

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	
	:	Case No. 2012-0118
Plaintiff-Appellee,	:	
	:	On Appeal from the
v.	:	Cuyahoga County Court of Appeals,
	:	8th Appellate District,
J.S.,	:	Case No. 96637
	:	
Defendant-Appellee.	:	

MERIT BRIEF OF APPELLEE J.S.

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FILED
AUG 15 2012
CLERK OF COURT
SUPREME COURT OF OHIO

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## INTRODUCTION

This case does not present an opportunity to extend this Court's holdings in *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, or *State v. Harris*, Slip Opinion No. 2012-Ohio-1908. The Cuyahoga County Prosecutor's Office asks this Court to adopt a position exactly opposite of the position that it successfully argued to this Court last year in *State v. Harris*.<sup>1</sup> For the same reason the State prevailed in *Harris*, its argument fails in this case.

This case is controlled by this Court's long-held jurisprudence that served as the basis for *Harris* and *Fischer*: if a court disregards statutory requirements and imposes a sentence that is not authorized by law, that sentence is void. *Colegrove v. Burns*, 175 Ohio St. 437, 438, 195 N.E.2d 811 (1964); *State v. Beasley*, 14 Ohio St.3d 74, 75, 471 N.E.2d 774 (1984).

After the Eighth District Court of Appeals remanded this case for disposition and sentencing de novo, the State did not appeal to this Court. *In re J.S.* 8th Dist. No. 95365, 2010-Ohio-6199, ¶ 6 (*J.S. 1*). On remand, the juvenile court imposed a new juvenile disposition and stayed adult sentence that was different as to each offense. Then, the court ordered that the new sentence be invoked based upon conduct that pre-dated the sentence. The court of appeals properly held that conduct that predates the valid sentence cannot serve as the basis for invoking that sentence. *In re J.S.*, 8th Dist. No. 96637, 2011-Ohio-6280, ¶ 22, (*J.S. 2*). In order to adopt the State's proposition of law, this Court must overrule *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, *Colgrove, Romito v. Maxwell*, 10 Ohio St.2d 266, 267, 227 N.E.2d 223 (1967), and *Beasley*.

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<sup>1</sup> *State of Ohio v. Mario Harris*, (November 15, 2011), <http://www.supremecourtfohiomedia.library.org/Media.aspx?fileId=133318> at 23:00 to 24:16, (accessed August 8, 2012).

## STATEMENT OF THE CASE AND FACTS

After an incident that occurred on May 21, 2006, then-fourteen-year-old James S. was charged with committing two counts of aggravated robbery, two counts of rape, and one count of kidnapping. Each of the charges carried firearm specifications under R.C. 2941.141 and R.C. 2941.145, as well as specifications that James was a Serious Youthful Offender (SYO). (October 10, 2006 Complaints).

On December 28, 2006, the Cuyahoga County Juvenile Court found James not delinquent of one count of rape, but delinquent of each of the other offenses and specifications. (December 28, 2006 Judgment Entry). Because the offenses were committed when he was fourteen years old, James's SYO disposition was discretionary. R.C. 2152.11(D).

On January 10, 2007, the juvenile court committed James to the Department of Youth Services (DYS), found him to be a SYO, and imposed adult prison terms, as follows:

<b>Charge</b>	<b>Juvenile Commitment</b>	<b>Adult Prison Term</b>
Count 10, Rape	None	3-to-10-year prison term
Count 12, Kidnapping	None	3-to-10-year prison term
Count 13, Aggravated Robbery	2-year minimum DYS commitment, consecutive to 3-year firearm specification [or, see Count 14]	3-to-10 year prison term
Count 14, Aggravated Robbery	2-year minimum DYS commitment, consecutive to 3-year firearm specification [it is unclear from entry whether the disposition is for Count 13 or 14]	3-to-10 year prison term

The entry also stated that the parties agreed that a "minimum (9) nine year prison sentence" be suspended. But, because the juvenile court cannot locate a recording of the January 3, 2007 sentencing hearing, there is no record as to what the court imposed or advised James in person. The State has never claimed that it objected to the void sentence, nor did the State appeal.

On February 22, 2008, the State filed a motion to invoke the adult portion of James's sentence pursuant to R.C. 2152.14, and did not challenge or address that the prison term was void. On April 12, 2008 the juvenile court granted that motion, terminated the juvenile portion of James's sentence, and invoked the adult portion of his sentence as follows:

COURT: I make the decision that the juvenile portion of your sentence is terminated. The adult portion of your sentence is to go into effect immediately. You will be taken by the sheriff to the county jail and then transported to the Lorain Correctional Institution reception in Grafton. And, that is for that period of time—that was a nine-year sentence, is that correct?

MR. KONET:<sup>2</sup> Maximum amount. I think it was five, your honor.

COURT: Maximum. And, until you reach the age of 18 you will be in a separate facility within the adult system. And, then, I presume at the time you turn 18 you then will be put into the general population. But, James, keeping mind you've still got to work within that system. If you pick up new charges, if you violate their rules, you can have even more time added on. So, I wish you the best.

(April 8, 2008 T.pp. 35-36).

The court's April 12, 2008 judgment entry does not specify specific prison terms for each offense. On May 9, 2008, the juvenile court filed a nunc pro tunc entry adding, "The child is to serve a total of nine (9) years in the adult prison system" to the sentence.<sup>3</sup> On April 22, 2010, James filed a motion asking the juvenile court to vacate his void sentence. On June 7, 2010, the court overruled that motion.

James appealed, and based on this Court's case law concerning void judgments, the Eighth District Court of Appeals remanded James's case to the juvenile court for resentencing.

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<sup>2</sup> Defense counsel. (April 8, 2008 T.p. 4).

<sup>3</sup> The hearing on the SYO invocation was held April 8, 2008, and that is the date to which the juvenile court refers in the nunc pro tunc, but the entry was journalized April 12, 2008.

*J.S. I*, 8th Dist. No. 95365, 2010-Ohio-6199. “Because there are a number of inconsistencies within the SYO disposition journal entry along with sentences that are not authorized by law, we remand this matter for resentencing.” *Id.* at ¶ 6, citing *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, ¶ 14; 17; 35. The court further stated, “Where a sentence contains portions that are not authorized by law, the appropriate procedure to correct the error is a remand for sentencing de novo.” *J.S. I*, at ¶ 7. The State did not appeal to this Court.

