ORIGINAL

No . 2012-0216

IN THE SUPREME COURT OF OHIO

APPEAL FROM THE SUMMIT COUNTY COURT OF APPEALS
NINTH APPELLATE DISTRICT
SUMMIT COUNTY, OHIO
Appellate Case No. 24894

STATE OF OHIO,
Appellee/Cross-Appellant

v.

DAVID WILLAN,
Appellant/Cross-Appellee

Cross-Appellant State of Ohio Reply Brief

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FILED
NOV 28 2012
CLERK OF COURT
SUPREME COURT OF OHIO

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I. Statement of Facts

While Appellee's recitation of the factual background of this case bears little resemblance to the actual evidence that was adduced at trial, it is not necessary to repeatedly point out where the represented "facts" are what the Cross-Appellee wished the evidence would have been rather than what the evidence actually was. The question before this Court is simply whether, pursuant to the provisions of *RC 2929.14(D)(3)(a)*, a conviction for a first degree predicate crime under the State's Corrupt Activity statute mandates the imposition of a mandatory sentence for the concurrent conviction for a Corrupt Activity.

The determination of this specific issue does not require any consideration of the basic facts that led to the Cross-Appellee's convictions, much less a review and consideration of the extent to which those facts are misrepresented. This Court did not accept the review of whether the Court of Appeals properly decided the factual and legal questions that led to the jury to convict the Cross-Appellee on multiple charges. In the same fashion, this Court did not accept the issue of whether the determination by the Appellate Court was correct in affirming the Cross-Appellee's convictions on the remaining charges, which include several first degree felonies.

Whether the Cross-Appellee agrees with the decision by the Appellate Court to affirm the remaining convictions and / or agrees with the determination by the General Assembly that the seriousness of crimes he was convicted of dictate that they are properly classified as first degree felonies is irrelevant to the issue that this Court has accepted for review. Consequently, the State will not address the multiple instances of revisionist history that appear in the Cross-Appellee's factual recitation unless requested to by this Court.

II. *Argument on Proposition of Law*

Proposition of Law:

> ***R.C. 2929.14(D)(3)(a) Establishes a Mandatory 10-Year Sentence Where a Defendant is Found Guilty of a Corrupt Activity Where The Most Serious Offense in the Pattern of Corrupt Activity is a Felony of the First Degree***

1. RC 2929.14(D)(3)(a) Is Not Ambiguous and Interpretation Is Not Required

In responding to Cross-Appellee's argument, the State must first note that the entire premise used by the Ninth Appellate District to justify an "interpretation" of the relevant language of *R.C. 2929.14(D)(3)(a)* was the recognition that *(D)(3)(a)* did not include the statutory reference number for the Corrupt Activity offense. *Appellate Decision at 45.* Indeed, the Ninth District decided it could disregard a clear decision on the exact same issue by the Eighth Appellate District in *State v. Schneider* (Cuyahoga cty 2010), 2010 Ohio App. LEXIS 1721, 2010-Ohio-2089, based upon the observation that the *Schneider* Court did not address the legal significance regarding the absence of any reference of *RC 2923.32* in the statute. *Appellate Decision at Id.*

The fundamental problem with the rationale used by the Ninth Appellate District to disregard the decision by the Eighth Appellate District which specifically found the language of *RC 2929.14(D)(3)(a)* was *not ambiguous* in establishing a mandatory sentence of 10 years for a conviction on a Corrupt Activity charge when the predicate crime is a first degree felony, is that it is wrong. The *Schneider* Court was *specifically* faced with the *exact same* contention that was the *exact rationale* the Ninth District then used to decide it was necessary to "interpret" the sentencing statute. The *Schneider* Court specifically recognized that:

> ***[Schneider] states, "*R.C. 2923.32* is not expressly cited, and the only reference thereto is immediately preceded by a description of drug offenses subject to a mandatory term of incarceration."

State v. Schneider at Id.

The *Schneider* Court then specifically addressed that claim. The Eight Appellate District stated without qualification:

> ***we disagree with Schneider's claim.

Then, in explaining its rationale, the Eighth Appellate District specifically examined and considered the fact the statute used the terminology "pattern of corrupt activity" and the fact the statute contained a description of drug offenses. *Id.* It was not necessary to embark upon an odyssey of "interpretation" because the Eighth Appellate District found the language of the sentencing statute was not ambiguous.

The determination that the sentencing statute is free from ambiguity made by the Eighth Appellate District is consistent with previous considerations of that statute. *Cf State v. Rowles* (Summit cty 2008), 2008 Ohio App. LEXIS 5534, 2008-Ohio-6631. [There is no ambiguity in the Ohio sentencing statutes post-Foster. The rule of lenity applies only when there is a conflict between criminal statutes or when a statute is ambiguous.]; *Cf State v. Swann* (2007), 171 Ohio App.3d 304, 2007-Ohio-2010. [There is nothing ambiguous in *RC ss 2929.14.* The rule of lenity is a canon of statutory construction which, by its definition, applies only where a given statute is vague or ambiguous.] Nothing changed in the sentencing statute between the time the Eighth Appellate District Court stated, without any qualification, it *did not find* R.C. *2929.14(D)(3)(a)* to be ambiguous and when the Ninth Appellate District suddenly found an ambiguity where previously there was none.

A court may interpret a statute only where the statute is ambiguous. *State ex. Rel. Celebrezze v. Allen* (1987), 32 Ohio St.3d 24, 27. The Constitution requires the Ohio General Assembly to write statutes in such a way that people of common intelligence may understand what conduct is required. *State v. Consilio* (2007), 114 Ohio St.3d 295, 2007-Ohio-4163. The necessity to require the General

Assembly to enunciate its intent in plain terms is directed at allowing the casual reader of the law to immediately know what the law requires or prohibits. *Cf, Id.* Indeed, courts do not have authority to ignore the plain language of a statute under the guise of statutory interpretation or liberal construction of criminal statutes; in such situations, courts must give effect to words utilized. *Morgan v. Ohio Adult Parole Authority* (1994), 68 Ohio St.3d 344, 1994-Ohio-380. While the Eighth Appellate District did exactly what this Court stated a court should do and simply looked to the wording of the statute, the Ninth Appellate District used "interpretation" to find the statute was ambiguous.

The linchpin of the Cross-Appellee's contention of ambiguity tracks that of the Ninth Appellate District, that the relevant language of *RC 2929.14(D)(3)(a)* is ambiguous since it does not specifically contain the statutory reference number for the Corrupt Activity statute[1]. *See Cross-Appellee's Brief, Section C.* Cross-Appellee further contends that the statutory provision is ambiguous because it is not clear whether the 10 year mandatory sentence was to apply to a conviction for Corrupt Activity or to the underlying predicate crime. *Id. at p.15.* The Cross-Appellee is wrong in both instances.

2. Case Law Does Not Support a Determination That RC 2929.14(D)(3)(a) Does Not Establish a Mandatory Sentence for a Corrupt Activity Conviction with a First Degree Predicate Crime

The Cross-Appellee goes to great lengths to cite a number of cases as "authority" for the apparent proposition that other courts have rejected the fact that *RC 2929.14(D)(3)(a)* establishes a mandatory sentence of 10-years for a Corrupt Activity conviction where one of the predicate offenses is a first degree felony. Contrary to Cross-Appellee's position, the cited decisions do not appear to have even considered the application of *RC 2929.14(D)(3)(a).*

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[1] It is necessary to note that the Cross-Appellee still fails to provide any legal authority to indicate that the General Assembly is required to identify statutory provisions by use of a reference number rather than ordinary language.

Cross-Appellee inexplicably relies upon *State v. Williams* (Greene cty 2012), 2012 Ohio App. LEXIS 1087, 2012-Ohio-1240. *Williams* was convicted of Engaging in a Pattern of Corrupt Activity, a first degree felony, and several first degree felonies. *Id.* *Williams* was sentenced to a non-mandatory term of incarceration on the Corrupt Activity conviction and he appealed the sentence. The *Williams* Court considered the sentence established by the trial court for the Corrupt Activity conviction under the provisions of *RC 2929.13(F)(10)*[2]. The *Williams* Court went on to specifically find:

> *RC 2929.13(F)(10)* states that the trial court "shall impose a prison term" for "corrupt activity in violation of section 2923.32***when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree."

While the Cross-Appellee points to this case for some reason, the *Williams* Court went on to find the four year non-mandatory sentence was incorrect and remanded the matter for resentencing. Contrary to Cross-Appellee's apparent reliance upon this case, it would appear to support the State's position that the General Assembly intended a conviction on a charge of Corrupt Activity to carry a mandatory period of incarceration when the most serious predicate crime is a felony of the first degree.

Cross-Appellee next relies upon *State v. Orosz* (Wood cty 2009), 2009 Ohio App. LEXIS 4164, 2009-Ohio-4922. *Orosz* was convicted on a charge of Corrupt Activity, a first degree felony. *Orosz* was then sentenced to a mandatory term of 10 years. Cross-Appellee points to the fact the appellate court considered the fact that *RC 2929.14(A)* shows a range of years for a first degree felony sentence. *Cross-Appellee's Brief at 17.* However, the Cross-Appellee overlooks that the provisions of *RC 2929.14(A)* do not, in and of themselves, establish that term of incarceration is

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[2] In this case the State raised the existence of *RC 2929.13(F)(10)* as an indication that the General Assembly intended to establish a mandatory sentence for a conviction on a charge of Corrupt Activity. The Ninth Appellate District rejected that position.

then mandatory. While the *Orosz* appellate court did approve of the mandatory 10 year sentence for the conviction on the Corrupt Activity charge, there is no indication in the decision that the court did or did not consider any other sentencing provision to determine that the mandatory nature of the 10-year sentence was proper.

Cross-Appellee next relies upon *State v. Foreman* (Hancock cty 2008), 2008 Ohio App. LEXIS 3711, 2008-Ohio-4408. While this case did involve the imposition of an 8-year sentence for a charge of Corrupt Activity despite the existence of a first degree predicate crime, there was no discussion concerning the propriety of what was an improper sentence. Indeed, the sentence of incarceration that was established in the case was not even the subject of the appeal.

