

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re: I.A., a minor child	:	Case No. 2012-2122
	:	
	:	On Appeal from the Montgomery
	:	County Court of Appeals
	:	Second Appellate District
	:	Case No. 25078

REPLY BRIEF OF APPELLANT I. A.

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TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE AND FACTS.....	1
ARGUMENT.....	3
Certified-Conflict Question: If a court commits a child to a secure facility, does R.C. 2152.83(B)(1) permit the court to conduct a classification hearing at the time of disposition?.....	3
I. There is only one reasonable construction of R.C. 2152.83(B)(1).....	3
II. The language in 2152.83(B)(1) provides for one hearing, not two.....	7
CONCLUSION.....	8
CERTIFICATE OF SERVICE	9
APPENDIX:	
R.C. 2152.84.....	A-1
R.C. 2152.85.....	A-4
R.C. 2929.14.....	A-7
R.C. 5139.35.....	A-19

TABLE OF AUTHORITIES

Page No.

CASES:

<i>Caraco Pharmaceutical Laboratories, Ltd. v. Novo Nordisk A/S</i> , ___ U.S. ___, 132 S.Ct. 1670, 1682, 182 L.Ed.2d 678 (2012)	3
<i>In re A.R.</i> , 12th Dist. No. CA2006-09-112, 2007-Ohio-5191	5
<i>In re B.D.</i> , 11th Dist. No. 2011-P-0078, 2012-Ohio-4463	4,5
<i>In re B.G.</i> , 5th Dist. No. 2011-COA-012, 2011-Ohio-5898	3,6,8
<i>In re B.W.K.</i> , 11th Dist. No. 2009-P-0058, 2010-Ohio-3050	5
<i>In re C.A.C.</i> , 2d Dist. No. 2005-CA-134; 2005-CA-135, 2006-Ohio- 4003	6
<i>In re Callahan</i> , 5th Dist. No. 04COA-064, 2005-Ohio-735	4,5,6
<i>In re Carr</i> , 5th Dist. No. 08CA19, 2008-Ohio-5689	4
<i>In re I.A.</i> , 2d Dist. No. 25078, 2012-Ohio-497	4,6
<i>In re McAllister</i> , 5th Dist. No. 2006CA00073, 2006-Ohio-5554	4,5,6
<i>In re Mudrick</i> , 5th Dist. No. 2007CA00038, 2007-Ohio-6800	2
<i>In re P.B.</i> , 4th Dist. No. 07CA3140, 2007-Ohio-3937	4
<i>State v. Willan</i> , Slip Opinion No. 2013-2405	3

STATUTES:

R.C. 2152.82	5,6
R.C. 2152.83	<i>passim</i>
R.C. 2152.84	8
R.C. 2152.85	8

TABLE OF AUTHORITIES

Page No.

STATUTES:

R.C. 2929.14.....	3
R.C. 5139.35.....	2

STATEMENT OF THE CASE AND THE FACTS

Ian A. rests on his statement of the case and facts as set forth in his merit brief, but adds the following in response to Appellee's statement of the case and facts.

In its brief, the State notes that "although not raised or addressed below" there is "some uncertainty over whether I.A. was necessarily committed to a 'secure facility.'" *Answer* at 1, fn. 1. There is no such uncertainty.

At the disposition hearing on February 1, 2012, the juvenile court unequivocally committed Ian to the Department of Youth Services for a minimum period of one year, maximum to his 21st birthday. T.p. 7 ("The Court is going to give him, because this is a first-degree felony, minimum one year at DYS to his 21st birthday * * *."); T.p. 8 ("Young man, you're going to go - - you're going to go to DYS."); T.p. 9 ("I do not believe there were any options locally to treat this youth, and that is why the Court is committing him to the Department of Youth Services."). Further, the disposition entry provides that "it is therefore ordered that the child be and hereby is committed to the legal custody of the Department of Youth Services for institutionalization (in a secure facility) for a minimum period of twelve (12) months and a maximum period not to exceed the child's attainment of the age of twenty-one (21) years." (February 12, 2012 Disposition Entry) (*Merit* at A-35).

The court noted that it was "fearful" that Ian might be transferred to Paint Creek, a non-secure facility; and that if the court failed to classify him at the time of

that transfer, defense counsel would argue that the court lost its ability to classify him. T.p. 11; *Answer* at 1. This is because, had Ian been transferred to Paint Creek, the court would have addressed whether or not Ian would be classified at that time. See *In re Mudrick*, 5th Dist. No. 2007CA00038, 2007-Ohio-6800, ¶ 4-17. But the court's fear is unfounded, because the department of youth services must first obtain permission from the court before it transfers any child in its custody to a less restrictive setting. Specifically, R.C. 5139.35 provides:

5139.35 Prior consent of committing court required for placement in less restrictive setting.

(A) Except as provided in division (C) of this section and division (C)(2) of section 5139.06 of the Revised Code, the department of youth services shall not place a child committed to it pursuant to section 2152.16 or divisions (A) and (B) of section 2152.17 of the Revised Code who has not been institutionalized or institutionalized in a secure facility for the prescribed minimum period of institutionalization in an institution with a less restrictive setting than that in which the child was originally placed, other than an institution under the management and control of the department, without first obtaining the prior consent of the committing court.