On February 28, 2011, the Cuyahoga County Juvenile Court held a new dispositional hearing, and imposed a new disposition as to each offense:

<b>Charge</b>	<b>Juvenile Commitment</b>	<b>Adult Prison Term</b>
Count 10, Rape	12-month minimum DYS commitment	3-year prison term; consecutive 3-year firearm specification
Count 12, Kidnapping	12-month minimum commitment, to merge with Count 10	3-year prison term, to merge with Count 10
Count 13, Aggravated Robbery	12-month minimum DYS commitment, consecutive to Count 10; 1-year consecutive firearm specification	3-year prison term, concurrent with Count 10
Count 14, Aggravated Robbery	12-month minimum DYS commitment, consecutive to Count 13; 1-year consecutive firearm specification	3-year prison term, concurrent with Count 10; consecutive 3-year firearm specification

The juvenile court stated in its entry that the parties agreed to a minimum DYS commitment of five years, and a suspended, aggregate prison term of nine years. (March 8, 2011 Journal Entry from February 28, 2011 Disposition).

The next day, March 1, 2011, based upon James’s October 9, 2007 Delaware County Juvenile Court adjudication for rape, the State filed a motion to invoke the SYO portion of James’s 2011 sentence. On March 8, 2011, the Cuyahoga County Juvenile Court conducted a

hearing and invoked the SYO portions of the March 8, 2011 disposition. James timely appealed, asserting that the 2007 Delaware County adjudication could not serve as the predicate offense to invoke the new, suspended adult prison term, because it occurred long before the court imposed the legally valid sentence. James argued that the 2007 Delaware County adjudication could not be used to invoke a sentence imposed four years later, in 2011. The court of appeals agreed, and reversed the invocation of his adult prison sentence. *J.S. 2*, 8th Dist. No. 96637, 2011-Ohio-6280, at ¶ 22. The State filed a timely appeal, and this Court accepted review.

**EXPLANATION OF WHY THIS CASE SHOULD BE  
DISMISSED AS IMPROVIDENTLY ALLOWED**

This case is not about a sentencing court omitting a mandatory component of a sentence such as a driver's license suspension, mandatory fine, or term of post-release control. In this case, James's entire sentence was void, because the juvenile court imposed an SYO disposition and adult prison sentence that were not authorized by law. R.C. 2929.14 and 2152.13. The Eighth District Court of Appeals recognized that, and remanded this case for disposition and sentencing de novo in *J.S. 1*, 8th Dist. No. 95365, 2010-Ohio-6199, at ¶ 6. The State did not appeal that decision to this Court, or object to the de novo disposition and sentencing.

On remand, the juvenile court imposed a new juvenile disposition and stayed adult sentence that was different from the original disposition and sentence as to each offense. (March 8, 2011 Judgment Entry). Then, the court ordered the adult portion of the new sentence invoked based upon conduct that pre-dated the sentence. On appeal, the court of appeals held that conduct that predates the valid sentence cannot serve as the basis for invoking that sentence. *J.S. 2*, 8th Dist. No. 96637, 2011-Ohio-6280, at ¶ 22.

The State repeatedly refers to the void sentence in this case as an “unrelated error.” (*Merit* at 4, 8, 9). It is difficult to imagine what could be “unrelated” about a sentence that is void ab initio. (See, *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 29, “It is axiomatic that imposing a sentence outside the statutory range, contrary to statute, is outside a court’s jurisdiction, thereby rendering the sentence void ab initio.”). Such a void sentence is a legal nullity; the parties are in the same position as though there had been no sentence. *Romito*, 10 Ohio St.2d 266, 267, 227 N.E.2d 223. The court of appeals properly applied this Court’s precedent to the facts of this case; therefore this Court need not write new law to resolve this case. Accordingly, this Court should dismiss this case as improvidently allowed.

## **ARGUMENT OPPOSING THE STATE’S PROPOSITION OF LAW**

### **APPELLEE’S PROPOSITION OF LAW**

**When a void Serious Youthful Offender disposition and sentence is vacated and a juvenile court imposes a new Serious Youthful Offender disposition and sentence, the new sentence cannot be invoked based upon conduct that pre-dated the valid sentence.**

- 1. A juvenile court must be held to statutory and constitutional requirements when it sentences a child to a prison term under Chapter 2929. of the Revised Code.**

When a juvenile court sentences a child to a prison term in the Department of Rehabilitation and Corrections “as if the child were an adult,” the juvenile court must adhere to statutory and constitutional requirements. R.C. 2152.13; Fifth and Fourteenth Amendments to the United States Constitution; Article 1, Section 10 of the Ohio Constitution. In its brief, the State cites the purpose of SYO sentencing and public policy to support its argument that the juvenile court acted properly in this case. However, public policy is best served when reviewing courts require the juvenile court to follow the law before sentencing a child to prison.

The Revised Code ensures that potential Serious Youthful Offenders have full due process rights, including the right to a speedy trial, and the right to trial by jury, and R.C. 2152.13 permits a juvenile court to impose “a sentence available for [a] violation, as if the child were an adult, under Chapter 2929. of the Revised Code.” R.C. 2152.13(D)(2)(a)(i). This language is plain and requires a juvenile court to follow the adult sentencing provisions.

The State argues “The nine year adult prison term was agreed upon by the parties, jointly proposed to the juvenile court, and was properly imposed and suspended at the time of J.S.’s original disposition in 2006.” (*Merit* at 9). The State is wrong. First, the January 10, 2007 sentencing entry stated that the parties agreed that a “minimum (9) year prison sentence” be suspended. The juvenile court has no record of the January 3, 2007 sentencing hearing, so there is no way to know what sentence the court imposed, or advised James in person. Second, the sentencing entry states that the suspended prison term be a “minimum (9) nine year” term. That is not a definite term, is not authorized by R.C. 2929, and is void. Moreover, a vague term of years, unconnected to an offense, is not a legal sentence. *Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, at paragraph one of the syllabus. The State asks this Court to ignore its long-standing jurisprudence, and hold that the sentencing package doctrine is applicable for sentencing under Chapter 2929. when the defendant being sentenced to prison is a juvenile. The State contends that, “Upon remand J.S. was given an identical disposition, minus the improper reference to an indefinite prison term.” (*Merit* at 8). That is simply not true. James’s 2007 and 2011 juvenile dispositions and prison terms were imposed as follows:

<b>Charge</b>	<b>2007 Juvenile Commitment</b>	<b>2011 Juvenile Commitment</b>
Count 10, Rape	None	12-month minimum DYS commitment
Count 12, Kidnapping	None	12-month minimum commitment, to merge with Count 10
Count 13, Aggravated Robbery	2-year minimum DYS commitment, consecutive to 3-year firearm specification [or, see Count 14]	12-month minimum DYS commitment, consecutive to Count 10; 1-year consecutive firearm specification
Count 14, Aggravated Robbery	2-year minimum DYS commitment, consecutive to 3-year firearm specification [unclear from entry whether the disposition is for Count 13 or 14]	12-month minimum DYS commitment, consecutive to Count 13; 1-year consecutive firearm specification

<b>Charge</b>	<b>2007 Prison Term</b>	<b>2011 Prison Term</b>
Count 10, Rape	3-to-10-year prison term	3-year prison term; consecutive 3-year firearm specification
Count 12, Kidnapping	3-to-10-year prison term	3-year prison term, to merge with Count 10
Count 13, Aggravated Robbery	3-to-10-year prison term	3-year prison term, concurrent with Count 10
Count 14, Aggravated Robbery	3-to-10-year prison term	3-year prison term, concurrent with Count 10; consecutive 3-year firearm specification

The juvenile commitments and prison terms imposed in 2011 were different than each of the juvenile commitments and prison terms that had been unlawfully imposed in 2007.

The State relies on *State v. Saxon* to support its argument in other respects, but ignores *Saxon's* fundamental premise: A sentence is the sanction or combination of sanctions imposed for each separate, individual offense. *Saxon* at paragraph one of the syllabus. The sentencing-package doctrine has no applicability to Ohio's sentencing laws and may not be employed by Ohio's courts. *Id.* at paragraph two of the syllabus. Further, this Court has adopted a strict-compliance interpretation of the notice requirements in criminal sentencing. *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, ¶ 29.

In *Brooks*, the defendant pleaded guilty to a fifth-degree felony offense, and the sentencing court informed him that the maximum sentence he could receive was twelve months of incarceration. *Id.* at ¶ 1. Brooks's plea agreement was for a term of two years of community control, and the court's journal entry stated that "a violation of the conditions could lead to a prison term of 6 to 12 months." *Id.* After he violated the terms of his supervision, the trial court sentenced Brooks to an eight-month prison term. *Id.* at ¶ 2. This Court held that "a trial court sentencing an offender to a community control sanction must, at the time of the sentencing, notify the offender of the specific prison term that may be imposed for a violation of the conditions of the sanction, as a prerequisite to imposing a prison term on the offender for a subsequent violation." *Id.* at ¶ 29. This Court held that the offender must be aware *before a violation* of the specific prison term that he or she will face; thus, the remedy for insufficient notification is remand for resentencing without a prison term as an option. *Id.* at ¶ 33.

In *Brooks*, this Court adopted a strict-compliance interpretation because the General Assembly "explicitly set forth the 'specific prison term' requirement and has used the word 'shall' to indicate the mandatory nature of the provision." *Id.* at ¶ 24. This Court stated that it "will not interpret such a clear statute to mean anything other than what it unmistakably states. \* \* \* To do so would be to rewrite a statute that is clear on its face." *Id.*

In this case, the juvenile court was authorized to impose "a sentence available for the violation, as if the child were an adult, under Chapter 2929. of the Revised Code." R.C. 2152.13(D)(2)(a)(i). That means the juvenile court was authorized to impose a sentence under R.C. 2929.14 for each offense for which James was adjudicated delinquent with the specification that he was a Serious Youthful Offender. R.C. 2152.13(A); *Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, at syllabus. The juvenile court adjudicated James delinquent of four offenses which would be first-degree felonies if committed by an adult.

Under R.C. 2929.14, “for a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, or ten years.” R.C. 2929.14(A)(1). The juvenile court was then required to “stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.” R.C. 2152.13(D)(2)(a)(iii).

The notice requirements for a suspended prison term under SYO sentencing are identical to those for a suspended prison term when an offender is placed on community control. The General Assembly has used the word “shall” in both instances when setting forth the specific nature of the suspended sentences. R.C. 2152.13 refers to SYO dispositions for individual acts, and sentences to be imposed under Chapter 2929. of the Revised Code for those individual acts. Neither R.C. 2152.13 nor 2929.14 allows for a sentencing-package term to be sufficient, and this Court has specifically rejected such sentences. *Saxon*, at paragraph two of the syllabus.

Contrary to the State’s argument, the court of appeals’s decision in this case will not have a chilling effect on SYO sentencing—this case is about a juvenile court that imposed a sentence that was wholly unauthorized by law, and thus, is void ab initio. *Beasley*, 14 Ohio St.3d 74, 75 471 N.E.2d 774; *Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, at ¶29. If the juvenile court had imposed a lawful sentence, or if the prosecutor had objected to the void sentence, there would have been no error, and James’s sentence could have been properly invoked. This case should only have a chilling effect on a sentencing courts’ systematic disregard for statutory requirements. It is not an undue burden for juvenile courts to adhere to the law and impose legally valid sentences, and for prosecutors to object when trial courts err.

2. ***State v. Fischer* and *State v. Harris* do not apply to this case, because James's entire SYO disposition was void ab initio, and the juvenile court imposed an entirely new disposition and sentence de novo upon remand.**

The State argues that the "voiding effect is limited to only the incorrect portion of the sentence." (*Merit* at 9). However, James's entire sentence was unauthorized by law, and thus, is void. In *J.S. I*, the court of appeals remanded the sentence for "de novo disposition" for several reasons. The juvenile court has no record of the January 3, 2007 disposition and sentencing hearing in this case, and the record of that sentencing is limited to the court's January 10, 2007 entry. In that entry, the court imposed a juvenile disposition for one of the aggravated robbery counts and corresponding firearm specification; though it is not clear which count. Then, for the adult portion of the sentence under Chapter 2929. of the Revised Code, the court imposed "a minimum term of 3 years and a maximum term of 10 years" in prison on each of the four counts for which he was adjudicated, to be served concurrently, as well as two, three-year firearm specifications, to be served consecutively. (January 10, 2007 Judgment Entry). The juvenile court's entry further states, "Parties are in agreement to a minimum (9) nine year prison sentence that be suspended and the child is to be committed to the Ohio Department of Youth Services for a total of (5) five years."

