and that all restitution that has been ordered has been paid as ordered, the court may suspend any financial sanctions imposed pursuant to this section or *section 2929.32 of the Revised Code* that have not been paid.

(H) No financial sanction imposed under this section or *section 2929.32 of the Revised Code* shall preclude a victim from bringing a civil action against the offender.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 480 (Eff 10-16-96); 146 v S 166 (Eff 10-17-96); 147 v H 122 (Eff 7-29-98); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 528 (Eff 2-13-2001); 149 v H 170. Eff 9-6-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 151 v H 461, § 1, eff. 4-4-07; 151 v H 241, § 1, eff. 7-1-07; 152 v S 17, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09.

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TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2929. PENALTIES AND SENTENCING

PENALTIES FOR MISDEMEANOR

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ORC Ann. 2929.24 (2011)

Legislative Alert: LEXSEE 2011 Ohio HB 5 -- See sections 1 and 2.

§ 2929.24. Definite jail terms for misdemeanor; eligibility for county jail industry program; reimbursement sanction; costs of confinement

(A) Except as provided in *section 2929.22 or 2929.23 of the Revised Code* or division (E) or (F) of this section and unless another term is required or authorized pursuant to law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender pursuant to this chapter, the court shall impose a definite jail term that shall be one of the following:

- (1) For a misdemeanor of the first degree, not more than one hundred eighty days;
- (2) For a misdemeanor of the second degree, not more than ninety days;
- (3) For a misdemeanor of the third degree, not more than sixty days;
- (4) For a misdemeanor of the fourth degree, not more than thirty days.

(B) (1) A court that sentences an offender to a jail term under this section may permit the offender to serve the sentence in intermittent confinement or may authorize a limited release of the offender as provided in division (B) of *section 2929.26 of the Revised Code*. The court retains jurisdiction over every offender sentenced to jail to modify the jail sentence imposed at any time, but the court shall not reduce any mandatory jail term.

(2) (a) If a prosecutor, as defined in *section 2935.01 of the Revised Code*, has filed a notice with the court that the prosecutor wants to be notified about a particular case and if the court is considering modifying the jail sentence of the offender in that case, the court shall notify the prosecutor that the court is considering modifying the jail sentence of the offender in that case. The prosecutor

may request a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, and, if the prosecutor requests a hearing, the court shall notify the eligible offender of the hearing.

(b) If the prosecutor requests a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, the court shall hold the hearing before considering whether or not to release the offender from the offender's jail sentence.

(C) If a court sentences an offender to a jail term under this section and the court assigns the offender to a county jail that has established a county jail industry program pursuant to *section 5147.30 of the Revised Code*, the court shall specify, as part of the sentence, whether the offender may be considered for participation in the program. During the offender's term in the county jail, the court retains jurisdiction to modify its specification regarding the offender's participation in the county jail industry program.

(D) If a person is sentenced to a jail term pursuant to this section, the court may impose as part of the sentence pursuant to *section 2929.28 of the Revised Code* a reimbursement sanction, and, if the local detention facility in which the term is to be served is covered by a policy adopted pursuant to *section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code* and *section 2929.37 of the Revised Code*, both of the following apply:

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

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

(b) If the person does not dispute the bill described in division (D)(1)(a) of this section and does not pay the bill by the times specified in *section 2929.37 of the Revised Code*, the clerk of the court may issue a certificate of judgment against the person as described in that section.

(2) The sentence automatically includes any certificate of judgment issued as described in division (D)(1)(b) of this section.

(E) If an offender who is convicted of or pleads guilty to a violation of division (B) of *section 4511.19 of the Revised Code* also is convicted of or also pleads guilty to a specification of the type described in *section 2941.1416 [2941.14.16] of the Revised Code* and if the court imposes a jail term on the offender for the underlying offense, the court shall impose upon the offender an additional definite jail term of not more than six months. The additional jail term shall not be reduced pursuant to any provision of the Revised Code. The offender shall serve the additional jail term consecutively to and prior to the jail term imposed for the underlying offense and consecutively to any other mandatory term imposed in relation to the offense.