In this same vein, Cross-Appellee points to the case of *State v. Skaggs* (Wood cty 2004), 2004 Ohio App. LEXIS 6024, 2004-Ohio-6653. Again, this case involved a sentence for a charge of Corrupt Activity with a first degree predicate crime. Again, the sentence did not conform to the provisions of *RC 2929.14(D)(3)(a).* Again, the sentence was not the subject of the appeal and there was no discussion concerning the propriety of what was an improper sentence. Thus, other than to show that other courts and/or attorneys are not aware of the impact of *RC 2929.14(D)(3)(a),* and why it is necessary for this Court to step in and clarify the mandatory nature of the sentencing statute, these cases have no value to a determination of the issue before this Court.

3. The State's Position That RC 2929.14(D)(3)(a) Establishes a Mandatory Sentence for a Corrupt Activity Conviction with a First Degree Predicate Crime Has Been Consistent in This Case

In a rush to contend that the State's position on the mandatory nature of the provisions of *RC 2929.14(D)(3)(a)* has somehow shifted in the instant case, Cross-Appellee points to two companion cases where the Defendants entered into plea agreements with the State. Indeed, according to the analysis by the Cross-Appellee the State :

> ***has entered into multiple plea agreements with codefendants in this case that flatly contradict the State's position with this Court.

Cross-Appellee's Brief at p.18. The primary problem with this unequivocal statement, like many other statements, claims, and analysis contained in Cross-Appellee's Brief, is that it is wrong.

First, Cross-Appellee points to the conviction of Daniel Mohler who is claimed to have pled guilty to violations of *RC 2923.32(A)(1)* with predicate acts being felonies of the first degree. *Id.* Cross-Appellee is correct that Mr. Mohler pled guilty to a charge of Corrupt Activity that was a felony of the first degree and charges of Securities Fraud, in violation of *RC 1707.44(G)*, and acting as an Unlicensed Dealer, in violation of *RC 1707.44(A)(1)*, both first degree felonies. *Appendix 6.* However, Cross-Appellee apparently did not bother to then look up the relevant crimes that constitute the predicate crimes for a Corrupt Activity.

RC 2923.31(I) defines the crimes that are predicate crimes for a Corrupt Activity offense. While violations of *RC 1707.44* do appear as predicate crimes, only violations of sections (B), (C)(4), (D), (E), or (F) are predicate crimes. Subsection (G), Securities Fraud, one of the sub-sections Defendant Mohler pled guilty to, while a first degree felony, is not a predicate crime for a Corrupt Activity conviction. In addition, while Defendant Mohler also pled guilty to a violation of subsection (A)(1), acting as an Unlicensed Securities Dealer, also a first degree felony, subsection (A)(1) does not appear as a predicate crime. While the sentencing entry may or may not be artfully written, Defendant Mohler did not plead guilty to a first degree predicate crime.

In relation to the case concerning Defendant Conner, he pled guilty to a charge of Corrupt Activity that was a felony of the first degree, and charges of Aggravated Theft, a first degree felony, several counts of Grand Theft, fourth degree felonies, several counts of Aggravated Theft, third degree felonies, and multiple other felonies, none of which were first degree felonies. *Appendix 8.* Aggravated theft, in violation of *RC 2913.02(A)(3)*, is found within the crimes established as predicate crimes for a Corrupt Activity conviction. However, since Defendant Conner pled guilty to a charge that would be a first degree predicate crime, the Entry went on to recognize that, pursuant

to the plea agreement, the Assistant Prosecutor deleted that from consideration as an incident of Corrupt Activity. *Appendix 8, paragraph 2.*

A review of the actual contents of the sentencing entries, in combination with the provision in *RC 2923.31* that identifies what is a predicate crime in the two companion cases above, is not a commentary on whether the accompanying sentencing entries artfully convey, or even properly, accomplish what they sought to do. The review conducted above merely demonstrates the State's position that, contrary to the Cross-Appellee's vacuous claim, the provisions of *RC 2929.14(D)(3)(a)* establish a mandatory sentencing requirement that has been consistently advocated and applied by the State in this case.

In an effort to justify the subsequent invalidation of the mandatory sentencing structure created by the provisions of *RC 2929.14(D)(3)(a),* the Cross-Appellee points out the ill-conceived review of the human trafficking specification contained in *RC 2941.1422* performed by the Court of Appeals in this case. The Appellate Court stated that the sentence for a conviction of Engaging in a Pattern of Corrupt Activity with a human trafficking specification:

> ***is a term of "not less than five years and not greater than ten years[,] which is less severe than the mandatory ten-year term imposed by former *RC 2929.14(D)(3)(a).*

The Appellate Court then concluded in pertinent part:

> Consequently, given that the legislature intended to increase the penalties for Corrupt Activity under *RC 2923.32* that were predicated on human trafficking, which could include the first-degree felony offense of kidnapping, it would be unreasonable to conclude that the legislature understood that such offenses under *RC 2923.32* were already subject to a *more severe* penalty under former *RC 2929.14(D)(3)(a)* and current *RC 2929.14(B)(3)(a).*

The analysis by the Ninth District Court has several key, fatal flaws. First, the comments by the Appellate Court evince a basic misunderstanding of the role of a specification in a prosecution.

While a specification is meant to provide an enhanced penalty for a crime, it is a penalty that is imposed *in addition to* the sentence for the *underlying crime*. *See State v. Middcap* (Summit cty 2006), 2006 Ohio App. LEXIS 2854. (emphasis added) The Appellate Court discussion appears to proceed on the misunderstanding that a specification is a "stand-alone" crime. However, a specification is a set of circumstances contingent on a conviction for the "underlying" felony. *Cf State v. Ford* (2011), 128 Ohio St.3d 398, 2011-Ohio-765.

The Appellate Court, as well as the Cross-Appellee, appear to argue that a sentencing court would be required to sentence an offender found guilty of a human trafficking specification to the mandatory sentence established in *RC 2929.14(B)(7) instead of,* rather than *in addition to,* the sentence that would normally be imposed for the underlying felony. Indeed, relying on the Appellate Court in this case, the Cross-Appellee flatly states that the application of the human trafficking specification in conjunction with a charge of Corrupt Activity would not increase the penalty for many crimes. *Cross-Appellee's Brief at 26.* However, the Cross-Appellee and the Court of Appeals are wrong. Both proceed upon the assumption that there can only be one enhancement for a sentence. However, there is no legal authority that creates a limitation that would produce such a result.

For instance, where an offender is guilty of a Corrupt Activity where the predicate crime is a first degree felony, pursuant to *RC 2929.14(D)(3)(a),* the sentence would be a mandatory 10 years. Should the offender also be found guilty of a human trafficking specification for the charge of Corrupt Activity, the sentence would be enhanced by an additional term of not less than 5 years. Again, there is no prohibition against more than one enhancement for a series of crimes. The intent stated by the General Assembly, to increase the penalty for a conviction for a Corrupt Activity involving human trafficking, is fulfilled.

Finally, it should be pointed out that the Ninth District analysis of the human trafficking specification myopically overlooks that it only requires the offender to have been convicted of a

felony violation of the identified statutes, including the Corrupt Activity statute. Unless an offender is charged with a predicate offense that is either a first, second, or third degree felony, a conviction for a Corrupt Activity is only a second degree felony, and not subject to a mandatory sentence under *RC 2929.14(D)(3)(a)*. Indeed, even where the Corrupt Activity offense is a first degree felony, the underlying predicate offense could still be a second or third degree felony. Thus, again, the mandatory sentencing under *RC 2929.14(D)(3)(a)* would not come into play. In either of these situations, the enhancement represented by the human trafficking specification would be the only mandatory period of incarceration involved.

In the end, these factors simply point out that reliance upon the fact the human trafficking specification provides prosecutors with an additional tool that can be used to properly tailor a result that adequately addresses the specific criminal activities of a particular offender, does not make another tool such as the mandatory sentencing provision established in the clear wording of *RC 2929.14(D)(3)(a)* ambiguous.

4. The Terminology "Corrupt Activity" is Interchangeable with The Term "Engaging in a Pattern of Corrupt Activity" or the Statutory Reference Number and, Standing Alone, Each is Sufficient to Identify the Activities Prohibited by the General Assembly

Cross-Appellee contends that the mere use of the term "Corrupt Activity" cannot be viewed as interchangeable with the statutory reference number or the term "Engaging in a Pattern of Corrupt Activity." *Id. at p. 13.* While rambling through the Court of Appeals decision in this case and referencing inapplicable legal decisions as apparent legal authority for that position, Cross-Appellee myopically fails to do something as simple as looking at the language of the Corrupt Activity statute itself in conjunction with the language of *RC 2929.14(D)(3)(a)*. A review of the specific language of those sections demonstrates Cross-Appellee is again wrong.

The relevant language of *RC 2929.14(D)(3)(a)* states:

> ***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***

Cross-Appellee points out that the term "Corrupt Activity" appears over 200 times in the Ohio Revised Code. *Id. at 14.* However, Cross-Appellee fails to recognize that the definition of what is a Corrupt Activity only appears in one place, *RC 2923.31(I)*, which states in pertinent part:

> "Corrupt Activity" means *engaging in****

(emphasis added).

As noted above, *RC 2929.14(D)(3)(a)* references that the most serious offense in the "pattern of corrupt activity" must be a felony of the first degree. In a fashion similar to the fact that the meaning of "Corrupt Activity" can only be found in *RC 2923.31*, the meaning of a "Pattern of Corrupt Activity" as used in *RC 2929.14(D)(3)(a)* can only be found in the provisions of *RC 2923.31(E),* which explains, in pertinent part, that a "Pattern of Corrupt Activity" means:

> ***two or more incidents of corrupt activity,***

The absence of a statutory reference number, while using the term "Corrupt Activity" or "Pattern of Corrupt Activity", does not create any ambiguity as to the legislative intent to identify the crime that only exists under the Corrupt Activity statute. Any contrary contention is illogical and untenable.

Cross-Appellee argues that performing a "linguistic and grammatical" analysis discloses the provisions of *RC 2929.14(D)(3)(a)* are ambiguous as to the intent to impose a 10-year mandatory minimum sentence for a conviction under the State's Corrupt Activity statute. However, the "analysis" argued by the Cross-Appellee simply refuses to recognize or accept the plain language of the sentencing statute and fails to consider how the State's Corrupt Activity statute is designed.

