

IN THE SUPREME COURT OF OHIO  
Supreme Court Case Number 12-2136

STATE OF OHIO

Appellee

v.

LUCIOUS TAYLOR

Appellant

On Appeal from the Summit  
County Court of Appeals  
Ninth Appellate District  
Court of Appeals No. 26279

MERIT BRIEF OF APPELLEE  
STATE OF OHIO

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## STATEMENT OF FACTS

The State agrees with the Statement of Facts given in appellant Lucious Taylor's merit brief.

## PROPOSITION OF LAW I

**A DEFENDANT IS ENTITLED TO A DECREASE IN THE PENALTY OF AN OFFENSE, BUT NOT THE CLASSIFICATION OF THE OFFENSE, WHEN A GENERAL ASSEMBLY AMENDMENT TO THE CLASSIFICATION AND PENALTY FOR THE OFFENSE BECOMES EFFECTIVE BETWEEN THE DATE THE DEFENDANT COMMITTED THE OFFENSE AND SENTENCING.**

## LAW AND ARGUMENT

On July 23, 2011, Taylor stole \$550 worth of cologne from a department store. The Summit County Grand Jury indicted Taylor for a felony theft offense, in violation of R.C. 2913.02(A). Taylor pled no contest. The trial court convicted Taylor of a misdemeanor, rather than a felony, on December 27, 2011 and, on the same date, the court imposed a misdemeanor sentence.

The State appealed the ruling that led to the misdemeanor conviction, arguing that the old version of the Theft statute applied to Taylor's conviction. The State did not dispute that Taylor was entitled to receive the benefit of the reduction in penalty, which became effective after Taylor committed the offense, but before he was sentenced. On appeal, the Ninth District sustained the State's argument and reversed the trial court's decision as to the ruling that led to the misdemeanor conviction. *State v. Taylor*, 9<sup>th</sup> Dist. No. 26279, 2012-Ohio-5403, ¶ 9. The State acknowledges that, pursuant to R.C. 2945.67(A), the reversal does not affect Taylor's misdemeanor conviction. *State v. Taylor*, 9<sup>th</sup> Dist. No. 26279, 2012-Ohio-5403, ¶ 9.

At the time Taylor committed the Theft, the offense was a felony because, at that time, the Ohio Revised Code stated that the minimum property value for a felony theft offense was

\$500. See, former R.C. 2913.02(A). If Taylor had committed the offense on or after the effective date of H.B. 86, September 30, 2011, when the General Assembly increased the minimum value of property stolen to constitute a theft offense from \$500 to \$1,000, the offense would have been a misdemeanor. R.C. 2913.02(A).

R.C. 1.58(B) provides that, “[i]f the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.”

Taylor was sentenced after the effective date of H.B. 86. Since he was sentenced after the effective date of H.B. 86, pursuant to R.C. 1.58(B), made applicable by uncodified Section 4 of H.B. 86, Taylor was entitled to a decrease in the “penalty, forfeiture, and punishment” for the offense and was properly sentenced to a sentence applicable to a misdemeanor of the first degree, rather than a felony. The State contends that he was not, however, entitled to a reduction in the classification or degree of the offense. Thus, the issue before this Court is whether R.C. 1.58(B) applies to the degree or classification of the offense, thereby entitling a defendant to a decrease in the degree of the offense. The State contends that it does not.

“A statute is presumed to be prospective in its operation unless expressly made retrospective.” R.C. 1.48. “Thus, a statute may not be applied retroactively unless the court finds a ‘clearly expressed legislative intent’ that the statute so apply.” *State v. Williams*, 103 Ohio St.3d 112, 2004-Ohio-4747, ¶ 8, quoting *State v. Cook*, 83 Ohio St.3d 404, 410 (1998). “Legislation violates the Ex Post Facto Clause if it makes a previously innocent act criminal, increases the punishment for a crime after its commission, or deprives the accused of a defense available at the time the crime was committed.” *State v. Rush*, 83 Ohio St.3d 53, 59 (1998).

The State contends that, in light of this, a defendant who commits a crime prior to the effective date of a statute, but has not yet been sentenced, will generally receive the benefit of any decrease in penalty, unless the General Assembly avoids the application of Section 1.58(B) by expressly stating that intent. *Taylor, supra*, at ¶ 5.