(F) (1) If an offender is convicted of or pleads guilty to a misdemeanor violation of *section 2907.23, 2907.24, 2907.241 [2907.24.1], or 2907.25 of the Revised Code* and to a specification of the type described in *section 2941.1421 [2941.14.21] of the Revised Code* and if the court imposes a jail term on the offender for the misdemeanor violation, the court may impose upon the offender an additional definite jail term as follows:

(a) Subject to division (F)(1)(b) of this section, an additional definite jail term of not more than sixty days;

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

type described in *section 2941.1421 [2941.14.21] of the Revised Code* regarding one or more of those violations, an additional definite jail term of not more than one hundred twenty days.

(2) In lieu of imposing an additional definite jail term under division (F)(1) of this section, the court may directly impose on the offender a sanction that requires the offender to wear a real-time processing, continual tracking electronic monitoring device during the period of time specified by the court. The period of time specified by the court shall equal the duration of an additional jail term that the court could have imposed upon the offender under division (F)(1) of this section. A sanction imposed under this division shall commence on the date specified by the court, provided that the sanction shall not commence until after the offender has served the jail term imposed for the misdemeanor violation of *section 2907.23, 2907.24, 2907.241 [2907.24.1], or 2907.25 of the Revised Code* and any residential sanction imposed for the violation under *section 2929.26 of the Revised Code*. A sanction imposed under this division shall be considered to be a community control sanction for purposes of *section 2929.25 of the Revised Code*, and all provisions of the Revised Code that pertain to community control sanctions shall apply to a sanction imposed under this division, except to the extent that they would by their nature be clearly inapplicable. The offender shall pay all costs associated with a sanction imposed under this division, including the cost of the use of the monitoring device.

(G) If an offender is convicted of or pleads guilty to a misdemeanor violation of *section 2903.13 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1423 [2941.14.23] of the Revised Code* that charges that the victim of the violation was a woman whom the offender knew was pregnant at the time of the violation, the court shall impose on the offender a mandatory jail term that is a definite term of at least thirty days.

HISTORY:

149 v H 490, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 152 v S 220, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09; 153 v H 338, § 1, eff. 9-17-10.

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at the November 2011 general election. *

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

Go to the Ohio Code Archive Directory

ORC Ann. 2929.28 (2011)

Legislative Alert: LEXSEE 2011 Ohio HB 5 -- See sections 1 and 2.

§ 2929.28. Financial sanctions; court costs

(A) In addition to imposing court costs pursuant to *section 2947.23 of the Revised Code*, the court imposing a sentence upon an offender for a misdemeanor, including a minor misdemeanor, may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section. If the court in its discretion imposes one or more financial sanctions, the financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Unless the misdemeanor offense is a minor misdemeanor or could be disposed of by the traffic violations bureau serving the court under *Traffic Rule 13*, restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. The court may not impose restitution as a sanction pursuant to this division if the offense is a minor misdemeanor or could be disposed of by the traffic violations bureau serving the court under *Traffic Rule 13*. If the court requires restitution, the court shall order that the restitution be made to the victim in open court or to the adult probation department that serves the jurisdiction or the clerk of the court on behalf of the victim.

If the court imposes restitution, the court shall determine the amount of restitution to be paid by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic

loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold an evidentiary hearing on restitution if the offender, victim, or survivor disputes the amount of restitution. If the court holds an evidentiary hearing, at the hearing the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender.

All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

If the court imposes restitution, the court may order that the offender pay a surcharge, of not more than five per cent of the amount of the restitution otherwise ordered, to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) A fine of the type described in divisions (A)(2)(a) and (b) of this section payable to the appropriate entity as required by law:

(a) A fine in the following amount:

- (i) For a misdemeanor of the first degree, not more than one thousand dollars;
- (ii) For a misdemeanor of the second degree, not more than seven hundred fifty dollars;
- (iii) For a misdemeanor of the third degree, not more than five hundred dollars;
- (iv) For a misdemeanor of the fourth degree, not more than two hundred fifty dollars;
- (v) For a minor misdemeanor, not more than one hundred fifty dollars.