The Corrupt Activity statute was designed as an enhancement to the penalties for certain criminal activity. *RC 2923.32* was enacted to criminalize the "pattern of corrupt activity," and not

the underlying predicate acts. Its application depends on the existence of a "pattern of criminal activity" that violates an independent criminal statute. *State v. Dudas* (Lake cty 2009), 2009 Ohio App. LEXIS 825, 2009-Ohio-1001 *citing US v. Neapolitan* (7th Cir. 1986), 791 F.2d 489,495; *See also State v. Dodson* (Butler cty 2011), 2011 Ohio App. LEXIS 5104, 2011-Ohio-6222. The purpose of RICO as stated in its legislative history is to eradicate organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime. *Russello v. US* (1983), 464 US 16 *citing US v. Turkette* (1981), 452 US 576, 588-89.

The understanding that the very purpose of the Corrupt Activity statute is to provide an *enhanced sanction for engaging in a pattern of criminal activity* that violates an independent criminal statute, makes the language contained in *RC 2929.14(D)(3)(a)* more focused. The Corrupt Activity statute does not involve any form of misdemeanor. When an individual is found guilty of a Corrupt Activity the crime is a felony. However, the felony is either a first or second degree felony. A conviction is a second degree felony unless at least one of the incidents of corrupt activity is a felony of the first, second, or third degree, at which point the conviction for a Corrupt Activity becomes a first degree felony. *See RC 2923.32(B)(1).* The fact that a Corrupt Activity felony can be a first degree felony while the underlying predicate crime in the pattern of corrupt activity is either a first, second or third degree felony is important to understanding the subsequent sentencing language in *RC 2929.14.*

Again, the relevant language of *RC 2929.14(D)(3)(a)* states:

> ***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***the court shall impose upon the offender for the felony violation a ten-year prison term that, ***, cannot be reduced***

This language addresses the fact that a Corrupt Activity felony does not necessarily involve a first degree predicate crime. This section identifies that, when the sentencing court is aware that the offender has been found guilty of a corrupt activity, the court must then identify whether the most serious offense in the pattern is a first degree felony, since the conviction could involve predicate crimes of the second or third degree. Subsequent to determining that the underlying predicate crime is a first degree felony, the sentencing court is to then impose a 10 year mandatory sentence for that felony.

There is no real question as to what felony is being identified by *RC 2929.14(D)(3)(a)*. The only felony being discussed is in the same breath in which the statute identifies the offender as guilty of a Corrupt Activity. The specification of the first degree predicate is necessary to identify that the only conviction for a Corrupt Activity subject to the subsequent mandatory sentencing provision is the most serious possible, *i.e. a first degree corrupt activity conviction where the predicate crime is also a first degree crime.* Again, the Legislative intent behind the Corrupt Activity statute was to criminalize the "pattern" of criminal offenses, not the underlying predicate act. *State v. Dodson, supra.* Where one of the predicate crimes is the most serious possible, a first degree felony, then the General Assembly plainly stated the penalty for the Corrupt Activity felony is to be the most severe additional penalty possible in this instance, *i.e.* a mandatory period of incarceration.

5. There is No Ambiguity in Which "Felony" is to Receive a Mandatory Sentence

Cross-Appellee blindly repeats a mantra that it is not clear whether the term "felony" that immediately precedes the specification of a 10-year sentence refers to the Corrupt Activity crime or the predicate crime. Thus, Cross-Appellee mistakenly reasons, the statutory provision is ambiguous. The contention is ill-conceived, and borders on nonsensical, in that it fails to consider the potential end-result of that questionable contention and case-law that mandates that such results should be avoided.

In this instance, even after the Court of Appeals mistakenly invalidated multiple verdicts of guilty, the end result was still three first degree felonies that provided the predicate crimes for the first degree Corrupt Activity conviction. If Cross-Appellee's contention that the mandatory sentence could reasonably be read as applying to the predicate crime instead of the conviction for Corrupt Activity, the sentence in this case, even after the appeal, could involve a mandatory term of 10 years for each of those felonies resulting in a 30 year *mandatory* sentence on those charges alone. While the State could not argue that such a result would not have a clear deterrent effect to anyone considering making False Representations in the Registration of Securities, the State would be hard pressed to argue that such a result could not be classified as draconian, unreasonable, or, at best, absurd.

A statute must be construed to avoid an unreasonable or absurd result. *State ex rel. Asti v. Ohio Dept. of Youth Services* (2005), 107 Ohio St.3d 262, 2005-Ohio-6432. The fact that the terminology pointed to by the Cross-Appellee cannot reasonably be viewed as somehow requiring a mandatory 10 year sentence for each underlying first degree predicate crime, circles back to the inescapable conclusion that logically, and reasonably, the language can only be meant to apply to a conviction for a Corrupt Activity. Thus, the language is not ambiguous.

6. RC 2929.14(D)(3)(a) Does Not Require Judicial Fact Finding

While not raising the issue in the lower courts, Cross-Appellee now contends that the provisions of *RC 2929.14(D)(3)(a)* are unconstitutional because the statute requires judicial factfinding before a penalty enhancement is imposed. *Cross-Appellee's Brief at 36.* The specific terminology of which the Cross-Appellee now complains states:

> ***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***

(emphasis added).

Initially, it should be noted that constitutional arguments that are not raised at trial are generally deemed waived. *State v. Awan* (1986), 22 Ohio St.3d 120, *holding limited by In Re M.D.* . (1988), 38 Ohio St.3d 149. (constitutional arguments raised at trial are generally deemed waived)[3] Nevertheless, even assuming the Cross-Appellee had properly preserved this claim of error and assuming this Court had accepted this issue for review, the Cross-Appellee's contention lacks merit. Even the canon in favor of strict construction of criminal statutes is not an obstinate rule which overrides common sense and evident statutory purpose. *State v. New* (2012), 197 Ohio App.3d 718, 2012-Ohio-468, *citing State v. Sway* (1984), 15 Ohio St.3d 112, 116.

While the language in this section does use the word "finds", it would require the suspension of common sense to accept the position that this requires a trial court to embark upon a voyage of judicial fact-finding. As used in the statute itself, it is starkly clear that all the statute requires the trial court to do is look at the findings by the jury and identify whether a defendant was also convicted of a first degree predicate crime.[4] The fundamental application of common sense would seem to clarify that a trial court is not precluded from reading the jury verdict or reviewing a plea agreement and "finding" whether one of the incidents is in fact a first degree felony. The "finding" by the trial court is not one involving a "fact" that would fall within the province of the jury in the first instance. The crime is or is not a first degree felony based upon the jury verdict/finding.

The jury found the Cross-Appellee guilty based upon the evidence adduced at trial. Several of the crimes that he was convicted of were first degree felonies that are predicate crimes under the

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[3] The bar to raising a constitutional claim that was not raised in the courts below would also apply to the Cross-Appellee's newly announced contention that the State's "interpretation" of *RC 2929.14(D)(3)(a)* somehow violates the Cross-Appellee's constitutional due process rights. *Cross-Appellee's Brief at 34.* The State is *not* interpreting the language of the sentencing statute but simply relying upon what the plain words of the statute state. Interpretation is not required.

[4] In the situation where a defendant is entering a plea, again, the court is only looking to see if one of the predicate crimes is identified as a first degree felony or not, which, in a plea setting, a defendant must agree to in order to reach the plea stage in the first place.

Corrupt Activity statute. The sentencing court was only required to "find" that the Cross-Appellee was indeed convicted of the charge and that it was a first degree predicate crime. No other "facts" were found or were necessary under *RC 2929.14(D)(3)(a)*. Nor does the Cross-Appellee point this Court to any "fact" the sentencing judge was required to "find" that properly fell within the province of the jury. Cross-Appellee's vacant contention that the sentencing statute is unconstitutional is meritless.

III. Conclusion

For the reasons stated herein, Cross-Appellant State of Ohio respectfully urges this Court reverse the decision by the Ninth Appellate District Court of Appeals and confirm that the provisions of *RC 2929.14(D)(3)(a)* establish a mandatory term of incarceration for a Corrupt Activity conviction where the most serious offense in the Pattern of Corrupt Activity is a first degree felony.

Respectfully Submitted,

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Certificate of Service

This is to certify that the foregoing **Cross-Appellant State of Ohio Reply Brief** was served upon the following by **US Mail**, this 28th day of November, 2012.

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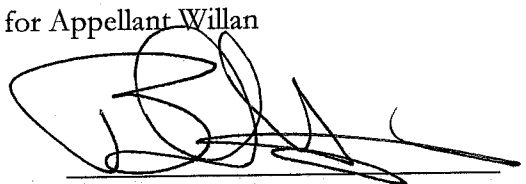

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2010 Ohio Revised Code
Title [29] XXIX CRIMES - PROCEDURE
Chapter 2929: PENALTIES AND SENTENCING
2929.14 Definite prison terms.

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2929.14 Definite prison terms.

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

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

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

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

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

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

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

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

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

(C) Except as provided in division (D)(7), (D)(8), (G), or (L) of this section, in section 2919.25 of the Revised Code, or in Chapter 2925. of the Revised Code, the court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of the offense, upon offenders who pose the greatest

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

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

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

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

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

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

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

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

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prison term under division (D)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (D)(1)(d) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) If a prison term is imposed for a violation of division (B) of section 2911.01 of the Revised Code, a violation of division (A) of section 2913.02 of the Revised Code in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(J)(1) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.143 of the Revised Code that charges the offender with having committed the offense in a

school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years consecutively to and prior to the prison term imposed for the underlying offense.

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

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

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

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

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

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

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

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison and the department does not subsequently place the

offender in the recommended program or prison, the department shall send a notice to the court indicating why the offender was not placed in the recommended program or prison.

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

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

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

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2929.13 Sanction imposed by degree of felony.

(A) Except as provided in division (E), (F), or (G) of this section and unless a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, a court that imposes a sentence upon an offender for a felony may impose any sanction or combination of sanctions on the offender that are provided in sections 2929.14 to 2929.18 of the Revised Code.