(B) Except as provided in division (C) of this section, the department of youth services shall notify the committing court, in writing, of any placement of a child committed to it pursuant to division (A)(1)(b), (c), (d), or (e) of section 2152.16 or divisions (A) and (B) of section 2152.17 of the Revised Code who has been institutionalized or institutionalized in a secure facility for the prescribed minimum period of institutionalization under those divisions in an institution with a less restrictive setting than that in which the child was originally placed, other than an institution under the management and control of the department, at least fifteen days before the scheduled date of placement.

Accordingly, this Court should disregard Appellee's statement regarding the possibility that Ian was not committed to a secure facility, as it is not supported by the record in this matter or the law.

ARGUMENT

Certified-Conflict Question: If a court commits a child to a secure facility, does R.C. 2152.83(B)(1) permit the court to conduct a classification hearing at the time of disposition?

I. There is only one reasonable construction of R.C. 2152.83(B)(1).

Both Ian and Appellee assert that the meaning of the timing provision in R.C. 2152.83(B)(1) is clear and unambiguous, but come to different conclusions about what the meaning is. *Merit* at 2-6; *Answer* at 3-4. Careful consideration of the language in R.C. 2152.83(B)(1), within the context of R.C. 2152.83, and according to the rules of grammar and common usage, will lead this Court to the same conclusion reached by the Fifth District: “the use of the word ‘may’ indicates the court has discretion to decide whether, not when, to classify the child.” *In re B.G.*, 5th Dist. No. 2011-COA-012, 2011-Ohio-5898, ¶ 32.

This conclusion makes sense in light of the rationale set forth by this Court in *State v. Willan*, Slip Opinion No. 2013-2405. In *Willan*, this Court determined the scope of R.C. 2929.14(D)(3)(a), by “reading the words and phrases in context and construing them according to the rules of grammar and common usage.” *Id.* at ¶ 5. Noting that R.C. 2929.14(D)(3)(a) is complex, this Court concluded that “the mere possibility of clearer phrasing’ will not defeat the most natural reading of the Statute.” *Id.* at ¶ 11, quoting *Caraco Pharmaceutical Laboratories, Ltd. v. Novo Nordisk A/S*, ___ U.S. ___, 132 S.Ct. 1670, 1682, 182 L.Ed.2d 678 (2012). Just as this Court held that “there is only one reasonable construction of R.C. 2929.14(D)(3)(a),” Ian asks this Court to hold that the most natural reading of R.C.

2152.83(B)(1) according to the rules of grammar and common usage, and the only reasonable construction of R.C. 2152.83(B)(1), is that the word “may” refers both to the classification hearing for a child not committed to a secure facility and a child committed to a secure facility; but, if the child is committed to a secure facility, then, the court may classify the child only upon the child’s release. This is because the outcome—whether the court classifies the child or not at disposition or upon the child’s release from a secure facility—is conditioned upon whether the child is committed to a secure facility.¹

The State and I.A. below rely on the reasoning that “the General Assembly’s use of the word ‘may’ and the use of the conjunction ‘or’ triggers the trial court’s discretion regarding when to make [the juvenile sex offender classification] determination.” *In re I.A.*, 2d Dist. No. 25078, 2012-Ohio-497, ¶ 13, citing *In re Carr*, 5th Dist. No. 08CA19, 2008-Ohio-5689; *In re McAllister*, 5th Dist. No. 2006CA00073, 2006-Ohio-5554, and; *In re Callahan*, 5th Dist. No. 04COA-064, 2005-Ohio-735; *Answer* at 3. Both the State and the court below ignore that the word “may” is followed, not only by the word “if,” but by the phrase “or, if.” R.C. 2152.83(B)(1). The word “or” is important, because it creates alternate conditions, each modified by the word “may.”

In support of its conclusion that the language is plain, the State cites three cases: *In re P.B.*, 4th Dist. No. 07CA3140, 2007-Ohio-3937; *In re B.D.*, 11th Dist.

¹ See http://en.wikipedia.org/wiki/Conditional_sentence (accessed June 29, 2013) for an overview of conditional sentences.