(b) A state fine or cost as defined in *section 2949.111 [2949.11.1] of the Revised Code*.

(3) (a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including, but not limited to, the following:

(i) All or part of the costs of implementing any community control sanction, including a supervision fee under *section 2951.021 [2951.02.1] of the Revised Code*;

(ii) All or part of the costs of confinement in a jail or other residential facility, including, but not limited to, a per diem fee for room and board, the costs of medical and dental treatment, and the costs of repairing property damaged by the offender while confined;

(iii) All or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under *section 4510.13 of the Revised Code*.

(b) The amount of reimbursement ordered under division (A)(3)(a) of this section shall not exceed the total amount of reimbursement the offender is able to pay and shall not exceed the actual cost of the sanctions. The court may collect any amount of reimbursement the offender is required to pay under that division. If the court does not order reimbursement under that division, confinement costs may be assessed pursuant to a repayment policy adopted under *section 2929.37 of the Revised Code*. In addition, the offender may be required to pay the fees specified in *section 2929.38 of the Revised Code* in accordance with that section.

(B) If the court determines a hearing is necessary, the court may hold a hearing to determine whether the offender is able to pay the financial sanction imposed pursuant to this section or court costs or is likely in the future to be able to pay the sanction or costs.

If the court determines that the offender is indigent and unable to pay the financial sanction or court costs, the court shall consider imposing and may impose a term of community service under division (A) of *section 2929.27 of the Revised Code* in lieu of imposing a financial sanction or court

costs. If the court does not determine that the offender is indigent, the court may impose a term of community service under division (A) of *section 2929.27 of the Revised Code* in lieu of or in addition to imposing a financial sanction under this section and in addition to imposing court costs. The court may order community service for a minor misdemeanor pursuant to division (C) of *section 2929.27 of the Revised Code* in lieu of or in addition to imposing a financial sanction under this section and in addition to imposing court costs. If a person fails to pay a financial sanction or court costs, the court may order community service in lieu of the financial sanction or court costs.

(C) (1) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(3) of this section to pay the costs incurred by a county pursuant to any sanction imposed under this section or *section 2929.26 or 2929.27 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.26 of the Revised Code* to the county treasurer. The county treasurer shall deposit the reimbursements in the county's general fund. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or *section 2929.26 or 2929.27 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.26 of the Revised Code*.

(2) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(3) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under this section or *section 2929.26 or 2929.27 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.26 of the Revised Code* to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in the municipal corporation's general fund. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction im-

posed under this section or *section 2929.26* or *2929.27 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.26 of the Revised Code*.

(3) The offender shall pay reimbursements imposed pursuant to division (A)(3) of this section for the costs incurred by a private provider pursuant to a sanction imposed under this section or *section 2929.26* or *2929.27 of the Revised Code* to the provider.

(D) Except as otherwise provided in this division, a financial sanction imposed under division (A) of this section is a judgment in favor of the state or the political subdivision that operates the court that imposed the financial sanction, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(3)(a)(i) of this section upon an offender is a judgment in favor of the entity administering the community control sanction, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(3)(a)(ii) of this section upon an offender confined in a jail or other residential facility is a judgment in favor of the entity operating the jail or other residential facility, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to division (A)(1) of this section is an order in favor of the victim of the offender's criminal act that can be collected through execution as described in division (D)(1) of this section or through an order as described in division (D)(2) of this section and the offender shall be considered for purposes of the collection as the judgment debtor.

Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may bring an action to do any of the following:

(1) Obtain execution of the judgment or order through any available procedure, including any of the procedures identified in divisions (D)(1)(a) to (e) of *section 2929.18 of the Revised Code*.

(2) Obtain an order for the assignment of wages of the judgment debtor under *section 1321.33 of the Revised Code*.

(E) The civil remedies authorized under division (D) of this section for the collection of the financial sanction supplement, but do not preclude, enforcement of the criminal sentence.