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

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

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

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

(B)(1)(a) Except as provided in division (B)(1)(b) of this section, if an offender is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence, the court shall sentence the offender to a community control sanction of at least one year's duration if all of the following apply:

(i) The offender previously has not been convicted of or pleaded guilty to a felony offense or to an offense of violence that is a misdemeanor and that the offender committed within two years prior to the offense for which sentence is being imposed.

(ii) The most serious charge against the offender at the time of sentencing is a felony of the fourth or fifth degree.

(iii) If the court made a request of the department of rehabilitation and correction pursuant to division (B)(1)(c) of this section, the department, within the forty-five-day period specified in that division, provided the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court.

(b) The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence if any of the following apply:

(i) The offender committed the offense while having a firearm on or about the offender's person or under the offender's control.

(ii) The offender caused physical harm to another person while committing the offense.

(iii) The offender violated a term of the conditions of bond as set by the court.

(iv) The court made a request of the department of rehabilitation and correction pursuant to division (B)(1)(c) of this section, and the department, within the forty-five-day period specified in that division, did not provide the court with the name of, contact information for, and program details of any community control sanction of at least one year's duration that is available for persons sentenced by the court.

(c) If a court that is sentencing an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence believes that no community control sanctions are available for its use that, if imposed on the offender, will adequately fulfill the overriding principles and purposes of sentencing, the court shall contact the department of rehabilitation and correction and ask the department to provide the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court. Not later than forty-five days after receipt of a request from a court under this division, the department shall provide the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court, if any. Upon making a request under this division that relates to a particular offender, a court shall defer sentencing of that offender until it receives from the department the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court or for forty-five days, whichever is the earlier.

If the department provides the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court within the forty-five-day period specified in this division, the court shall impose upon the offender a community control sanction under division (B)(1)(a) of this section, subject to divisions (B)(1)(b)(i) and (ii) of this section. If the department does not provide the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court within the forty-five-day period specified in this division, the court may impose upon the offender a prison term under division (B)(1)(b)(iii) of this section.

(d) A sentencing court may impose an additional penalty under division (B) of section 2929.15 of the Revised Code upon an offender sentenced to a community control sanction under division (B)(1)(a) of this section if the offender violates the conditions of the community control sanction, violates a law, or leaves the state without the permission of the court or the offender's probation officer.

(2) If division (B)(1) of this section does not apply, except as provided in division (B)(3), (E), (F), or (G) of this section, in sentencing an offender for a felony of the fourth or fifth degree, the sentencing court shall determine whether any of the following apply:

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

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

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

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

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

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

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

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

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

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

(b) Except as provided in division (E), (F), or (G) of this section, if the court does not make a finding described in division (B)(2)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section and if the court, after considering the factors set forth in section 2929.12 of the Revised Code, finds that a community control sanction or combination of community control sanctions is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code, the court shall impose a community control sanction or combination of community control sanctions upon the offender.

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

(D)(1) Except as provided in division (E) or (F) of this section, for a felony of the first or second degree, for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being

applicable, and for a violation of division (A)(4) or (B) of section 2907.05 of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code. Division (D)(2) of this section does not apply to a presumption established under this division for a violation of division (A)(4) of section 2907.05 of the Revised Code.

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

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

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

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

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

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

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

(3) A court that sentences an offender for a drug abuse offense that is a felony of the third, fourth, or fifth degree may require that the offender be assessed by a properly credentialed professional within a specified period of time. The court shall require the professional to file a written assessment of the offender with the court. If the offender is eligible for a community control sanction and after considering the written assessment, the court may impose a community control sanction that includes treatment and recovery support services authorized by

section 3793.02 of the Revised Code. If the court imposes treatment and recovery support services as a community control sanction, the court shall direct the level and type of treatment and recovery support services after considering the assessment and recommendation of treatment and recovery support services providers.

(F) Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under sections 2929.02 to 2929.06, section 2929.14, section 2929.142, or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20, divisions© to (I) of section 2967.19, or section 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code shall not reduce the term or terms 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 for any of the following offenses:

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

(2) Any rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape if, had the offender completed the rape that was attempted, the offender would have been guilty of a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and would be sentenced under section 2971.03 of the Revised Code;

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

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

(b) Regarding gross sexual imposition, the offense was committed on or after August 3, 2006, and evidence other than the testimony of the victim was admitted in the case corroborating the violation.

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

(i) The offense was committed prior to August 3, 2006, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.

(ii) The offense was committed on or after August 3, 2006.

(4) A felony violation of section 2903.04, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2905.32, or 2907.07 of the Revised Code if the section requires the imposition of a prison term;

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

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

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

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

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

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

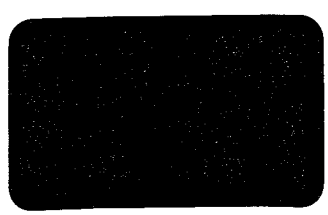
(9) Any offense of violence that is a felony, if the offender wore or carried body armor while committing the felony offense of violence, with respect to the portion of the sentence imposed pursuant to division (B)(1)(d) of section 2929.14 of the Revised Code for wearing or carrying the body armor;

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

2929.14 Definite 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.



2923.32 Engaging in pattern of corrupt activity.

(A)(1) No person employed by, or associated with, any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity or the collection of an unlawful debt.

(2) No person, through a pattern of corrupt activity or the collection of an unlawful debt, shall acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.

(3) No person, who knowingly has received any proceeds derived, directly or indirectly, from a pattern of corrupt activity or the collection of any unlawful debt, shall use or invest, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

A purchase of securities on the open market with intent to make an investment, without intent to control or participate in the control of the issuer, and without intent to assist another to do so is not a violation of this division, if the securities of the issuer held after the purchase by the purchaser, the members of the purchaser's immediate family, and the purchaser's or the immediate family members' accomplices in any pattern of corrupt activity or the collection of an unlawful debt do not aggregate one per cent of the outstanding securities of any one class of the issuer and do not confer, in law or in fact, the power to elect one or more directors of the issuer.

(B)(1) Whoever violates this section is guilty of engaging in a pattern of corrupt activity. Except as otherwise provided in this division, engaging in corrupt activity is a felony of the second degree. Except as otherwise provided in this division, if at least one of the incidents of corrupt activity is a felony of the first, second, or third degree, aggravated murder, or murder, if at least one of the incidents was a felony under the law of this state that was committed prior to July 1, 1996, and that would constitute a felony of the first, second, or third degree, aggravated murder, or murder if committed on or after July 1, 1996, or if at least one of the incidents of corrupt activity is a felony under the law of the United States or of another state that, if committed in this state on or after July 1, 1996, would constitute a felony of the first, second, or third degree, aggravated murder, or murder under the law of this state, engaging in a pattern of corrupt activity is a felony of the first degree. If the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, engaging in a pattern of corrupt activity is a felony of the first degree, and the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code. Notwithstanding any other provision of law, a person may be convicted of violating the provisions of this section as well as of a conspiracy to violate one or more of those provisions under section 2923.01 of the Revised Code.

(2) Notwithstanding the financial sanctions authorized by section 2929.18 of the Revised Code, the court may do all of the following with respect to any person who derives pecuniary value or causes property damage, personal injury other than pain and suffering, or other loss through or by the violation of this section:

(a) In lieu of the fine authorized by that section, impose a fine not exceeding the greater of three times the gross value gained or three times the gross loss caused and order the clerk of the court to

pay the fine into the state treasury to the credit of the corrupt activity investigation and prosecution fund, which is hereby created;

(b) In addition to the fine described in division (B)(2)(a) of this section and the financial sanctions authorized by section 2929.18 of the Revised Code, order the person to pay court costs;

(c) In addition to the fine described in division (B)(2)(a) of this section and the financial sanctions authorized by section 2929.18 of the Revised Code, order the person to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution the costs of investigation and prosecution that are reasonably incurred.

The court shall hold a hearing to determine the amount of fine, court costs, and other costs to be imposed under this division.

(3) In addition to any other penalty or disposition authorized or required by law, the court shall order any person who is convicted of or pleads guilty to a violation of this section or who is adjudicated delinquent by reason of a violation of this section to criminally forfeit to the state under Chapter 2981. of the Revised Code any personal or real property in which the person has an interest and that was used in the course of or intended for use in the course of a violation of this section, or that was derived from or realized through conduct in violation of this section, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation, including all of the following:

(a) Any position, office, appointment, tenure, commission, or employment contract of any kind acquired or maintained by the person in violation of this section, through which the person, in violation of this section, conducted or participated in the conduct of an enterprise, or that afforded the person a source of influence or control over an enterprise that the person exercised in violation of this section;

(b) Any compensation, right, or benefit derived from a position, office, appointment, tenure, commission, or employment contract described in division (B)(3)(a) of this section that accrued to the person in violation of this section during the period of the pattern of corrupt activity;

(c) Any interest in, security of, claim against, or property or contractual right affording the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of this section;

(d) Any amount payable or paid under any contract for goods or services that was awarded or performed in violation of this section.

Amended by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

Effective Date: 01-01-2002; 07-01-2007; 2008 HB280 04-07-2009

1707.44 Prohibited acts.

(A)(1) No person shall engage in any act or practice that violates division (A), (B), or (C) of section 1707.14 of the Revised Code, and no salesperson shall sell securities in this state without being licensed pursuant to section 1707.16 of the Revised Code.

(2) No person shall engage in any act or practice that violates division (A) of section 1707.141 or section 1707.161 of the Revised Code.

(3) No person shall engage in any act or practice that violates section 1707.162 of the Revised Code.

(4) No person shall engage in any act or practice that violates section 1707.164 of the Revised Code.

(B) No person shall knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for any of the following purposes:

(1) Registering securities or transactions, or exempting securities or transactions from registration, under this chapter;

(2) Securing the qualification of any securities under this chapter;

(3) Procuring the licensing of any dealer, salesperson, investment adviser, investment adviser representative, bureau of workers' compensation chief investment officer, or state retirement system investment officer under this chapter;

(4) Selling any securities in this state;

(5) Advising for compensation, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities;

(6) Submitting a notice filing to the division under division (X) of section 1707.03 or section 1707.092 or 1707.141 of the Revised Code.