The State argues that "the juvenile court could undoubtedly use J.S.'s 2007 rape to invoke the agreed nine year adult prison term." (*Merit* at 10). Thus, the State argues that the single line from the entry "parties are in agreement to a minimum (9) nine year prison sentence" is legally sufficient to support a prison term, even though it does not set forth a definite term for a specific offense. And, it is not a prison term in connection with the charge for which James was ordered to serve a juvenile disposition. R.C. 2152.13(D)(2).

In *J.S. I*, the court of appeals remanded the case for disposition and sentencing de novo, because the sentences were void ab initio. *J.S. I*, 8th Dist. No. 95365, 2010-Ohio-6199. The

State did not appeal that decision. On remand, the juvenile court imposed an entirely different sentence for each count. In *J.S. 2*, the court of appeals confirmed that it had “remanded J.S.’s case for a de novo sentencing, finding his sentence was ‘void’ because it was contrary to law.” *J.S. 2*, 8th Dist. No. 96637, 2011-Ohio-6280, at ¶ 13. The court reasoned, “In Ohio, the effect of determining that a judgment is void is well established. ‘It is as though such proceedings had never occurred; the judgment is a mere nullity \* \* \* and the parties are in the same position as if there had been no judgment.’” *Id.*; *Romito*, 10 Ohio St.2d 266, 267, 227 N.E.2d 223.

In *State v. Fischer* and *State v. Harris*, this Court considered situations wherein sentencing courts omitted mandatory components of a sentence—post-release control and driver’s license suspensions, respectively. In *Fischer*, this Court held that “When an appellate court concludes that a sentence imposed by a trial court is in part void, only the portion that is void may be vacated or otherwise amended.” *Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, at ¶ 28. This Court extended *Fischer* to the driver’s license suspension that was omitted in *Harris*. *Harris*, Slip Opinion No. 2012-Ohio-1908, at ¶ 16. But, in this case, a component of James’s sentence was not omitted, and his sentence was not partially void; rather, the entire sentence was void ab initio, and the court of appeals remanded for sentencing de novo. *J.S. 1* at ¶ 6; *J.S. 2* at ¶ 13. At his initial disposition and sentencing, the court only imposed a juvenile disposition for one count of aggravated robbery, and corresponding firearm specification. (January 10, 2007 Judgment Entry). Yet it imposed indefinite prison terms for each count for which it adjudicated James delinquent. (January 10, 2007 Judgment Entry). After remand for sentencing de novo, the court imposed proper juvenile dispositions and corresponding adult terms for each charge. (March 8, 2011 Judgment Entry).

In *Fischer*, this Court provided a concise analysis of the “imperative” exception to the general rule that void sentences are typically those in which a court lacked subject-matter

jurisdiction over the defendant. *Fischer* at ¶ 8. “By the time we decided *Beasley*, it had developed into the principle that “[a]ny attempt by a court to disregard statutory requirements \* \* \* renders the attempted sentence a nullity or void.” *Id.* at ¶ 9. This Court has “not so severely limited the notion of void judgments to only those judgments that arise from jurisdictional cases. *See, e.g., State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 103-104. The historic, narrow view does not adequately address the constitutional infirmities of a sentence imposed without statutory authority.” *Id.* at ¶ 20. The reasoning governing this Court’s holding in *Beasley*, 14 Ohio St.3d 74, 471 N.E.2d 774, formed the basis for this Court’s decision in *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, and thus began the line of post-release control cases.

In *Fischer*, this Court held that *Saxon* was more applicable to the post-release control sentencing error than *Romito v. Maxwell*, which the prior post-release control cases had relied upon. *Fischer* at ¶ 16. The State argues that in this case, *Saxon* should similarly limit James’s resentencing. But that is impossible. As this Court stated in *Fischer*, “We recognize that our authority to sentence in criminal cases is limited by the people through the Ohio Constitution and by our legislators through the Revised Code. Judges have no inherent power to create sentences. \* \* \* No court has the authority to impose a sentence that is contrary to law.” *Id.* at ¶ 22-23. *Saxon* cannot limit the scope of James’s resentencing in this case because each aspect of his initial sentence was legally void, and he was resentenced de novo on each count.

This is not a case like *Fischer* or *Harris*, where the court omitted a mandatory component of the sentence, such as post-release control or a driver’s license suspension. This case is akin to *Colgrove*, 175 Ohio St.3d 437, 195 N.E.2d 811, and *Beasley*, because the sentence the juvenile court imposed was not authorized by law and was contrary to statute. This basic rule, that a court has no power to impose a sentence that is contrary to law, has not been

modified by *Fischer* or *Harris*. “Although the interests in finality of a sentence are important, they cannot trump the interests of justice, which require a judge to follow the letter of the law in sentencing a defendant.” *Fischer* at ¶ 23.

In its oral argument before this Court in *State v. Harris*, the State argued that there is a “difference” between a void sentence wherein a mandatory component such as a license suspension or post-release control was omitted, and a void sentence wherein the sentence itself is unauthorized by law, such as a prison term that is longer or shorter than what is permitted by statute.<sup>4</sup> The State argued that the latter would still be void ab initio, and distinguishable from *Fischer* and *Saxon*. Now, the State is arguing the opposite, and asks this Court to overrule decades of jurisprudence defining the legal effect of a sentence that a court imposes without statutory authority. This Court should decline the invitation to overrule its precedent.

**3. A sentence is the sanction imposed for each separate, individual offense; at the time of James’s 2007 Delaware County adjudication, he had not been sentenced to the SYO disposition that the juvenile court invoked in 2011.**

In 2007, the Delaware County Juvenile Court adjudicated James delinquent of one count of rape. As the Eighth District Court of Appeals reasoned in *J.S. 2*, that adjudication was proper, and he was subject to an appropriate disposition rendered in that case. *J.S. 2*, 8th Dist. No. 96637, 2011-Ohio-6280, at ¶ 16. The State could have moved for James to be bound over to the adult system, or James could have received a proper SYO disposition and sentence in that case. However, that adjudication cannot serve as the basis for invoking a SYO disposition that was not imposed until 2011. “Just because J.S.’s sentence was void does not mean he cannot be held accountable for his actions in the rape case; the act constituting rape simply cannot serve as the predicate act for pursuing imposition of the adult portion of J.S.’s sentence in this case.” *Id.*

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<sup>4</sup> *State of Ohio v. Mario Harris*, (November 15, 2011), <http://www.supremecourtfohiomedia.library.org/Media.aspx?fileId=133318> at 23:00 to 24:16, (accessed August 8, 2012).