“[T]he General Assembly is lodged with the power to define, classify and prescribe punishment for crimes committed within the state.” *State v. Rush*, 83 Ohio St.3d 53, 57 (1998), quoting *State v. Young*, 62 Ohio St.2d 370, 392 (1980). The General Assembly did not, however, make the amendments to R.C. 2913.02 retroactive in H.B. 86. Instead, the General Assembly emphasized its legislative intent to apply R.C. 1.58 to give defendants who had committed crimes, but had not yet been sentenced at the time of the enactment, the benefit of the decreased penalties.

The General Assembly stated that, “[t]he amendments to section[ ] \*\*\* 2913.02 \*\*\* that are made in this act apply to a person who commits an offense specified or penalized under [Section 2913.02] on or after the effective date of this section and to a person to whom division (B) of section 1.58 of the Revised Code makes the amendments applicable.” Am. Sub. H.B. No. 86, Section 4, 2011 Ohio Laws 29. Thus, it is clear that the amendments to R.C. 2913.02 apply under two circumstances: to a person who committed the offense after September 30, 2011; and, to a person to whom R.C. 1.58(B) is applicable.

Applying the aforementioned statement of the General Assembly’s intent as to the applicability of the amendments, it is clear that Taylor is not “a person who commit[ted] an offense \*\*\* on or after the effective date” of House Bill 86, since House Bill 86 went into effect after Taylor committed the theft, but before he was convicted and sentenced. As such, the applicability of the new version of R.C. 2913.02 to Taylor is limited to the benefits set forth in

R.C. 1.58, which provides that “[i]f the penalty, forfeiture, or punishment for any offense is reduced by \*\*\* amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.” R.C. 1.58(B). The State, therefore, contends that the benefit conferred upon Taylor is a reduction in his sentence, not a reduction in the classification or degree of the offense.

Section 1.58 of the Ohio Revised Code clearly states that, when a statutory amendment decreases the penalty, forfeiture, or punishment, a defendant is entitled to receive the reduced penalty, forfeiture, or punishment. R.C. 1.58(B) makes no mention of a criminal defendant receiving the benefit of a lesser or reduced offense such as the benefit of having a felony conviction amended to a first-degree misdemeanor.

As noted *supra*, the General Assembly did not make the amendments to Section 2913.02 retroactive; instead, it emphasized its intent to apply Section 1.58(B) to give defendants who had committed crimes, but had not yet been sentenced at the time of the enactment, the benefit of the decreased penalties. Pursuant to R.C. 1.58(B), a defendant is entitled to the benefit of a reduction in the “penalty, forfeiture and punishment for the offense.” The State contends that “penalty, forfeiture and punishment for the offense” differ from the “degree of the offense” and, therefore, R.C. 1.58(B) does not confer upon a defendant the benefit of having a felony morphed into a misdemeanor.

Furthermore, the Ohio Revised Code section governing the classification of offenses provides additional support for the State’s contention that a “penalty” differs from a “classification” of an offense. R.C. 2901.02(D), which addresses the classification of felonies, provides that, “[r]egardless of the penalty that may be imposed, any offense specifically classified as a felony is a felony, and any offense specifically classified as a misdemeanor is a

misdemeanor.” R.C. 2901.02(D). Similarly, the Ohio Rules of Criminal Procedure state that a “ ‘[f]elony’ means an offense defined by law as a felony” and a “ ‘[m]isdemeanor’ means an offense defined by law as a misdemeanor.” Crim.R. 2(A) & (B).

Additionally, the Ohio Revised Code separates the aforementioned classifications into degree levels, with penalties that vary depending on the degree of the offense. The “degree of crime” has been defined as “[t]he grade of a crime according to the gravity of the offense and the culpability of the guilty person, considered \*\*\* in determining the punishment.” Ballentine’s Law Dictionary (3<sup>rd</sup> Ed. 1969) 325.

Section 2919.14(A) of the Ohio Revised Code, for example, separates felonies into degrees and denotes different penalties that vary depending on the degree. R.C. 2929.14(A). The Ohio Revised Code also contains some unclassified felonies, such as aggravated murder and murder. *State v. Honaker*, 9<sup>th</sup> Dist. No. 08CA009458, 2009-Ohio-4424, ¶2. The Ohio Revised Code additionally separates misdemeanors into degrees, with the penalty varying according to the degree of the offense. R.C. 2929.24.