(C) No person shall knowingly sell, cause to be sold, offer for sale, or cause to be offered for sale, any security which comes under any of the following descriptions:

(1) Is not exempt under section 1707.02 of the Revised Code, nor the subject matter of one of the transactions exempted in section 1707.03, 1707.04, or 1707.34 of the Revised Code, has not been registered by coordination or qualification, and is not the subject matter of a transaction that has been registered by description;

(2) The prescribed fees for registering by description, by coordination, or by qualification have not been paid in respect to such security;

(3) The person has been notified by the division, or has knowledge of the notice, that the right to buy, sell, or deal in such security has been suspended or revoked, or that the registration by description, by coordination, or by qualification under which it may be sold has been suspended or revoked;

(4) The offer or sale is accompanied by a statement that the security offered or sold has been or is to be in any manner indorsed by the division.

(D) No person who is an officer, director, or trustee of, or a dealer for, any issuer, and who knows such issuer to be insolvent in that the liabilities of the issuer exceed its assets, shall sell any securities of or for any such issuer, without disclosing the fact of the insolvency to the purchaser.

(E) No person with intent to aid in the sale of any securities on behalf of the issuer, shall knowingly make any representation not authorized by such issuer or at material variance with statements and documents filed with the division by such issuer.

(F) No person, with intent to deceive, shall sell, cause to be sold, offer for sale, or cause to be offered for sale, any securities of an insolvent issuer, with knowledge that such issuer is insolvent in that the liabilities of the issuer exceed its assets, taken at their fair market value.

(G) No person in purchasing or selling securities shall knowingly engage in any act or practice that is, in this chapter, declared illegal, defined as fraudulent, or prohibited.

(H) No licensed dealer shall refuse to buy from, sell to, or trade with any person because the person appears on a blacklist issued by, or is being boycotted by, any foreign corporate or governmental entity, nor sell any securities of or for any issuer who is known in relation to the issuance or sale of the securities to have engaged in such practices.

(I) No dealer in securities, knowing that the dealer's liabilities exceed the reasonable value of the dealer's assets, shall accept money or securities, except in payment of or as security for an existing debt, from a customer who is ignorant of the dealer's insolvency, and thereby cause the customer to lose any part of the customer's securities or the value of those securities, by doing either of the following without the customer's consent:

(1) Pledging, selling, or otherwise disposing of such securities, when the dealer has no lien on or any special property in such securities;

(2) Pledging such securities for more than the amount due, or otherwise disposing of such securities for the dealer's own benefit, when the dealer has a lien or indebtedness on such securities.

It is an affirmative defense to a charge under this division that, at the time the securities involved were pledged, sold, or disposed of, the dealer had in the dealer's possession or control, and available for delivery, securities of the same kinds and in amounts sufficient to satisfy all customers entitled to the securities, upon demand and tender of any amount due on the securities.

(J) No person, with purpose to deceive, shall make, issue, publish, or cause to be made, issued, or published any statement or advertisement as to the value of securities, or as to alleged facts affecting the value of securities, or as to the financial condition of any issuer of securities, when the person knows that the statement or advertisement is false in any material respect.

(K) No person, with purpose to deceive, shall make, record, or publish or cause to be made, recorded, or published, a report of any transaction in securities which is false in any material respect.

(L) No dealer shall engage in any act that violates the provisions of section 15(c) or 15(g) of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C.A. 78o(c) or (g), or any rule or regulation promulgated by the securities and exchange commission thereunder.

(M)(1) No investment adviser or investment adviser representative shall do any of the following:

(a) Employ any device, scheme, or artifice to defraud any person;

(b) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(c) In acting as principal for the investment adviser's or investment adviser representative's own account, knowingly sell any security to or purchase any security from a client, or in acting as salesperson for a person other than such client, knowingly effect any sale or purchase of any security for the account of such client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser or investment adviser representative is acting and obtaining the consent of the client to the transaction. Division (M)(1)(c) of this section does not apply to any investment adviser registered with the securities and exchange commission under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, or to any transaction with a customer of a licensed dealer or salesperson if the licensed dealer or salesperson is not acting as an investment adviser or investment adviser representative in relation to the transaction.

(d) Engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative. The division of securities may adopt rules reasonably designed to prevent acts, practices, or courses of business that are fraudulent, deceptive, or manipulative.

(2) No investment adviser or investment adviser representative licensed or required to be licensed under this chapter shall take or have custody of any securities or funds of any person, except as provided in rules adopted by the division.

(3) In the solicitation of clients or prospective clients, no person shall make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which the statements were made.

(N) No person knowingly shall influence, coerce, manipulate, or mislead any person engaged in the preparation, compilation, review, or audit of financial statements to be used in the purchase or sale of securities for the purpose of rendering the financial statements materially misleading.

(O) No state retirement system investment officer shall do any of the following:

(1) Employ any device, scheme, or artifice to defraud any state retirement system;

(2) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit on any state retirement system;

(3) Engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative. The division of securities may adopt rules reasonably designed to prevent such acts, practices, or courses of business as are fraudulent, deceptive, or manipulative;

(4) Knowingly fail to comply with any policy adopted regarding the officer established pursuant to section 145.094, 742.104, 3307.043, 3309.043, or 5505.065 of the Revised Code.

(P) No bureau of workers' compensation chief investment officer shall do any of the following:

(1) Employ any device, scheme, or artifice to defraud the workers' compensation system;

(2) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit on the workers' compensation system;

(3) Engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative. The division of securities may adopt rules reasonably designed to prevent such acts, practices, or courses of business as are fraudulent, deceptive, or manipulative;

(4) Knowingly fail to comply with any policy adopted regarding the officer established pursuant to section 4123.441 of the Revised Code.

Effective Date: 09-16-2003; 09-15-2004; 09-29-2005; 10-12-2006

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DANIEL M. HORRIGAN

2009 JUN 25 AM 7:50

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

THE STATE OF OHIO)
)
vs.)
)
DANIEL MOHLER)

Case No. CR 07 12 4233 (E)

JOURNAL ENTRY

THIS DAY, to-wit: The 22nd day of June, A.D., 2009, the Defendant's sentencing hearing was held pursuant to O.R.C. 2929.19. Defense counsel, PAUL ADAMSON, was present as was the Defendant who was afforded all rights pursuant to Crim. R. 32. The Court has considered the record, statements of counsel, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and the seriousness and recidivism factors under O.R.C. 2929.12.

The Court finds that the Defendant, heretofore on April 17, 2008, pled GUILTY of the charge of ENGAGING IN A PATTERN OF CORRUPT ACTIVITY, as contained in Count 1 of the Indictment, Ohio Revised Code Section 2923.32(A)(1), a felony of the first (1st) degree, UNLICENSED DEALER, as contained in Count 14 of the Indictment, Ohio Revised Code Section 1707.44(A)(1), a felony of the first (1st) degree, and SECURITIES FRAUD, as contained in Count 28 of the Indictment, Ohio Revised Code Section 1707.44(G), a felony of the first (1st) degree, which offenses occurred after July 1, 1996, which pleas, voluntarily made, and with a full understanding of the consequences, were accepted by the Court, and the Court found the Defendant guilty of the above offenses.

Thereupon, the Court inquired of the said Defendant if he had anything to say why judgment should not be pronounced against him; and having nothing but what he had already said and showing no good and sufficient cause why judgment should not be pronounced:

IT IS HEREBY ORDERED that the Defendant be sentenced to 4 years of incarceration on each of Counts 1, 14 and 28, to be served concurrently; suspended, upon the condition that the Defendant complete 5 years of community control, with the following sanctions being imposed:

1. Report to the Adult Probation Department as directed and abide by the rules and regulations of said Department and/or the Adult Parole Authority.

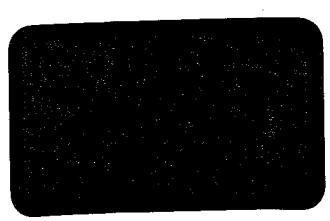
2. Refrain from offensive conduct of every nature and obey all laws.

3. Pay a $20.00 per month fee for services rendered by the Adult Probation Department; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662. IT IS FURTHER ORDERED that the Defendant shall satisfy in full their costs and restitution accounts before any monies can be paid toward the supervision fees. The Clerk of Courts shall collect such fees and deposit the monies into the Summit County Probation Services Fund established in the County Treasury.

4. Provide a DNA sample pursuant to Sections 2901.07 and 2152.74 of the Ohio Revised Code.

5. Sign a waiver releasing Defendant's medical records to his probation officer in order to determine his supervision.

6. Continue all current treatment plans.



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7. Enter into, **when a bed becomes available, if accepted,** and successfully complete the Community Based Correctional Facility Program operated by the Oriana House for a term of up to one year as directed by the Adult Probation Department, and follow through with all aftercare counseling and treatment for a term of up to one year as directed.

8. Upon successful discharge from CBCF, enter into and successfully complete the transitional services component program at CBCF, operated by the Oriana House, and further, follow any recommendations and conditions as directed by the Adult Probation Department.

9. If Defendant is unable to complete the Community Based Correctional Facility Program due to his medical condition, the Adult Probation Department may use home incarceration as an alternative.

10. Pay $500.00 toward the costs of this prosecution as directed by the Adult Probation Department; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662.

IT IS FURTHER ORDERED that the Summit County Clerk of Courts shall collect monies from the Defendant in the following order of priority: (1) restitution, if applicable; (2) costs; (3) Adult Probation Department fees; (4) fines, if applicable.

IT IS FURTHER ORDERED that the Defendant be screened for placement into the CBCF program operated by the Oriana House, Inc. The Defendant is to report to the CBCF intake staff as directed. The Summit County Sheriff's Office, Adult Probation Department and/or Court Psycho-Diagnostic Clinic shall cooperate with and make all records available to the CBCF staff, including pre-sentence investigations, to facilitate the screening process.

IT IS FURTHER ORDERED that if the Defendant fails to follow the rules and regulations of the Community Based Correction Facility Program as interpreted by the Community Based Correction Facility or probation staff, said Defendant shall be taken into custody by the Summit County Sheriff's Office and/or Akron Police Department and transported to the Summit County Jail and held without bail until further order of this Court.

IT IS FURTHER ORDERED that leaving the CBCF without authorization, including failure to return after being granted temporary leave, will constitute a violation of R.C. 2921.34 (ESCAPE) and will cause an independent subsequent prosecution, in addition to a probation violation.