The court of appeals provided an analogous example of when an offender is charged with escape from post-release control supervision, but the evidence affirmatively demonstrates that the sentencing court's imposition of post-release control was void: "one cannot commit the crime of escape when the criminal act is predicated on the violation of a void sentence. *Id.* at ¶ 17; *State v. Cash*, 8th Dist. No. 95158, 2011-Ohio-938; *State v. Huber*, 8th Dist. No. 94382, 2010-Ohio-5598. In this case, the court of appeals found that James's sentence was "void," and ordered disposition and resentencing de novo for several reasons: the juvenile disposition did not correspond to the adult portion, and because the adult portion was imposed in violation of R.C. 2929.14. *J.S. 1*, 8th Dist. No. 95365, 2010-Ohio-6199, at ¶ 7; *J.S. 2*, 8th Dist. No. 96637, 2011-Ohio-6280, at ¶ 13.

Each of James's juvenile dispositions and adult prison terms that the juvenile court imposed in 2011 was different from those the court imposed in 2007. The juvenile court's March 11, 2011 judgment entry of invocation sentenced James to prison terms that had not been imposed when he committed the October 2007 offense in Delaware County. The juvenile court could not invoke the new, 2011 prison terms based upon 2007 conduct. R.C. 2152.14(D). Moreover, at the time of the 2007 Delaware County adjudication, James did not have legally sufficient notice for violating the terms of his juvenile disposition. *Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837, at ¶ 29.

## CONCLUSION

This Court should dismiss this case as improvidently allowed because: 1) this case involves only the application of established law to the facts of this case, and 2) the State can avoid future problems by lodging timely objections at the initial sentencing hearing and appealing adverse decisions. In the alternative, this Court should affirm the court of appeals's decision.

Respectfully submitted,



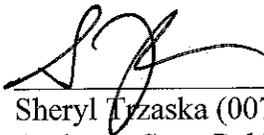
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COUNSEL FOR J.S.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MERIT BRIEF OF APPELLEE J.S.** was sent by regular U.S. mail to Kristen Sobieski, Assistant Prosecuting Attorney, Cuyahoga County Prosecutor's Office, 1200 Ontario Street, 8<sup>th</sup> Floor, Cleveland, OH 44113, this 15th day of August, 2012.



Sheryl Trzaska (0079915)  
Assistant State Public Defender

COUNSEL FOR J.S.

IN THE SUPREME COURT OF OHIO

State of Ohio,	:
	: Case No. 2012-0118
Plaintiff-Appellee,	:
	: On Appeal from the
v.	: Cuyahoga County Court of Appeals,
	: 8th Appellate District,
J.S.,	: Case No. 96637
	:
Defendant-Appellee.	:

---

**APPENDIX TO**

**MERIT BRIEF OF APPELLEE J.S.**

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[Cite as *In re J.S.*, 2010-Ohio-6199.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 95365

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**IN RE: J.S.  
(A Minor Child)**

---

**JUDGMENT:  
REVERSED AND REMANDED**

---

Appeal from the Cuyahoga County Court  
of Common Pleas, Juvenile Division  
Case No. DL-06104651

**BEFORE:** Sweeney, J., Kilbane, P.J., and Cooney, J.

**RELEASED AND JOURNALIZED:** December 16, 2010

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JAMES J. SWEENEY, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} Appellant, J.S.,<sup>1</sup> a minor, appeals the imposition of an adult prison term, asserting that it was a void sentence being unauthorized by law

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<sup>1</sup> Appellant is referred to herein by his initials in accordance with this court's established policy regarding non-disclosure of identities in juvenile cases.

and for failure to properly impose postrelease control. For the reasons that follow, we remand to the trial court for resentencing.

{¶ 3} In 2006, the juvenile court adjudicated J.S. delinquent and guilty as to two counts of aggravated robbery, one count of kidnapping, and one count of rape and firearm specifications.

{¶ 4} The State sought a serious youthful offender ("SYO") dispositional sentence pursuant to R.C. 2152.13. The trial court found J.S. to be a SYO. That designation appears to be based upon the court's reference to the delinquency adjudications for acts that would constitute aggravated robbery and for this J.S. was committed to the Department of Youth Service ("DYS") for a minimum of two years, maximum of his twenty-first birthday along with a three year consecutive term for a gun specification. The entry further provided that "[b]y agreement of parties the child shall serve a 5 year minimum commitment to the [DYS]." The State concedes that it is unclear from the journal entry which delinquent counts carry what portion of the penalties. The next component of the journal entry is designated "S.Y.O. sentencing" that provides that "Parties are in agreement to [an adult prison sentence of] a minimum nine (9) year prison sentence that be suspended and the child is to be committed to [DYS] for a total of (5) years[.]" However, the court then proceeded to order that the "child shall be sentenced as follows:"

and imposed indefinite sentences of three to ten years on each of the four counts of delinquency, i.e., two counts aggravated robbery, one count of kidnapping, and one count of rape. All terms to be served concurrently but consecutive to a three-year prison term for gun specification(s). Again, the order is unclear in that it provides that this three-year term be served "in addition to and shall be served consecutively with and prior to any other term of imprisonment ordered herein." The order notified J.S. of postrelease control and that it was part of the sentence but did not explicitly state that J.S. would be subject to a mandatory five years of postrelease control upon release from prison.<sup>2</sup> The adult sentence was stayed on condition that J.S. successfully complete the juvenile portion of the sentence.

{¶ 5} Upon his commitment to DYS, J.S. committed another act constituting a first degree felony rape. The State moved to invoke the adult portion of his SYO sentence pursuant to R.C. 2152.14. The juvenile court held a hearing and by order dated April 8, 2008, the juvenile court ordered "the adult portion of the disposition ordered on January 3, 2007" into effect.

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<sup>2</sup>The Deputy Clerk of the Juvenile Division of Common Pleas Court averred by affidavit that the recording of this dispositional hearing could not be located. Nonetheless, J.S. has not claimed that the court failed to advise him of the five year mandatory postrelease control aspect of his sentence personally in court.

A nunc pro tunc journal entry was issued on April 28, 2008 to add that “the child is to serve a total of nine (9) years in the adult prison system.”