The State contends that the reason that the Ohio Revised Code differentiates between the degrees of an offense and the penalty associated with an offense is because, although the terms “punishment”, “penalty” and “forfeiture” are synonymous with each other, they are not synonymous with the term degree. *United States v. Reisinger*, 128 U.S. 398, 402 (1888). “These words have been used by the great masters of crown law and the elementary writers \*\*\* Blackstone speaks of criminal law as that ‘branch of jurisprudence’ which teaches of the \*\*\* degrees of every crime \*\*\* and its adequate and necessary punishment.” *Id.* “[A] sentence is a penalty or combination of penalties imposed on a defendant as punishment for the offense\*\*\*.”

*State v. Harris*, 132 Ohio St.3d 318, 2012-Ohio-1908, ¶28, citing R.C. 2929.01(EE) and R.C. 2929.01(DD).

The State's position that the General Assembly's amendment raising the threshold amount for a felony relates only to the penalty, not the degree of the offense, is supported by the Third District Court of Appeals' decision in *Collier*, wherein the Court examined a case where the defendant committed a felony theft prior to the 1983 amendment of R.C. 2913.02, that increased the dollar amount necessary to constitute a felony, but the defendant was convicted and sentenced after the date of the amendment, and held that the 1983 amendment "relates only to penalty." *State v. Collier*, 22 Ohio App.3d 25, 27 (1984); citing *State v. Burton*, 11 Ohio App.3d 261 (1983). The *Collier* court further stated that the value under the theft statute was not a means to describe different offenses but was merely "to enable the court to administer the appropriate penalty." *Id.*, citing *State v. Whitten*, 82 Ohio St. 174, 182 (1910).

Based on the foregoing, the State contends that the effect of R.C. 1.58(B) is to reduce the penalty, punishment, or forfeiture applicable to an offense, but it does not act to reduce the degree or classification of the offense. Therefore, R.C. 1.58 entitles a defendant, such as Taylor, to benefit from the decreased penalty enacted by the General Assembly while the case was pending against him, but nothing in that section entitles such a defendant to benefit from any decrease in classification of the crime. See, *State v. Saplak*, 8th Dist. No. 97825, 2012-Ohio-4281, ¶ 13; *State v. Steinfurth*, 8<sup>th</sup> Dist. No. 97459, 2012-Ohio-3257. As such, a defendant, such as Taylor, should be convicted of Theft, a fifth-degree felony, as set forth in the version of R.C. 2913.02 in effect at the time of the offense; however, pursuant to R.C. 1.58(B), a defendant, such as Taylor, is entitled to having the benefit of the court imposing a sentencing for a first-degree

misdemeanor, as set forth in the version of Section 2913.02 in effect at the time of the sentencing hearing.

A review of Ohio case law shows, since H.B. 86 went into effect, many trial and appellate courts have addressed the issue that is now facing this Court. The Eighth and Ninth Districts have held that H.B. 86 does not require a reduction in the classification of a crime for defendants awaiting sentences for crimes committed before the effective date of H.B. 86. *State v. Steinfurth*, 8th Dist. No. 97549, 2012-Ohio-3257, ¶¶15-16; *State v. Saplak*, 8th Dist. No. 97825, 2012-Ohio-4281 ¶¶12-14; *State v. Taylor*, 9th Dist. No. 26279, 2012-Ohio-5403, ¶8. On the other hand, the First, Second, Fifth, Tenth, and Eleventh Appellate Courts have reached the opposite conclusion, holding that the a defendant who commits an offense prior to the effective date of H.B. 86, but who is sentenced after that date, is entitled to a reduction in penalty and a reduction in the classification of their offense. *State v. Solomon*, 1st. Dist. No. C-120044, 2012-Ohio-5755; *State v. Arnold*, 2nd Dist. No. 25044, 2012-Ohio-5786; *State v. Gillespie*, 5th Dist. No. 2012-CA-6, 2012-Ohio-3485; *State v. Boltz*, 6th Dist. App. No. WD-12-012, 2013-Ohio-1830; *State v. Limoli*, 11th Dist. No. 11AP-924, 2012-Ohio-4502; *State v. Cefalo*, 11th Dist. No. 201-L-163, 2012-Ohio-5594.