Violation of this sentence shall lead to more restrictive sanctions for the Defendant, up to and including a prison term of 4 years, as well as post release control of 5 years.

Defendant is therefore ORDERED to report to the Summit County Adult Probation Department, FORTHWITH.

IT IS FURTHER ORDERED that the Defendant was released on the same bond which was continued until a bed becomes available at the Community Based Correctional Facility, IF ACCEPTED, at which time the Defendant is to report to the Community Based Correctional Facility to commence serving the sentence imposed in this case.

SAID COMMUNITY CONTROL TO COMMENCE THIS 22ND DAY OF JUNE, A.D., 2009.

COPY

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

THE STATE OF OHIO	)	**Case No. CR 07 12 4233 (E)**
	)	
vs.	)	
	)	**JOURNAL ENTRY**
DANIEL MOHLER		

APPROVED:
June 23, 2009
cld

JAMES E. MURPHY, Visiting Judge
Sitting on Assignment
Pursuant to Art. IV, Sec. 6
Ohio Constitution for

THOMAS A. TEODOSIO, Judge
Court of Common Pleas
Summit County, Ohio

cc: Prosecutor Colleen Sims
Criminal Assignment
Adult Probation Department
(Attorney Paul Adamson)
(CBCF & Oriana House – **EMAIL**)

2923.31 Corrupt activity definitions.

As used in sections 2923.31 to 2923.36 of the Revised Code:

(A) "Beneficial interest" means any of the following:

(1) The interest of a person as a beneficiary under a trust in which the trustee holds title to personal or real property;

(2) The interest of a person as a beneficiary under any other trust arrangement under which any other person holds title to personal or real property for the benefit of such person;

(3) The interest of a person under any other form of express fiduciary arrangement under which any other person holds title to personal or real property for the benefit of such person.

"Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general or limited partnership.

(B) "Costs of investigation and prosecution" and "costs of investigation and litigation" mean all of the costs incurred by the state or a county or municipal corporation under sections 2923.31 to 2923.36 of the Revised Code in the prosecution and investigation of any criminal action or in the litigation and investigation of any civil action, and includes, but is not limited to, the costs of resources and personnel.

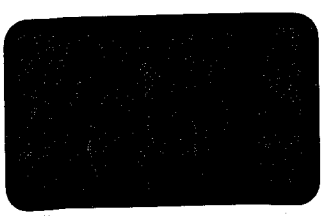
(C) "Enterprise" includes any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. "Enterprise" includes illicit as well as licit enterprises.

(D) "Innocent person" includes any bona fide purchaser of property that is allegedly involved in a violation of section 2923.32 of the Revised Code, including any person who establishes a valid claim to or interest in the property in accordance with division (E) of section 2981.04 of the Revised Code, and any victim of an alleged violation of that section or of any underlying offense involved in an alleged violation of that section.

(E) "Pattern of corrupt activity" means two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event.

At least one of the incidents forming the pattern shall occur on or after January 1, 1986. Unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern shall occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity.

For the purposes of the criminal penalties that may be imposed pursuant to section 2923.32 of the Revised Code, at least one of the incidents forming the pattern shall constitute a felony under the laws of this state in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, shall constitute a felony under the law of the United States or the other state and would be a criminal offense under the law of this state if committed in this state.



(F) "Pecuniary value" means money, a negotiable instrument, a commercial interest, or anything of value, as defined in section 1.03 of the Revised Code, or any other property or service that has a value in excess of one hundred dollars.

(G) "Person" means any person, as defined in section 1.59 of the Revised Code, and any governmental officer, employee, or entity.

(H) "Personal property" means any personal property, any interest in personal property, or any right, including, but not limited to, bank accounts, debts, corporate stocks, patents, or copyrights. Personal property and any beneficial interest in personal property are deemed to be located where the trustee of the property, the personal property, or the instrument evidencing the right is located.

(I) "Corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:

(1) Conduct defined as "racketeering activity" under the "Organized Crime Control Act of 1970," 84 Stat. 941, 18 U.S.C. 1961(1)(B), (1)(C), (1)(D), and (1)(E), as amended;

(2) Conduct constituting any of the following:

(a) A violation of section 1315.55, 1322.02, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2905.11, 2905.22, 2905.32 as specified in division (I)(2)(g) of this section, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2913.05, 2913.06, 2921.02, 2921.03, 2921.04, 2921.11, 2921.12, 2921.32, 2921.41, 2921.42, 2921.43, 2923.12, or 2923.17; division (F)(1)(a), (b), or© of section 1315.53; division (A)(1) or (2) of section 1707.042; division (B), (C)(4), (D), (E), or (F) of section 1707.44; division (A)(1) or (2) of section 2923.20; division (E) or (G) of section 3772.99; division (J)(1) of section 4712.02; section 4719.02, 4719.05, or 4719.06; division©, (D), or (E) of section 4719.07; section 4719.08; or division (A) of section 4719.09 of the Revised Code.

(b) Any violation of section 3769.11, 3769.15, 3769.16, or 3769.19 of the Revised Code as it existed prior to July 1, 1996, any violation of section 2915.02 of the Revised Code that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of section 3769.11 of the Revised Code as it existed prior to that date, or any violation of section 2915.05 of the Revised Code that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of section 3769.15, 3769.16, or 3769.19 of the Revised Code as it existed prior to that date.

(c) Any violation of section 2907.21, 2907.22, 2907.31, 2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37 of the Revised Code, any violation of section 2925.11 of the Revised Code that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, any violation of section 2915.02 of the Revised Code that occurred prior to July 1, 1996, any violation of section 2915.02 of the Revised Code that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of section 3769.11 of the Revised Code as it existed prior to that date, any violation of section 2915.06 of the Revised Code as it existed prior to July 1, 1996, or any violation of division (B) of section 2915.05 of the Revised Code as it exists on and after July 1, 1996, when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violation, or the value of the

contraband or other property illegally possessed, sold, or purchased in the violation exceeds one thousand dollars, or any combination of violations described in division (I)(2)(c) of this section when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds one thousand dollars;

(d) Any violation of section 5743.112 of the Revised Code when the amount of unpaid tax exceeds one hundred dollars;

(e) Any violation or combination of violations of section 2907.32 of the Revised Code involving any material or performance containing a display of bestiality or of sexual conduct, as defined in section 2907.01 of the Revised Code, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds one thousand dollars;

(f) Any combination of violations described in division (I)(2)(c) of this section and violations of section 2907.32 of the Revised Code involving any material or performance containing a display of bestiality or of sexual conduct, as defined in section 2907.01 of the Revised Code, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds one thousand dollars;

(g) Any violation of section 2905.32 of the Revised Code to the extent the violation is not based solely on the same conduct that constitutes corrupt activity pursuant to division (I)(2)(c) of this section due to the conduct being in violation of section 2907.21 of the Revised Code.

(3) Conduct constituting a violation of any law of any state other than this state that is substantially similar to the conduct described in division (I)(2) of this section, provided the defendant was convicted of the conduct in a criminal proceeding in the other state;

(4) Animal or ecological terrorism;

(5)(a) Conduct constituting any of the following:

(i) Organized retail theft;

(ii) Conduct that constitutes one or more violations of any law of any state other than this state, that is substantially similar to organized retail theft, and that if committed in this state would be organized retail theft, if the defendant was convicted of or pleaded guilty to the conduct in a criminal proceeding in the other state.

(b) By enacting division (I)(5)(a) of this section, it is the intent of the general assembly to add organized retail theft and the conduct described in division (I)(5)(a)(ii) of this section as conduct constituting corrupt activity. The enactment of division (I)(5)(a) of this section and the addition by division (I)(5)(a) of this section of organized retail theft and the conduct described in division (I)(5)(a)(ii) of this section as conduct constituting corrupt activity does not limit or preclude, and shall not be

construed as limiting or precluding, any prosecution for a violation of section 2923.32 of the Revised Code that is based on one or more violations of section 2913.02 or 2913.51 of the Revised Code, one or more similar offenses under the laws of this state or any other state, or any combination of any of those violations or similar offenses, even though the conduct constituting the basis for those violations or offenses could be construed as also constituting organized retail theft or conduct of the type described in division (I)(5)(a)(ii) of this section.

(J) "Real property" means any real property or any interest in real property, including, but not limited to, any lease of, or mortgage upon, real property. Real property and any beneficial interest in it is deemed to be located where the real property is located.

(K) "Trustee" means any of the following:

(1) Any person acting as trustee under a trust in which the trustee holds title to personal or real property;

(2) Any person who holds title to personal or real property for which any other person has a beneficial interest;

(3) Any successor trustee.

"Trustee" does not include an assignee or trustee for an insolvent debtor or an executor, administrator, administrator with the will annexed, testamentary trustee, guardian, or committee, appointed by, under the control of, or accountable to a court.

(L) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of any federal or state law relating to the business of gambling activity or relating to the business of lending money at an usurious rate unless the creditor proves, by a preponderance of the evidence, that the usurious rate was not intentionally set and that it resulted from a good faith error by the creditor, notwithstanding the maintenance of procedures that were adopted by the creditor to avoid an error of that nature.

(M) "Animal activity" means any activity that involves the use of animals or animal parts, including, but not limited to, hunting, fishing, trapping, traveling, camping, the production, preparation, or processing of food or food products, clothing or garment manufacturing, medical research, other research, entertainment, recreation, agriculture, biotechnology, or service activity that involves the use of animals or animal parts.

(N) "Animal facility" means a vehicle, building, structure, nature preserve, or other premises in which an animal is lawfully kept, handled, housed, exhibited, bred, or offered for sale, including, but not limited to, a zoo, rodeo, circus, amusement park, hunting preserve, or premises in which a horse or dog event is held.

(O) "Animal or ecological terrorism" means the commission of any felony that involves causing or creating a substantial risk of physical harm to any property of another, the use of a deadly weapon or dangerous ordnance, or purposely, knowingly, or recklessly causing serious physical harm to property and that involves an intent to obstruct, impede, or deter any person from participating in a lawful animal activity, from mining, foresting, harvesting, gathering, or processing natural resources, or from being lawfully present in or on an animal facility or research facility.