(F) Each court imposing a financial sanction upon an offender under this section may designate the clerk of the court or another person to collect the financial sanction. The clerk, or another person authorized by law or the court to collect the financial sanction may do the following:

(1) Enter into contracts with one or more public agencies or private vendors for the collection of amounts due under the sanction. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this section, a court shall comply with *sections 307.86 to 307.92 of the Revised Code*.

(2) Permit payment of all or any portion of the sanction in installments, by financial transaction device if the court is a county court or a municipal court operated by a county, by credit or debit card or by another electronic transfer if the court is a municipal court not operated by a county, or by any other reasonable method, in any time, and on any terms that court considers just, except that the maximum time permitted for payment shall not exceed five years. If the court is a county court or a municipal court operated by a county, the acceptance of payments by any financial transaction device shall be governed by the policy adopted by the board of county commissioners of the county pursuant to *section 301.28 of the Revised Code*. If the court is a municipal court not operated by a county, the clerk may pay any fee associated with processing an electronic transfer out of public money or may charge the fee to the offender.

(3) To defray administrative costs, charge a reasonable fee to an offender who elects a payment plan rather than a lump sum payment of any financial sanction.

(G) No financial sanction imposed under this section shall preclude a victim from bringing a civil action against the offender.

HISTORY:

149 v H 490 § 1, Eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 152 v S 17, § 1, eff. 9-30-08.

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at the November 2011 general election. *

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2981. FORFEITURE LAW

Go to the Ohio Code Archive Directory

ORC Ann. 2981.02 (2011)

§ 2981.02. Property subject to forfeiture; determination of use or intended use of instrumentality;
motor vehicle law exclusion

(A) The following property is subject to forfeiture to the state or a political subdivision under either the criminal or delinquency process in *section 2981.04 of the Revised Code* or the civil process in *section 2981.05 of the Revised Code*:

(1) Contraband involved in an offense;

(2) Proceeds derived from or acquired through the commission of an offense;

(3) An instrumentality that is used in or intended to be used in the commission or facilitation of any of the following offenses when the use or intended use, consistent with division (B) of this section, is sufficient to warrant forfeiture under this chapter:

(a) A felony;

(b) A misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties;

(c) An attempt to commit, complicity in committing, or a conspiracy to commit an offense of the type described in divisions (A)(3)(a) and (b) of this section.

(B) In determining whether an alleged instrumentality was used in or was intended to be used in the commission or facilitation of an offense or an attempt, complicity, or conspiracy to commit an offense in a manner sufficient to warrant its forfeiture, the trier of fact shall consider the following factors the trier of fact determines are relevant:

(1) Whether the offense could not have been committed or attempted but for the presence of the instrumentality;

(2) Whether the primary purpose in using the instrumentality was to commit or attempt to commit the offense;

(3) The extent to which the instrumentality furthered the commission of, or attempt to commit, the offense.

(C) This chapter does not apply to or limit forfeitures under Title XLV of the Revised Code, including forfeitures relating to *section 2903.06* or *2903.08 of the Revised Code*.

HISTORY:

151 v H 241, § 1, eff. 7-1-07.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2981. FORFEITURE LAW

Go to the Ohio Code Archive Directory

ORC Ann. 2981.04 (2011)

§ 2981.04. Criminal forfeiture proceedings

(A) (1) Property described in division (A) of *section 2981.02 of the Revised Code* may be forfeited under this section only if the complaint, indictment, or information charging the offense or municipal violation, or the complaint charging the delinquent act, contains a specification of the type described in *section 2941.1417 [2941.14.17] of the Revised Code* that sets forth all of the following to the extent it is reasonably known at the time of the filing:

- (a) The nature and extent of the alleged offender's or delinquent child's interest in the property;
- (b) A description of the property;
- (c) If the property is alleged to be an instrumentality, the alleged use or intended use of the property in the commission or facilitation of the offense.

(2) If any property is not reasonably foreseen to be subject to forfeiture at the time of filing the indictment, information, or complaint, the trier of fact still may return a verdict of forfeiture concerning that property in the hearing described in division (B) of this section if the prosecutor, upon discovering the property to be subject to forfeiture, gave prompt notice of this fact to the alleged offender or delinquent child under *Criminal Rule 7(E)* or *Juvenile Rule 10(B)*.