The First District Court of Appeals, in a case involving possession of drugs, determined that the statutory amendments reducing level of drug possession offense from fourth-degree felony to fifth-degree felony applied retroactively to defendant who was indicted before effective date of amendments, but who had not yet been sentenced at effective date. *State v. Solomon*, 1st. Dist. No. C-120044, 2012-Ohio-5755. The Court concluded that the legislative history indicated an intent to eliminate sentencing disparities due to divergent classification of offenses. *Id.*, ¶ 52. The Court, in reaching its conclusion, noted that the “General Assembly stated in Section 3 of

H.B. 86 that the “provisions” of the former act and not the “amendments” apply to those sentenced before the effective date of the act, but that the “amendments” to [the statute] apply to a person “to whom division (B) of section 1.58 of the Revised Code makes the amendments applicable.” (Emphasis added.) The General Assembly used the words ‘provisions’ and ‘amendments’ as opposed to ‘penalty,’ ‘sanction,’ or ‘punishment.’ ” *Id.*, at ¶49. The Court further concluded that, since the amended version of the statute includes the reduction in the degree of the offense, a defendant is entitled to the reduction in the degree and a reduction in the penalty. *Id.*

The Sixth District Court of Appeals, in reaching its conclusion that a defendant is entitled to the benefit of a reduced classification of an offense, noted that R.C. 2913.02 contains specific references to the classification of an offense being tied to the penalty associated therewith. *State v. Boltz*, 6th Dist. App. No. WD-12-012, 2013-Ohio-1830, ¶15-16. The Court also stated that it would be illogical to sentence a defendant for a misdemeanor while simultaneously classifying his crime as a felony. *Id.*

Additionally, in a case involving a conviction for possession of cocaine, the Tenth District Court of Appeals reversed, in part, because the trial did not impose a penalty according to the statute, as amended by H.B. 86. *State v. Limoli*, 11th Dist. No. 11AP-924, 2012-Ohio-4502, ¶ 62.

Finally, the Eleventh District Court of Appeals held that, for purposes of R.C. 2913.02, the penalty includes the level of the offense and therefore, under R.C. 1.58, a defendant is entitled to reduction in the offense level. *State v. Cefalo*, 11th Dist. No. 201-L-163, 2012-Ohio-5594, ¶ 19. In reaching its conclusion, the *Cefalo* Court examined the comments of the Ohio Legislative Services Commission’s Bill Analysis for H.B. 86, wherein it stated that “[g]enerally,

for the offenses, a default penalty, (generally a misdemeanor), is provided and that penalty applies unless the value of the property or loss involved in the offense reaches or exceeds a specific threshold” which results in an “increased penalty, (generally a felony) \*\*\*.” *Id.*, citing Ohio Legislative Service Bill Commission’s Analysis, page 19. The State respectfully disagrees with the *Cefalo* Court’s analysis and contends that the statements set forth in the Legislative Service Commission’s Bill Analysis for H.B. 86 cannot be used to determine the intent of the legislature that enacted R.C. 1.58.

The State disagrees with the appellate courts that have concluded that, because H.B. 86 reduces the classification of the offense due to the increase in the threshold value of the stolen property, a defendant who committed the offense prior to the effective date, is therefore entitled to have his offense reclassified as a misdemeanor. *State v. Cefalo*, 11<sup>th</sup> Dist. No. 2011-L-163, 2012-Ohio-5594, ¶ 15. *State v. Solomon*, 1st. Dist. No. C-120044, 2012-Ohio-5755; *State v. Arnold*, 2nd Dist. No. 25044, 2012-Ohio-5786; *State v. Gillespie*, 5th Dist. No. 2012-CA-6, 2012-Ohio-3485; *State v. Boltz*, 6th Dist. App. No. WD-12-012, 2013-Ohio-1830; *State v. Limoli*, 11th Dist. No. 11AP-924, 2012-Ohio-4502. The State disagrees because, with regard to theft offenses, H.B. 86 reduces the classification of future theft offenses committed after the effective date of H.B. 86; and, allows for a corresponding reduction in penalties for thefts committed prior to the statute’s effective date, through the application of R.C. 1.58. R.C. 1.58 does not reduce the classification of an offense that occurred prior to the effective date of H.B. 86.