(P) "Research facility" means a place, laboratory, institution, medical care facility, government facility, or public or private educational institution in which a scientific test, experiment, or investigation involving the use of animals or other living organisms is lawfully carried out, conducted, or attempted.

(Q) "Organized retail theft" means the theft of retail property with a retail value of one thousand dollars or more from one or more retail establishments with the intent to sell, deliver, or transfer that property to a retail property fence.

(R) "Retail property" means any tangible personal property displayed, held, stored, or offered for sale in or by a retail establishment.

(S) "Retail property fence" means a person who possesses, procures, receives, or conceals retail property that was represented to the person as being stolen or that the person knows or believes to be stolen.

(T) "Retail value" means the full retail value of the retail property. In determining whether the retail value of retail property equals or exceeds one thousand dollars, the value of all retail property stolen from the retail establishment or retail establishments by the same person or persons within any one-hundred-eighty-day period shall be aggregated.

Amended by 129th General Assembly File No. 142, HB 262, § 1, eff. 6/27/2012.

Amended by 129th General Assembly File No. 126, HB 386, § 1, eff. 6/11/2012.

Amended by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

Amended by 128th General Assembly File No. 58, SB 235, § 1, eff. 3/24/2011.

Effective Date: 05-15-2002; 04-14-2006; 07-01-2007; 2008 SB320 04-07-2009

See 129th General Assembly File No. 29, HB 86, §4.

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DANIEL M. HORRIGAN

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

2009 JUN 25 AM 7:50

THE STATE OF OHIO)
)
vs. SUMMIT COUNTY CLERK OF COURTS)
)

Case No. CR 07 12 4233 (B)

[redacted]

JOURNAL ENTRY

CRAIG E. CONNER
(PAGE 1 OF 4)

THIS DAY, to-wit: The 22nd day of June, A.D., 2009, the Defendant's sentencing hearing was held pursuant to O.R.C. 2929.19. Defense counsel, LARRY WHITNEY, was present as was the Defendant who was afforded all rights pursuant to Crim. R. 32. The Court has considered the record, oral statements, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and the seriousness and recidivism factors under O.R.C. 2929.12.

Prior to his sentencing the Prosecutor, Colleen Sims, made an oral motion to modify the plea agreement by deleting incident one from count one. The defense had no objection to the change, and it is so ordered.

The Court finds that the Defendant heretofore on December 20, 2007, pled GUILTY to ENGAGING IN A PATTERN OF CORRUPT ACTIVITY, as contained in Count 1 of the Bill of Information, Ohio Revised Code Section 2923.32(A)(1) and (B)(1), a felony of the first (1st) degree; AGGRAVATED THEFT, as contained in Count 2 of the Bill of Information, Ohio Revised Code Section 2913.02(A)(3), a felony of the first (1st) degree; GRAND THEFT, as contained in Counts 3, 4, 5, 6, 7 and 10 of the Bill of Information, Ohio Revised Code Section 2913.02(A)(3), all felonies of the fourth (4th) degree; AGGRAVATED THEFT, as contained in Counts 8, 9 and 11 of the Bill of Information, Ohio Revised Code Section 2913.02(A)(3), all felonies of the third (3rd) degree; FRAUD RELATING TO MORTGAGE DOCUMENTS, as contained in Counts 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the Bill of Information, Ohio Revised Code Section 1322.07(E), all felonies of the 5th degree; and TELECOMMUNICATIONS FRAUD, as contained in Counts 21 and 22 of the Bill of Information, Ohio Revised Code Section 2913.05(A), both felonies of the third (3rd) degree, which offenses occurred after July 1, 1996, which pleas were accepted by the Court, and the Court found the Defendant guilty of the above offenses.

Thereupon, the Court inquired of the said Defendant if he had anything to say why judgment should not be pronounced against him; and having nothing but what he had already said and showing no good and sufficient cause why judgment should not be pronounced:

IT IS THEREFORE ORDERED AND ADJUDGED BY THIS COURT that the Defendant, CRAIG E. CONNER, be committed to the Ohio Department of Rehabilitation and Corrections for a definite term of Four (4) Years, which is **not** a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of ENGAGING IN A PATTERN OF CORRUPT ACTIVITY, as contained in Count 1, Ohio Revised Code Section 2923.32(A)(1) and (B)(1), a felony of the first (1st) degree; for a definite term of Four (4) Years, which is **not** a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of AGGRAVATED THEFT, as contained in Count 2, Ohio Revised Code Section 2913.02(A)(3), a felony of the first (1st) degree; for a definite term of One (1) Year on each of Counts 3, 4, 5, 6, 7, and 10, which are **not** mandatory terms pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for

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punishment of the crime of GRAND THEFT, Ohio Revised Code Section 2913.02(A)(3), felonies of the fourth (4th) degree; for a definite term of One (1) Year on each of Counts 8, 9, and 11, which are **not** mandatory terms pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of AGGRAVATED THEFT, Ohio Revised Code Section 2913.02(A)(3), felonies of the third (3rd) degree; for a definite term of One (1) Year on each of Counts 12, 13, 14, 15, 16, 17, 18, 19, and 20, which are **not** mandatory terms pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of FRAUD RELATING TO MORTGAGE DOCUMENTS, Ohio Revised Code Section 1322.07(E), felonies of the fifth (5th) degree; and for a definite term of One (1) Year on each of Counts 21 and 22, which are **not** mandatory terms pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of TELECOMMUNICATIONS FRAUD, Ohio Revised Code Section 2913.05(A), felonies of the third (3rd) degree, and that the said Defendant pay the costs of this prosecution for which execution is hereby awarded; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662.

IT IS HEREBY ORDERED that the Court suspends the sentence on Counts 2 through 22, **except Count 1**, upon the condition that the Defendant complete 3 years of community control **following his incarceration**, with the following sanctions being imposed:

1. Report to the Adult Probation Department upon his release from prison and abide by the rules and regulations of said Department and/or the Adult Parole Authority.

2. Refrain from offensive conduct of every nature and obey all laws.

3. Pay a $20.00 per month fee for services rendered by the Adult Probation Department; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662. IT IS FURTHER ORDERED that the Defendant shall satisfy in full their costs and restitution accounts before any monies can be paid toward the supervision fees. The Clerk of Courts shall collect such fees and deposit the monies into the Summit County Probation Services Fund established in the County Treasury.

4. Provide a DNA sample pursuant to Sections 2901.07 and 2152.74 of the Ohio Revised Code.

5. He is to surrender his assets in the approximate amount of $76,341.57 to be paid to OHIO ORGANIZED CRIME INVESTIGATION COMMISSION TASK FORCE 06-4, by executing the necessary paperwork through his attorney.

6. Pay the costs of this prosecution as directed by the Adult Probation Department; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662.

IT IS FURTHER ORDERED that the Summit County Clerk of Courts shall collect monies from the Defendant in the following order of priority: (1) restitution, if applicable; (2) costs; (3) Adult Probation Department fees; (4) fines, if applicable.

Defendant is therefore ORDERED to report to the Summit County Adult Probation Department, UPON RELEASE FROM PRISON.

SAID COMMUNITY CONTROL TO COMMENCE UPON DEFENDANT'S RELEASE FROM PRISON.

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IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

THE STATE OF OHIO	)	**Case No. CR 07 12 4233 (B)**
	)	
vs.	)	
	)	**JOURNAL ENTRY**
CRAIG E. CONNER		
(PAGE 3 OF 4)		

IT IS FURTHER ORDERED, pursuant to the above sentence, that the Defendant be conveyed to the Lorain Correctional Institution at Grafton, Ohio, to commence the prison intake procedure.

IT IS FURTHER ORDERED that the sentence imposed in Counts 2 through 22 are be served CONCURRENTLY and not consecutively with each other.

As part of the sentence in this case, the Defendant may be supervised by the Adult Parole Authority after Defendant leaves prison, which is referred to as post-release control, for Five (5) years as determined by the Adult Parole Authority. If the Defendant violates post-release control supervision or any of its conditions, the Adult Parole Authority May impose a prison term, as part of the sentence, of up to Nine (9) months, with a maximum for repeated violations of Fifty percent (50%) of the stated prison term. If the Defendant commits a new felony while subject to post-release control, the Defendant May be sent to prison for the remaining post-release control period or Twelve (12) months, whichever is greater. This prison term shall be served consecutively to any prison term imposed for the new felony of which the Defendant is convicted. Defendant is ORDERED to pay all prosecution costs, including any fees permitted pursuant to O.R.C. 2929.18(A)(4).

IT IS FURTHER ORDERED that any motion for post-conviction relief is to be filed within 6 months from the date of sentencing.

IT IS FURTHER ORDERED that credit for time served **as of the date of sentencing** is to be calculated by the Summit County Adult Probation Department and will be forthcoming in a subsequent journal entry.

IT IS FURTHER ORDERED THAT THE DEFENDANT IS TO REMAIN IN THE SUMMIT COUNTY JAIL AND NOT TRANSPORTED TO THE PENAL INSTITUTION PENDING THE DEFENDANT EXECUTING THE NECESSARY PAPERWORK TO IS ATTORNEY, THEN HE MAY BE TRANSPORTED TO THE PENAL INSTITUTION.

APPROVED:
June 23, 2009
pmw

JAMES E. MURPHY, Visiting Judge
Sitting on Assignment
Pursuant to Art. IV, Sec. 6
Ohio Constitution for

THOMAS A. TEODOSIO, Judge
Court of Common Pleas
Summit County, Ohio

COPY

cc: Prosecutor Colleen Sims
Criminal Assignment
Adult Probation Department – **JAIL CREDIT**
(Registrar's Office – **EMAIL**)
(Attorney Larry Whitney)
(Court Convey – **EMAIL**)

2913.02 [Effective Until 9/28/2012] Theft.

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat;

(5) By intimidation.

(B)(1) Whoever violates this section is guilty of theft.