(3) For good cause shown, the court may consider issues of the guilt of the alleged offender or the delinquency of the alleged delinquent child separate from whether property specified as subject to forfeiture should be forfeited.

(B) If a person pleads guilty to or is convicted of an offense or is adjudicated a delinquent child for committing a delinquent act and the complaint, indictment, or information charging the offense or act contains a specification covering property subject to forfeiture under *section 2981.02 of the Revised Code*, the trier of fact shall determine whether the person's property shall be forfeited. If the

state or political subdivision proves by a preponderance of the evidence that the property is in whole or part subject to forfeiture under *section 2981.02 of the Revised Code*, after a proportionality review under *section 2981.09 of the Revised Code* when relevant, the trier of fact shall return a verdict of forfeiture that specifically describes the extent of the property subject to forfeiture. If the trier of fact is a jury, on the offender's or delinquent child's motion, the court shall make the determination of whether the property shall be forfeited.

(C) If the court enters a verdict of forfeiture under this section, the court imposing sentence or disposition, in addition to any other sentence authorized by Chapter 2929. of the Revised Code or any disposition authorized by Chapter 2152. of the Revised Code, shall order that the offender or delinquent child forfeit to the state or political subdivision the offender's or delinquent child's interest in the property. The property vests with the state or political subdivision subject to the claims of third parties. The court may issue any additional order to affect the forfeiture, including, but not limited to, an order under *section 2981.06 of the Revised Code*.

(D) After the entry of a forfeiture order under this section, the prosecutor shall attempt to identify any person with an interest in the property subject to forfeiture by searching appropriate public records and making reasonably diligent inquiries. The prosecutor shall give notice of the forfeiture that remains subject to the claims of third parties and proposed disposal of the forfeited property to any person known to have an interest in the property. The prosecutor also shall publish notice of the forfeiture that remains subject to the claims of third parties and proposed disposal of the forfeited property once each week for two consecutive weeks in a newspaper of general circulation in the county in which the property was seized.

(E) (1) Any person, other than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the forfeiture order, who asserts a legal interest in

the property that is the subject of the order may petition the court that issued the order for a hearing under division (E)(3) of this section to adjudicate the validity of the person's alleged interest in the property. All of the following apply to the petition:

(a) It shall be filed within thirty days after the final publication of notice or the person's receipt of notice under division (D) of this section.

(b) It shall be signed by the petitioner under the penalties for falsification specified in *section 2921.13 of the Revised Code*.

(c) It shall describe the nature and extent of the petitioner's interest in the property, the time and circumstances of the petitioner's acquisition of that interest, any additional facts supporting the petitioner's claim, and the relief sought.

(2) (a) In lieu of filing a petition as described in division (E)(1) of this section, a person, other than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the forfeiture order, may file an affidavit as described in this division to establish the validity of the alleged right, title, or interest in the property that is the subject of the forfeiture order if the person is a secured party or other lienholder of record that asserts a legal interest in the property, including, but not limited to, a mortgage, security interest, or other type of lien. The affidavit shall contain averments that the secured party or other lienholder acquired its alleged right, title, or interest in the property in the regular course of its business, for a specified valuable consideration, without actual knowledge of any facts pertaining to the offense that was the basis of the forfeiture order, in good faith, and without the intent to prevent or otherwise impede the state or political subdivision from seizing or obtaining a forfeiture of the property. The person shall file the affidavit within thirty days after the earlier of the final publication of notice or the receipt of notice under division (D) of this section.

(b) Except as otherwise provided in this section, the affidavit shall constitute prima-facie evidence of the validity of the affiant's alleged interest in the property.

(c) Unless the prosecutor files a motion challenging the affidavit within ten days after its filing and unless the prosecutor establishes by a preponderance of the evidence at the hearing held under division (E)(3) of this section that the affiant does not possess the alleged interest in the property or that the affiant had actual knowledge of facts pertaining to the offense or delinquent act that was the basis of the forfeiture order, the affidavit shall constitute conclusive evidence of the validity of the affiant's interest in the property.