No. 2011-P-0078, 2012-Ohio-4463; and *In re A.R.*, 12th Dist. No. CA2006-09-112, 2007-Ohio-5191. *Answer* at 4. *P.B.* is not persuasive, however, because it concerned a classification hearing for a 17-year-old child pursuant to R.C. 2152.83(A), and referred to the Fifth district's now-abandoned analysis from *McAllister* and *Callahan*. The State's reliance on *A.R.* is misplaced, because in *A.R.*, the Twelfth District found that the juvenile court erred when it conducted the classification hearing pursuant to the wrong statute—R.C. 2152.83(B) instead of R.C. 2152.82. *Id.* at ¶ 10-24. Specifically, the Twelfth District noted that a court could only conduct a classification hearing under R.C. 2152.83(B), if it was not required to classify the child under R.C. 2152.82:

R.C. 2152.83(B)(1) provides that the juvenile court that adjudicates a child delinquent may conduct a hearing to determine whether the delinquent child should be classified as a juvenile sex offender registrant at either the time of disposition or the time at which the delinquent child is released from a secure facility *if*, among other things, the court was not required to classify the child as a juvenile sex offender registrant under R.C. 2152.82.

A.R. at ¶ 12. (Emphasis sic.)

The State's reliance on *B.D.* only confuses matters more, because the Eleventh District has interpreted the timing provision in R.C. 2152.83(B)(1) in a way that no other court ever has, allowing the court to classify the child "at *any* time during the disposition period * * *." *B.D.* at ¶ 14. (Emphasis sic); *but see In re B.W.K.*, 11th Dist. No. 2009-P-0058, 2010-Ohio-3050, ¶ 14, (O'Toole, J. dissenting):

Finding merit in *B.K.*'s first assignment of error, I would reverse. Regarding a delinquent child *B.K.*'s age, R.C. 2152.83(B)(1) provides that the trial court "may conduct at the time of disposition of the child or, if the court commits the child * * * to the custody of a secure

facility, may conduct at the time of the child's release from the secure facility a hearing [to determine the child's sexual offender classification] * * * ." I agree with B.K. that the language chosen by the General Assembly indicates that, if the delinquent child is sent to a secure facility, a sexual offender classification hearing may be held only when the child is released from that facility. I dissented from this court's disposition of the appeal in [*In re*] *Thrower*, 11th Dist. No. 2008-G-2813, 2009-Ohio-1314] at ¶ 60-63. I still believe it contravenes the plain meaning of the statute and would reverse, finding plain error.

Finally, the Second District has not always interpreted the timing provisions in R.C. 2152.83(A) and (B) differently. The Second District first considered the timing provisions in R.C. 2152.82 and .83, in 2006. *In re C.A.C.*, 2d Dist. No. 2005-CA-134; 2005-CA-135, 2006-Ohio-4003. Although the court determined that the issue was moot, it noted that "both of those statutes provide for a sexual offender classification to be made at the time of disposition, as part of the dispositional order, unless the juvenile is committed to a secure facility, in which event the classification shall be made at the time of the juvenile's release from a secure facility." *Id.* at ¶ 53.

The Second District got it right in *C.A.C.*, and the Fifth District correctly abandoned its prior analysis in *Callahan* and *McAllister* and reached the correct conclusion in *B.G.* Ian asks this Court to reject the strained reasoning offered by the State and *I.A.*, below, and accept the conclusion reached in *B.G.*, which reflects the most natural reading of the statute.

II. The language in R.C. 2152.83(B)(1) provides for one hearing, not two.

The State asserts that I.A.'s reliance on the conflict case is misplaced and offers a reading of R.C. 2152.83(B)(1) that is not supported by the language in the statute or any decision of any court. *Answer* at 5-8. Specifically, the State asserts that the language in R.C. 2152.83(B)(1), as interpreted by the Second District below, offers younger children “*more benefit* from treatment than is afforded older offenders, not less.” *Answer* at 7. (Emphasis sic.) Not surprisingly, the State offers no precedent to support its rationale, because no court has ever interpreted R.C. 2152.83(B)(1) and (B)(2) to mean what the State asserts.

Specifically, the State asserts that R.C. 2152.83(B)(1) actually allows the court to conduct two classification hearings—one before the child goes to the secure facility, and one upon the child's release from the secure facility:

[T]he law already allows juvenile courts to take into consideration the benefits of rehabilitation and treatment *before and after* the juvenile is classified. R.C. 2152.83(B)(1) and 2152.83(B)(2) allow courts, both at the time of disposition *and again* at the time of the child's release from a secure facility, the discretion “to review the effectiveness of the disposition and of any treatment provided to the child placed in a secure setting,” to determine, or redetermine, the child's classification.

Answer at 7. (Emphasis sic.)