{¶ 6} J.S. has appealed, raising various sentencing issues for our review. Because there are a number of inconsistencies within the SYO disposition journal entry along with sentences that are not authorized by law, we remand this matter for resentencing.

{¶ 7} Primarily we note that the SYO disposition was authorized by law pursuant to R.C. 2152.13(D)(2)(a)(iii); however, the parties agree that the entry is unclear as to what counts were being addressed in the juvenile portion of the sentence. Secondly, the adult portion of the sentence appears to impose an agreed sentence of nine years but also imposed indefinite sentences on each count, which are not authorized by law. See R.C. 2929.14(A)(1) (requiring the imposition of a definite sentence for felonies of the first degree). Where a sentence contains portions that are not authorized by law, the appropriate procedure to correct the error is a remand for sentencing de novo. *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, ¶ 14, 17, 35.

{¶ 8} Because a de novo disposition must be conducted, appellant’s remaining issues concerning the notification of postrelease control are moot and overruled. App.R.12(A)(1)(c).

{¶ 9} Appellant's assignment of error is sustained, and this matter is remanded for a de novo disposition.

{¶ 10} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellee its costs herein.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

---

JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, P.J., and  
COLLEEN CONWAY COONEY, J., CONCUR

## AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

### AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

# AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

## AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim or the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

# CONSTITUTION OF THE STATE OF OHIO

## ARTICLE I: BILL OF RIGHTS

**§ 10 [Trial of accused persons and their rights; depositions by state and comment on failure to testify in criminal cases.]**

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense. (As amended September 3, 1912.)

Page's Ohio Revised Code Annotated:  
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Current through Legislation passed by the 129th Ohio General Assembly  
 and filed with the Secretary of State through File 124  
 \*\*\* Annotations current through May 7, 2012 \*\*\*

TITLE 21. COURTS -- PROBATE -- JUVENILE  
 CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS

**Go to the Ohio Code Archive Directory**

*ORC Ann. 2152.11 (2012)*

§ 2152.11. Range of dispositions of child adjudicated to be delinquent

(A) A child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult is eligible for a particular type of disposition under this section if the child was not transferred under *section 2152.12 of the Revised Code*. If the complaint, indictment, or information charging the act includes one or more of the following factors, the act is considered to be enhanced, and the child is eligible for a more restrictive disposition under this section;

(1) The act charged against the child would be an offense of violence if committed by an adult.

(2) During the commission of the act charged, the child used a firearm, displayed a firearm, brandished a firearm, or indicated that the child possessed a firearm and actually possessed a firearm.

(3) The child previously was admitted to a department of youth services facility for the commission of an act that would have been aggravated murder, murder, a felony of the first or second degree if committed by an adult, or an act that would have been a felony of the third degree and an offense of violence if committed by an adult.

(B) If a child is adjudicated a delinquent child for committing an act that would be aggravated murder or murder if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was fourteen or fifteen years of age;

(2) Discretionary SYO, if the act was committed when the child was ten, eleven, twelve, or thirteen years of age;

(3) Traditional juvenile, if divisions (B)(1) and (2) of this section do not apply.

(C) If a child is adjudicated a delinquent child for committing an act that would be attempted aggravated murder or attempted murder if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was fourteen or fifteen years of age;

(2) Discretionary SYO, if the act was committed when the child was ten, eleven, twelve, or thirteen years of age;

(3) Traditional juvenile, if divisions (C)(1) and (2) of this section do not apply.

(D) If a child is adjudicated a delinquent child for committing an act that would be a felony of the first degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Mandatory SYO, if the act allegedly was committed when the child was sixteen or seventeen years of age, and the act is enhanced by the factors described in division (A)(1) and either division (A)(2) or (3) of this section;

(2) Discretionary SYO, if any of the following applies:

(a) The act was committed when the child was sixteen or seventeen years of age, and division (D)(1) of this section does not apply.

(b) The act was committed when the child was fourteen or fifteen years of age.

(c) The act was committed when the child was twelve or thirteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section.

(d) The act was committed when the child was ten or eleven years of age, and the act is enhanced by the factors described in division (A)(1) and either division (A)(2) or (3) of this section.

(3) Traditional juvenile, if divisions (D)(1) and (2) of this section do not apply.

(E) If a child is adjudicated a delinquent child for committing an act that would be a felony of the second degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Discretionary SYO, if the act was committed when the child was fourteen, fifteen, sixteen, or seventeen years of age;

(2) Discretionary SYO, if the act was committed when the child was twelve or thirteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(3) Traditional juvenile, if divisions (E)(1) and (2) of this section do not apply.

(F) If a child is adjudicated a delinquent child for committing an act that would be a felony of the third degree if committed by an adult, the child is eligible for whichever of the following is appropriate:

(1) Discretionary SYO, if the act was committed when the child was sixteen or seventeen years of age;

(2) Discretionary SYO, if the act was committed when the child was fourteen or fifteen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(3) Traditional juvenile, if divisions (F)(1) and (2) of this section do not apply.

(G) If a child is adjudicated a delinquent child for committing an act that would be a felony of the fourth or fifth degree if committed by an adult, the child is eligible for whichever of the following dispositions is appropriate:

(1) Discretionary SYO, if the act was committed when the child was sixteen or seventeen years of age, and the act is enhanced by any factor described in division (A)(1), (2), or (3) of this section;

(2) Traditional juvenile, if division (G)(1) of this section does not apply.

(H) The following table describes the dispositions that a juvenile court may impose on a delinquent child:

OFFENSE CATEGORY (Enhancement factors)	AGE		AGE		AGE	
	16 & 17	14 & 15	12 & 13	10 & 11	AGE	AGE
Murder/Aggravated Murder	N/A		MSYO, TJ	DSYO, TJ	DSYO,	
Attempted Murder/Attempted Aggravated Murder	N/A		MSYO, TJ	DSYO, TJ	DSYO,	
F1 (Enhanced by Offense of Violence Factor and Either Disposition Firearm Factor or Previous DYS Admission Factor)			MSYO, TJ	DSYO, TJ	DSYO, TJ	DSYO,
F1 (Enhanced by Any Single or Other Combination of Enhancement Factors)			DSYO, TJ	DSYO, TJ	DSYO, TJ	TJ
F1 (Not Enhanced)			DSYO, TJ	DSYO, TJ	TJ	TJ
F2 (Enhanced by Any Enhancement Factor)			DSYO, TJ	DSYO, TJ	DSYO, TJ	TJ

F2 (Not Enhanced)	DSYO,	DSYO,	TJ	TJ
	TJ	TJ		
F3 (Enhanced by Any Enhancement Factor)	DSYO,	DSYO	TJ	TJ
F3 (Not Enhanced)	TJ	TJ		
	DSYO,	TJ	TJ	TJ
	TJ			
F4 (Enhanced by Any Enhancement Factor)	DSYO,	TJ	TJ	TJ
F4 (Not Enhanced)	TJ			
F5 (Enhanced by Any Enhancement Factor)	TJ	TJ	TJ	TJ
F5 (Not Enhanced)	DSYO,	TJ	TJ	TJ
	TJ			
	TJ	TJ	TJ	TJ

(I) The table in division (H) of this section is for illustrative purposes only. If the table conflicts with any provision of divisions (A) to (G) of this section, divisions (A) to (G) of this section shall control.