R.C. 1.58 applies to sentences, not the levels or classifications of an offense. There is no language in R.C. 1.58 regarding offense levels. “R.C. 1.58 clearly states that a criminal defendant receives the benefit of a reduced penalty, forfeiture, or punishment. \* \* \* R.C. 1.58

makes no mention of a criminal defendant receiving the benefit of a lesser or reduced offense itself,” which would entitle a defendant to receive “the benefit of amending [his] fifth-degree felony conviction to that of a first-degree misdemeanor.” (Emphasis deleted.) *State v. Steinfurth, supra*, at ¶ 15; *State v. Saplak, supra*, at ¶ 11. As such, a defendant such as Taylor is entitled to a reduced sentence but not a reduction in the level of the charged offense.

For the foregoing reasons, Taylor was entitled to have the benefit of a misdemeanor penalty, but he was not entitled to have the degree of the offense reduced to a misdemeanor. Therefore, the Ninth District Court of Appeals correctly determined that the trial court erred in reducing the degree of Taylor’s offense. The State acknowledges, however, that the trial court’s error cannot be remedied in Taylor’s case.

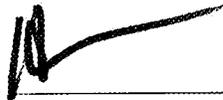
The State respectfully asks this Court to hold that a defendant who has committed an offense prior to the effective date of H.B. 86, but was sentenced after the effective date of H.B. 86, is entitled to reduction in sentence but not a reduction in the level or degree of the offense.

**CONCLUSION**

Pursuant to the argument offered, the State respectfully contends that the judgment of the Ninth District Court of Appeals should be affirmed.

Respectfully submitted,

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**PROOF OF SERVICE**

I hereby certify that a copy of this Merit Brief was sent by regular U.S. Mail to Attorney Neil P. Agarwal, 3766 Fishcreek Road, #289, Stow, Ohio 44224-4379, on the 24th day of June, 2013.



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APPENDIX

## **1.48 Presumption that statute is prospective.**

A statute is presumed to be prospective in its operation unless expressly made retrospective.

Effective Date: 01-03-1972

## **2901.02 Classification of crimes.**

As used in the Revised Code:

(A) Offenses include aggravated murder, murder, felonies of the first, second, third, fourth, and fifth degree, misdemeanors of the first, second, third, and fourth degree, minor misdemeanors, and offenses not specifically classified.

(B) Aggravated murder when the indictment or the count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of Revised Code, and any other offense for which death may be imposed as a penalty, is a capital offense.

(C) Aggravated murder and murder are felonies.

(D) Regardless of the penalty that may be imposed, any offense specifically classified as a felony is a felony, and any offense specifically classified as a misdemeanor is a misdemeanor.

(E) Any offense not specifically classified is a felony if imprisonment for more than one year may be imposed as a penalty.

(F) Any offense not specifically classified is a misdemeanor if imprisonment for not more than one year may be imposed as a penalty.

(G) Any offense not specifically classified is a minor misdemeanor if the only penalty that may be imposed is one of the following:

(1) For an offense committed prior to January 1, 2004, a fine not exceeding one hundred dollars;

(2) For an offense committed on or after January 1, 2004, a fine not exceeding one hundred fifty dollars, community service under division (D) of section 2929.27 of the Revised Code, or a financial sanction other than a fine under section 2929.28 of the Revised Code.

Amended by 129th General Assembly File No.25,HB 5, §1, eff. 9/23/2011.

Effective Date: 01-01-2004

## **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.

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

(3)

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

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

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

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

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; 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

Related Legislative Provision: See 129th General Assembly File No.29, HB 86, §11

## **2929.24 Definite jail terms for misdemeanors.**

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

(1) For a misdemeanor of the first degree, not more than one hundred eighty days;

(2) For a misdemeanor of the second degree, not more than ninety days;

(3) For a misdemeanor of the third degree, not more than sixty days;

(4) For a misdemeanor of the fourth degree, not more than thirty days.

(B)

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

(2)

(a) If a prosecutor, as defined in section 2935.01 of the Revised Code, has filed a notice with the court that the prosecutor wants to be notified about a particular case and if the court is considering modifying the jail sentence of the offender in that case, the court shall notify the prosecutor that the court is considering modifying the jail sentence of the offender in that case. The prosecutor may request a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, and, if the prosecutor requests a hearing, the court shall notify the eligible offender of the hearing.