(d) Any subsequent purchaser or other transferee of property pursuant to forfeiture under this section shall take the property subject to the continued validity of the interest of the affiant.

(3) Upon receipt of a petition or affidavit filed under division (E)(1) or (2) of this section, the court shall hold a hearing to determine the validity of the petitioner's interest in the property that is the subject of the forfeiture order or, if the affidavit was challenged, to determine the validity of the affiant's interest in the property. To the extent practicable and consistent with the interests of justice, the court shall hold the hearing within thirty days after the filing of the petition or within thirty days after the prosecutor files the motion challenging the affidavit. The court may consolidate the hearing with a hearing on any other petition or affidavit that is filed by a person other than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the forfeiture order and that relates to the property that is the subject of the forfeiture order.

At the hearing, the petitioner or affiant may testify, present evidence and witnesses on the petitioner's or affiant's behalf, and cross-examine witnesses for the state or political subdivision. In regards to a petition, the state or political subdivision may present evidence and witnesses in rebuttal and in defense of its claim to the property and may cross-examine witnesses for the petitioner. In

regards to an affidavit, the prosecutor may present evidence and witnesses and cross-examine witnesses for the affiant.

In addition to the evidence and testimony presented at the hearing, the court also shall consider the relevant portions of the record in the criminal or delinquent child case that resulted in the forfeiture order.

(F) (1) If the hearing involves a petition, the court shall amend its forfeiture order if it determines at the hearing held pursuant to division (E)(3) of this section that the petitioner has established either of the following by a preponderance of the evidence:

(a) The petitioner has a legal interest in the property that is subject to the forfeiture order that renders the order completely or partially invalid because the legal interest in the property was vested in the petitioner, rather than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the order, or was superior to any interest of that offender or delinquent child, at the time of the commission of the offense or delinquent act that is the basis of the order.

(b) The petitioner is a bona fide purchaser for value of the interest in the property that is subject to the forfeiture order and was, at the time of the purchase, reasonably without cause to believe that it was subject to forfeiture.

(2) The court also shall amend its forfeiture order to reflect any interest of a secured party or other lienholder of record in the property subject to forfeiture who prevails at a hearing on the petition or affidavit filed pursuant to division (E)(1) or (2) of this section.

(G) If the court disposes of all petitions or affidavits timely filed under this section in favor of the state or political subdivision, the state or political subdivision shall have clear title to the property that is the subject of a forfeiture order issued under this section, but only to the extent that other

parties' lawful interests in the property are not infringed. To the extent that the state or political subdivision has clear title to the property, the state or political subdivision may warrant good title to any subsequent purchaser or other transferee.

HISTORY:

151 v H 241, § 1, eff. 7-1-07.

OHIO RULES OF COURT SERVICE

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*** RULES CURRENT THROUGH APRIL 1, 2011 ***

*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

Ohio Rules Of Criminal Procedure

Ohio Crim. R. 32 (2011)

Review Court Orders which may amend this Rule.

Rule 32. Sentence

(A) Imposition of sentence.

Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

(1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

(2) Afford the prosecuting attorney an opportunity to speak;

(3) Afford the victim the rights provided by law;

(4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

(B) Notification of right to appeal.

(1) After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant that the defendant has a right to appeal the conviction.

(2) After imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right, where applicable, to appeal or to seek leave to appeal the sentence imposed.

(3) If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule, the court shall also advise the defendant of all of the following:

(a) That if the defendant is unable to pay the cost of an appeal, the defendant has the right to appeal without payment;

(b) That if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost;

(c) That if the defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost;

(d) That the defendant has a right to have a notice of appeal timely filed on his or her behalf.

Upon defendant's request, the court shall forthwith appoint counsel for appeal.

(C) Judgment.

A judgment of conviction shall set forth the plea, the verdict, or findings, upon which each conviction is based, and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

HISTORY: Amended, eff 7-1-92; 7-1-98; 7-1-04; 7-1-09.