(J) Key for table in division (H) of this section:

- (1) "Any enhancement factor" applies when the criteria described in division (A)(1), (2), or (3) of this section apply.
- (2) The "disposition firearm factor" applies when the criteria described in division (A)(2) of this section apply.
- (3) "DSYO" refers to discretionary serious youthful offender disposition.
- (4) "F1" refers to an act that would be a felony of the first degree if committed by an adult.
- (5) "F2" refers to an act that would be a felony of the second degree if committed by an adult.
- (6) "F3" refers to an act that would be a felony of the third degree if committed by an adult.
- (7) "F4" refers to an act that would be a felony of the fourth degree if committed by an adult.
- (8) "F5" refers to an act that would be a felony of the fifth degree if committed by an adult.
- (9) "MSYO" refers to mandatory serious youthful offender disposition.
- (10) The "offense of violence factor" applies when the criteria described in division (A)(1) of this section apply.
- (11) The "previous DYS admission factor" applies when the criteria described in division (A)(3) of this section apply.
- (12) "TJ" refers to traditional juvenile.

**HISTORY:**

148 v S 179, § 3. Eff 1-1-2002.

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Current through Legislation passed by the 129th Ohio General Assembly  
and filed with the Secretary of State through File 124  
\*\*\* Annotations current through May 7, 2012 \*\*\*

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

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ORC Ann. 2929.14 (2012)

Legislative Alert: LEXSEE 2011 Ohio SB 337 -- See sections 1 and 2.

§ 2929.14. Basic prison terms

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (E), (G), (H), or (J) 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, ten, or eleven years.

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

(3) (a) For a felony of the third degree that is a violation of *section 2903.06, 2903.08, 2907.03, 2907.04, or 2907.05 of the Revised Code* or that is a violation of *section 2911.02 or 2911.12 of the Revised Code* if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of *section 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code*, the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.

(b) For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be nine, twelve, eighteen, twenty-four, thirty, or thirty-six months.

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

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

(ii) A prison term of three years if the specification is of the type described in *section 2941.145 of the Revised Code* that charges the offender with having a firearm on or about the offender's person or under the offender's

control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

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

(b) If a court imposes a prison term on an offender under division (B)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2967.19, section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. Except as provided in division (B)(1)(g) of this section, a court shall not impose more than one prison term on an offender under division (B)(1)(a) of this section for felonies committed as part of the same act or transaction.

(c) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of *section 2923.161 of the Revised Code* or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in *section 2941.146 of the Revised Code* that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of *section 2923.161 of the Revised Code* or for the other felony offense under division (A), (B)(2), or (B)(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 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (B)(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 (B)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (B)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in *section 2941.1411 of the Revised Code* that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a prison term of two years. The prison term so imposed, subject to divisions (C) to (I) of *section 2967.19 of the Revised Code*, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(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 (B)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (B)(1)(d) of this section.

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

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

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

(f) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1412 of the Revised Code* that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in *section 2935.01 of the Revised Code* or a corrections officer, as defined in *section 2941.1412 of the Revised Code*, the court, after imposing a prison term on the offender for the felony offense under division (A), (B)(2), or (B)(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 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. If an offender is convicted of or pleads guilty to two or more felonies that include, as an essential element, causing or attempting to cause the death or physical harm to another and also is convicted of or pleads guilty to a specification of the type described under division (B)(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 (B)(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 (B)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (B)(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 are 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 (B)(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 (B)(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 (B)(2)(b) of this section does not apply, the court may impose on an offender, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

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

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

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

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

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

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

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

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

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

(c) For purposes of division (B)(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 (B)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20, section 2967.19, or section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.

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

(3) Except when an offender commits a violation of *section 2903.01 or 2907.02 of the Revised Code* and the penalty imposed for the violation is life imprisonment or commits a violation of *section 2903.02 of the Revised Code*, if the offender commits a violation of *section 2925.03 or 2925.11 of the Revised Code* and that section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, if the offender commits a felony violation of *section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161, 4729.37, or 4729.61, division (C) or (D) of section 3719.172, division (C) of section 4729.51, or division (J) of section 4729.54 of the Revised Code* that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in *section 2941.1410 of the Revised Code* charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of *section 2907.02 of the Revised Code* and, had the offender completed the violation of *section 2907.02 of the Revised Code* that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of *section 2907.02 of the Revised Code*, the court shall impose upon the offender for the felony violation a ten-year prison term that, subject to divisions (C) to (I) of *section 2967.19 of the Revised Code*, cannot be reduced pursuant to section 2929.20, section 2967.19, or any other provision of Chapter 2967. or 5120. of the Revised Code.

(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 (B)(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 (B)(4) of this section, the court also may sentence the offender to a community control sanction under *section 2929.16 or 2929.17 of the Revised Code*, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

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

(5) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of *section 2903.06 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1414 of the Revised Code* that charges that the victim of the offense is a peace officer, as defined in *section 2935.01 of the Revised Code*, or an investigator of the bureau of criminal identification and investigation, as defined in *section 2903.11 of the Revised Code*, the court shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (B)(5) of this section, the prison term, subject to divisions (C) to (I) of *section 2967.19 of the Revised Code*, shall not be reduced pursuant to *section 2929.20*, *section 2967.19*, *section 2967.193*, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(5) of this section for felonies committed as part of the same act.