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

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

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

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

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

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

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

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

(F)

(1) If an offender is convicted of or pleads guilty to a misdemeanor violation of section 2907.23, 2907.24, 2907.241, 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 jail term on the offender for the misdemeanor violation, the court may impose upon the offender an additional definite jail term as follows:

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

(b) If the offender previously has been convicted of or pleaded guilty to one or more misdemeanor or felony violations of section 2907.22, 2907.23, 2907.24, 2907.241, 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 definite jail term of not more than one hundred twenty days.

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

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

(H) If a court sentences an offender to a jail term under this section, the sentencing court retains jurisdiction over the offender and the jail term. Upon motion of either party or upon the court's own motion, the court, in the court's sole discretion and as the circumstances warrant, may substitute one or more community control sanctions under section 2929.26 or 2929.27 of the Revised Code for any jail days that are not mandatory jail days.

Amended by 129th General Assembly File No.25,HB 5, §1, eff. 9/23/2011.

Amended by 128th General Assembly File No.52,HB 338, §1, eff. 9/17/2010.

Effective Date: 01-01-2004; 09-23-2004; 2008 SB220 09-30-2008; 2008 HB280 04-07-2009

## **2945.67 Appeal by state by leave of court.**

(A) A prosecuting attorney, village solicitor, city director of law, or the attorney general may appeal as a matter of right any decision of a trial court in a criminal case, or any decision of a juvenile court in a delinquency case, which decision grants a motion to dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, or a motion for the return of seized property or grants post conviction relief pursuant to sections 2953.21 to 2953.24 of the Revised Code, and may appeal by leave of the court to which the appeal is taken any other decision, except the final verdict, of the trial court in a criminal case or of the juvenile court in a delinquency case. In addition to any other right to appeal under this section or any other provision of law, a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general may appeal, in accordance with section 2953.08 of the Revised Code, a sentence imposed upon a person who is convicted of or pleads guilty to a felony.

(B) In any proceeding brought pursuant to division (A) of this section, the court, in accordance with Chapter 120. of the Revised Code, shall appoint the county public defender, joint county public defender, or other counsel to represent any person who is indigent, is not represented by counsel, and does not waive the person's right to counsel.

Effective Date: 07-01-1996

# OHIO RULES OF CRIMINAL PROCEDURE

## RULE 2. Definitions

As used in these rules:

- (A) "Felony" means an offense defined by law as a felony.
- (B) "Misdemeanor" means an offense defined by law as a misdemeanor.
- (C) "Serious offense" means any felony, and any misdemeanor for which the penalty prescribed by law includes confinement for more than six months.
- (D) "Petty offense" means a misdemeanor other than a serious offense.
- (E) "Judge" means judge of the court of common pleas, juvenile court, municipal court, or county court, or the mayor or mayor's court magistrate of a municipal corporation having a mayor's court.
- (F) "Magistrate" means any person appointed by a court pursuant to Crim. R. 19. "Magistrate" does not include an official included within the definition of magistrate contained in section 2931.01 of the Revised Code, or a mayor's court magistrate appointed pursuant to section 1905.05 of the Revised Code.
- (G) "Prosecuting attorney" means the attorney general of this state, the prosecuting attorney of a county, the law director, city solicitor, or other officer who prosecutes a criminal case on behalf of the state or a city, village, township, or other political subdivision, and the assistant or assistants of any of them. As used in Crim. R. 6, "prosecuting attorney" means the attorney general of this state, the prosecuting attorney of a county, and the assistant or assistants of either of them.
- (H) "State" means this state, a county, city, village, township, other political subdivision, or any other entity of this state that may prosecute a criminal action.
- (I) "Clerk of court" means the duly elected or appointed clerk of any court of record, or the deputy clerk, and the mayor or mayor's court magistrate of a municipal corporation having a mayor's court.
- (J) "Law enforcement officer" means a sheriff, deputy sheriff, constable, municipal police officer, marshal, deputy marshal, or state highway patrolman, and also means any officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, the authority to arrest violators is conferred, when the officer, agent, or employee is acting within the limits of statutory authority. The definition of "law enforcement officer" contained in this rule shall not be construed to limit, modify, or expand any statutory definition, to the extent the statutory definition applies to matters not covered by the Rules of Criminal Procedure.

[Effective: July 1, 1973; amended effective July 1, 1976; July 1, 1990.]