(2) Except as otherwise provided in this division or division (B)(3), (4), (5), (6), (7), or (8) of this section, a violation of this section is petty theft, a misdemeanor of the first degree. If the value of the property or services stolen is one thousand dollars or more and is less than seven thousand five hundred dollars or if the property stolen is any of the property listed in section 2913.71 of the Revised Code, a violation of this section is theft, a felony of the fifth degree. If the value of the property or services stolen is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, a violation of this section is grand theft, a felony of the fourth degree. If the value of the property or services stolen is one hundred fifty thousand dollars or more and is less than seven hundred fifty thousand dollars, a violation of this section is aggravated theft, a felony of the third degree. If the value of the property or services is seven hundred fifty thousand dollars or more and is less than one million five hundred thousand dollars, a violation of this section is aggravated theft, a felony of the second degree. If the value of the property or services stolen is one million five hundred thousand dollars or more, a violation of this section is aggravated theft of one million five hundred thousand dollars or more, a felony of the first degree.

(3) Except as otherwise provided in division (B)(4), (5), (6), (7), or (8) of this section, if the victim of the offense is an elderly person or disabled adult, a violation of this section is theft from an elderly person or disabled adult, and division (B)(3) of this section applies. Except as otherwise provided in this division, theft from an elderly person or disabled adult is a felony of the fifth degree. If the value of the property or services stolen is one thousand dollars or more and is less than seven thousand five hundred dollars, theft from an elderly person or disabled adult is a felony of the fourth degree. If the value of the property or services stolen is seven thousand five hundred dollars or more and is less than thirty-seven thousand five hundred dollars, theft from an elderly person or disabled adult is a felony of the third degree. If the value of the property or services stolen is thirty-seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, theft from an elderly person or disabled adult is a felony of the second degree. If the value of the property or services stolen is one hundred fifty thousand dollars or more, theft from an elderly person or disabled adult is a felony of the first degree.

(4) If the property stolen is a firearm or dangerous ordnance, a violation of this section is grand theft. Except as otherwise provided in this division, grand theft when the property stolen is a firearm or dangerous ordnance is a felony of the third degree, and there is a presumption in favor of the court

imposing a prison term for the offense. If the firearm or dangerous ordnance was stolen from a federally licensed firearms dealer, grand theft when the property stolen is a firearm or dangerous ordnance is a felony of the first degree. The offender shall serve a prison term imposed for grand theft when the property stolen is a firearm or dangerous ordnance consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(5) If the property stolen is a motor vehicle, a violation of this section is grand theft of a motor vehicle, a felony of the fourth degree.

(6) If the property stolen is any dangerous drug, a violation of this section is theft of drugs, a felony of the fourth degree, or, if the offender previously has been convicted of a felony drug abuse offense, a felony of the third degree.

(7) If the property stolen is a police dog or horse or an assistance dog and the offender knows or should know that the property stolen is a police dog or horse or an assistance dog, a violation of this section is theft of a police dog or horse or an assistance dog, a felony of the third degree.

(8) If the property stolen is anhydrous ammonia, a violation of this section is theft of anhydrous ammonia, a felony of the third degree.

(9) In addition to the penalties described in division (B)(2) of this section, if the offender committed the violation by causing a motor vehicle to leave the premises of an establishment at which gasoline is offered for retail sale without the offender making full payment for gasoline that was dispensed into the fuel tank of the motor vehicle or into another container, the court may do one of the following:

(a) Unless division (B)(9)(b) of this section applies, suspend for not more than six months the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege;

(b) If the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege has previously been suspended pursuant to division (B)(9)(a) of this section, impose a class seven suspension of the offender's license, permit, or privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code, provided that the suspension shall be for at least six months.

(10) In addition to the penalties described in division (B)(2) of this section, if the offender committed the violation by stealing rented property or rental services, the court may order that the offender make restitution pursuant to section 2929.18 or 2929.28 of the Revised Code. Restitution may include, but is not limited to, the cost of repairing or replacing the stolen property, or the cost of repairing the stolen property and any loss of revenue resulting from deprivation of the property due to theft of rental services that is less than or equal to the actual value of the property at the time it was rented. Evidence of intent to commit theft of rented property or rental services shall be determined pursuant to the provisions of section 2913.72 of the Revised Code.

(C) The sentencing court that suspends an offender's license, permit, or nonresident operating privilege under division (B)(9) of this section may grant the offender limited driving privileges during the period of the suspension in accordance with Chapter 4510. of the Revised Code.

R.C. § 2913.02

Amended by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

Effective Date: 04-08-2004; 11-26-2004; 06-30-2006; 03-14-2007; 2008 SB320 04-07-2009

See 129th General Assembly File No. 29, HB 86, §4.

This section is set out twice. See also § 2913.02, as amended by 129th General Assembly File No. 131, SB 337, § 1, eff. 9/28/2012.

2913.02 [Effective 9/28/2012] Theft

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat;

(5) By intimidation.

(B)(1) Whoever violates this section is guilty of theft.

(2) Except as otherwise provided in this division or division (B)(3), (4), (5), (6), (7), or (8) of this section, a violation of this section is petty theft, a misdemeanor of the first degree. If the value of the property or services stolen is one thousand dollars or more and is less than seven thousand five hundred dollars or if the property stolen is any of the property listed in section 2913.71 of the Revised Code, a violation of this section is theft, a felony of the fifth degree. If the value of the property or services stolen is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, a violation of this section is grand theft, a felony of the fourth degree. If the value of the property or services stolen is one hundred fifty thousand dollars or more and is less than seven hundred fifty thousand dollars, a violation of this section is aggravated theft, a felony of the third degree. If the value of the property or services is seven hundred fifty thousand dollars or more and is less than one million five hundred thousand dollars, a violation of this section is aggravated theft, a felony of the second degree. If the value of the property or services stolen is one million five hundred thousand dollars or more, a violation of this section is aggravated theft of one million five hundred thousand dollars or more, a felony of the first degree.

(3) Except as otherwise provided in division (B)(4), (5), (6), (7), or (8) of this section, if the victim of the offense is an elderly person or disabled adult, a violation of this section is theft from an elderly person or disabled adult, and division (B)(3) of this section applies. Except as otherwise provided in this division, theft from an elderly person or disabled adult is a felony of the fifth degree. If the value of the property or services stolen is one thousand dollars or more and is less than seven thousand five hundred dollars, theft from an elderly person or disabled adult is a felony of the fourth degree. If the value of the property or services stolen is seven thousand five hundred dollars or more and is less than thirty-seven thousand five hundred dollars, theft from an elderly person or disabled adult is a felony of the third degree. If the value of the property or services stolen is thirty-seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, theft from an elderly person or disabled adult is a felony of the second degree. If the value of the property or services stolen is one

hundred fifty thousand dollars or more, theft from an elderly person or disabled adult is a felony of the first degree.

(4) If the property stolen is a firearm or dangerous ordnance, a violation of this section is grand theft. Except as otherwise provided in this division, grand theft when the property stolen is a firearm or dangerous ordnance is a felony of the third degree, and there is a presumption in favor of the court imposing a prison term for the offense. If the firearm or dangerous ordnance was stolen from a federally licensed firearms dealer, grand theft when the property stolen is a firearm or dangerous ordnance is a felony of the first degree. The offender shall serve a prison term imposed for grand theft when the property stolen is a firearm or dangerous ordnance consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(5) If the property stolen is a motor vehicle, a violation of this section is grand theft of a motor vehicle, a felony of the fourth degree.

(6) If the property stolen is any dangerous drug, a violation of this section is theft of drugs, a felony of the fourth degree, or, if the offender previously has been convicted of a felony drug abuse offense, a felony of the third degree.

(7) If the property stolen is a police dog or horse or an assistance dog and the offender knows or should know that the property stolen is a police dog or horse or an assistance dog, a violation of this section is theft of a police dog or horse or an assistance dog, a felony of the third degree.

(8) If the property stolen is anhydrous ammonia, a violation of this section is theft of anhydrous ammonia, a felony of the third degree.

(9) In addition to the penalties described in division (B)(2) of this section, if the offender committed the violation by causing a motor vehicle to leave the premises of an establishment at which gasoline is offered for retail sale without the offender making full payment for gasoline that was dispensed into the fuel tank of the motor vehicle or into another container, the court may do one of the following:

(a) Unless division (B)(9)(b) of this section applies, suspend for not more than six months the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege;

(b) If the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege has previously been suspended pursuant to division (B)(9)(a) of this section, impose a class seven suspension of the offender's license, permit, or privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code, provided that the suspension shall be for at least six months.

(c) The court, in lieu of suspending the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege pursuant to division (B)(9)(a) or (b) of this section, instead may require the offender to perform community service for a number of hours determined by the court.

(10) In addition to the penalties described in division (B)(2) of this section, if the offender committed the violation by stealing rented property or rental services, the court may order that the offender make restitution pursuant to section 2929.18 or 2929.28 of the Revised Code. Restitution may include, but is not limited to, the cost of repairing or replacing the stolen property, or the cost of repairing the stolen property and any loss of revenue resulting from deprivation of the property due to theft of rental

services that is less than or equal to the actual value of the property at the time it was rented. Evidence of intent to commit theft of rented property or rental services shall be determined pursuant to the provisions of section 2913.72 of the Revised Code.

(C) The sentencing court that suspends an offender's license, permit, or nonresident operating privilege under division (B)(9) of this section may grant the offender limited driving privileges during the period of the suspension in accordance with Chapter 4510. of the Revised Code.

R.C. § 2913.02

Amended by 129th General Assembly File No. 131, SB 337, § 1, eff. 9/28/2012.

Amended by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

Effective Date: 04-08-2004; 11-26-2004; 06-30-2006; 03-14-2007; 2008 SB320 04-07-2009

See 129th General Assembly File No. 29, HB 86, §4.

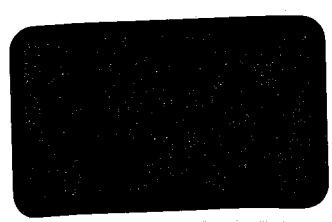
This section is set out twice. See also § 2913.02, effective until 9/28/2012.

2941.1422 Mandatory prison term - furtherance of human trafficking.

(A) Imposition of a mandatory prison term under division (B)(7) of section 2929.14 of the Revised Code is precluded unless the 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 unless the indictment, count in the indictment, or information charging the offense specifies that the offender knowingly committed the offense in furtherance of human trafficking. 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 defendant knowingly committed the offense in furtherance of human trafficking)."

(B) As used in this section, "human trafficking" has the same meaning as in section 2929.01 of the Revised Code.

Amended by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

Effective Date: 2008 HB280 04-07-2009