(6) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of *section 2903.06 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1415 of the Revised Code* that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of *section 4511.19 of the Revised Code* or an equivalent offense, as defined in *section 2941.1415 of the Revised Code*, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (B)(6) of this section, the prison term, subject to divisions (C) to (I) of *section 2967.19 of the Revised Code*, shall not be reduced pursuant to *section 2929.20*, *section 2967.19*, *section 2967.193*, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(6) of this section for felonies committed as part of the same act.

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

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

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

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

(b) Subject to divisions (C) to (I) of *section 2967.19 of the Revised Code*, the prison term imposed under division (B)(7)(a) of this section shall not be reduced pursuant to *section 2929.20*, *section 2967.19*, *section 2967.193*, or any other provision of Chapter 2967. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(7)(a) of this section for felonies committed as part of the same act, scheme, or plan.

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

(C) (1) (a) Subject to division (C)(1)(b) of this section, if a mandatory prison term is imposed upon an offender pursuant to division (B)(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 (B)(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 (B)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (B)(2), or (B)(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 (B)(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 (B)(1)(a) or (c) of this section, consecutively to and prior to any prison term imposed for the underlying felony under division (A), (B)(2), or (B)(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 (B)(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), (B)(2), or (B)(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 (B)(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, or 2921.35 of the Revised Code* or division (A)(1) or (2) of *section 2921.34 of the Revised Code*, if an offender who is under detention at a detention facility commits a felony violation of *section 2923.131 of the Revised Code*, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of division (A)(1) or (2) of *section 2921.34 of the Revised Code*, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.

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

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

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

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

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

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

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

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

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

(3) If a court imposes a prison term on or after the effective date of this amendment for a felony, it shall include in the sentence a statement notifying the offender that the offender may be eligible to earn days of credit under the circumstances specified in *section 2967.193 of the Revised Code*. The statement also shall notify the offender that days of credit are not automatically awarded under that section, but that they must be earned in the manner specified in that section. If a court fails to include the statement in the sentence, the failure does not affect the eligibility of the offender under *section 2967.193 of the Revised Code* to earn any days of credit as a deduction from the offender's stated prison term or otherwise render any part of that section or any action taken under that section void or voidable. The failure of a court to include in a sentence the statement described in this division does not constitute grounds for setting aside the offender's conviction or sentence or for granting postconviction relief to the offender.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In lieu of imposing an additional prison term under division (H)(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 (H)(2)(a) of this section. A sanction imposed under this division shall commence on the date specified by the court, provided that the sanction shall not commence until after the offender has served the prison term imposed for the felony violation of section 2907.22, 2907.24, 2907.241, or 2907.25 of the *Revised Code* and any residential sanction imposed for the violation under section 2929.16 of the *Revised Code*. A sanction imposed under this division shall be considered to be a community control sanction for purposes of section 2929.15 of the *Revised Code*, and all provisions of the *Revised Code* that pertain to community control sanctions shall apply to a sanction imposed under this division, except to the extent that they would by their nature be clearly inapplicable. The offender shall pay all costs associated with a sanction imposed under this division, including the cost of the use of the monitoring device.

(I) (1) At the time of sentencing, the court may recommend the offender for placement in a program of shock incarceration under section 5120.031 of the *Revised Code* or for placement in an intensive program prison under section 5120.032 of the *Revised Code*, disapprove placement of the offender in a program of shock incarceration or an intensive program prison of that nature, or make no recommendation on placement of the offender. In no case shall the department of rehabilitation and correction place the offender in a program or prison of that nature unless the department determines as specified in section 5120.031 or 5120.032 of the *Revised Code*, whichever is applicable, that the offender is eligible for the placement.

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

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

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

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

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

**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; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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Current through Legislation passed by the 129th Ohio General Assembly  
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\*\*\* Annotations current through May 7, 2012 \*\*\*

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

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*ORC Ann. 2929.141 (2012)*

§ 2929.141. New felony committed by person on post-release control

(A) Upon the conviction of or plea of guilty to a felony by a person on post-release control at the time of the commission of the felony, the court may terminate the term of post-release control, and the court may do either of the following regardless of whether the sentencing court or another court of this state imposed the original prison term for which the person is on post-release control:

(1) In addition to any prison term for the new felony, impose a prison term for the post-release control violation. The maximum prison term for the violation shall be the greater of twelve months or the period of post-release control for the earlier felony minus any time the person has spent under post-release control for the earlier felony. In all cases, any prison term imposed for the violation shall be reduced by any prison term that is administratively imposed by the parole board as a post-release control sanction. A prison term imposed for the violation shall be served consecutively to any prison term imposed for the new felony. The imposition of a prison term for the post-release control violation shall terminate the period of post-release control for the earlier felony.

(2) Impose a sanction under *sections 2929.15 to 2929.18 of the Revised Code* for the violation that shall be served concurrently or consecutively, as specified by the court, with any community control sanctions for the new felony.

**HISTORY:**

149 v H 327. Eff 7-8-2002; 152 v H 130, § 1, eff. 4-7-09.

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 \*\*\* Annotations current through May 7, 2012 \*\*\*

TITLE 29. CRIMES -- PROCEDURE  
 CHAPTER 2941. INDICTMENT  
 FORM AND SUFFICIENCY

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*ORC Ann. 2941.145 (2012)*

§ 2941.145. Specification that offender displayed, brandished, indicated possession of or used firearm

(A) Imposition of a three-year mandatory prison term upon an offender under division (B)(1)(a) of *section 2929.14 of the Revised Code* is precluded unless the indictment, count in the indictment, or information charging the offense specifies that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense. The specification shall be stated at the end of the body of the indictment, count, or information, and shall be stated in substantially the following form:

"SPECIFICATION (or, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or the prosecuting attorney's name when appropriate) further find and specify that (set forth that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense)."

(B) Imposition of a three-year mandatory prison term upon an offender under division (B)(1)(a) of *section 2929.14 of the Revised Code* is precluded if a court imposes a one-year or six-year mandatory prison term on the offender under that division relative to the same felony.

(C) The specification described in division (A) of this section may be used in a delinquent child proceeding in the manner and for the purpose described in *section 2152.17 of the Revised Code*.

(D) As used in this section, "firearm" has the same meaning as in *section 2923.11 of the Revised Code*.

**HISTORY:**

146 v S 2 (Eff 7-1-96); 148 v S 107 (Eff 3-23-2000); 148 v S 179, § 3. Eff 1-1-2002; 2011 HB 86, § 1, eff. Sept. 30, 2011.