Without question, R.C. 2152.83(B)(1) and (B)(2) provide for one hearing, not two, and do not contain any authority for a court to “redetermine” the child's classification. This is clear, because R.C. 2152.83(B)(1) refers to “a hearing” and (B)(2) refers to “a hearing” or “the hearing.” The General Assembly has

unquestionably granted juvenile courts the authority to make one, and only one initial classification determination. R.C. 2152.83(B)

The Code does provide opportunities for courts to modify or discontinue the classification order after the delinquent child's disposition is complete. Specifically, R.C. 2152.84 requires the court, upon the child's completion of disposition, to conduct a hearing to continue the classification or reclassify the child. And, R.C. 2152.85 allows the delinquent child to file a petition asking the court for reclassification or declassification, at least three years after the R.C. 2152.84 hearing, and allows a second petition at least three years thereafter. Contrary to the State's assertion, R.C. 2152.84 and .85 are the only provisions which allow a court to "redetermine" the child's classification order.

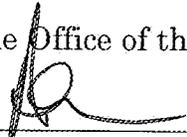
As set forth in Ian's merit brief, if this Court determines that the language in R.C. 2152.83(B)(1) is not clear, he asks this Court to adopt the reasoning set forth in *B.G.* at ¶ 32-42, answer the conflict question in the negative, and reverse the decision of the court below.

CONCLUSION

For all the forgoing reasons, Ian A. asks this Court to answer the certified question in the negative, vacate the juvenile sex offender classification issued in his case, and remand the matter to the juvenile court to determine whether a classification hearing pursuant to R.C. 2152.83(B)(1) is appropriate.

Respectfully submitted,

The Office of the Ohio Public Defender

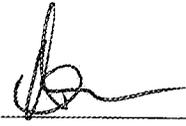

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief of Appellant I.A.** was served by ordinary U.S. Mail, postage-prepaid, this 1st day of July, 2013, to the office of Andrew T. French, Assistant Prosecuting Attorney, Montgomery County Prosecutor's Office, 301 West Third Street, P.O. Box 972, Dayton, Ohio 45422.


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APPENDIX TO
REPLY BRIEF OF APPELLANT I. A.

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*** Annotations current through April 22, 2013 ***

TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

ORC Ann. 2152.84 (2013)

§ 2152.84. Hearing upon completion of disposition on whether to continue classification or determination; reclassification

(A) (1) When a juvenile court judge issues an order under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code* that classifies a delinquent child a juvenile offender registrant and specifies that the child has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*, upon completion of the disposition of that child made for the sexually oriented offense or the child-victim oriented offense on which the juvenile offender registrant order was based, the judge or the judge's successor in office shall conduct a hearing to review the effectiveness of the disposition and of any treatment provided for the child, to determine the risks that the child might re-offend, to determine whether the prior classification of the child as a juvenile offender registrant should be continued or terminated as provided under division (A)(2) of this section, and to determine whether its prior determination made at the hearing held pursuant to *section 2152.831 of the Revised Code* as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender should be continued or modified as provided under division (A)(2) of this section.

(2) Upon completion of a hearing under division (A)(1) of this section, the judge, in the judge's discretion and after consideration of all relevant factors, including but not limited to, the factors listed in division (D) of *section 2152.83 of the Revised Code*, shall do one of the following as applicable:

(a) Enter an order that continues the classification of the delinquent child as a juvenile offender registrant made in the prior order issued under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code* and the prior determination included in the order that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable;

(b) If the prior order was issued under division (B) of *section 2152.83 of the Revised Code*, enter an order that contains a determination that the delinquent child no longer is a juvenile

offender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*. An order issued under division (A)(2)(b) of this section also terminates all prior determinations that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable. Division (A)(2)(b) of this section does not apply to a prior order issued under section 2152.82 or division (A) of *section 2152.83 of the Revised Code*.

(c) If the prior order was issued under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code*, enter an order that continues the classification of the delinquent child as a juvenile offender registrant made in the prior order issued under section 2152.82 or division (A) or (B) of *section 2152.83 of the Revised Code*, and that modifies the prior determination made at the hearing held pursuant to *section 2152.831 of the Revised Code* that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable. An order issued under division (A)(2)(c) of this section shall not include a determination that increases to a higher tier the tier classification of the delinquent child. An order issued under division (A)(2)(c) of this section shall specify the new determination made by the court at a hearing held pursuant to division (A)(1) of this section as to whether the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable.

(B) (1) If a judge issues an order under division (A)(2)(a) of this section that continues the prior classification of the delinquent child as a juvenile offender registrant and the prior determination included in the order that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable, the prior classification and the prior determination shall remain in effect.

(2) A judge may issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier III sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier I sex offender/child-victim offender classification.

A judge may issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification. A judge may not issue an order under that division that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification to a tier III sex offender/child-victim offender classification.

A judge may not issue an order under division (A)(2)(c) of this section that contains a determination that reclassifies a child from a tier I sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier III sex offender/child-victim offender classification.

If a judge issues an order under this division that contains a determination that reclassifies a child, the judge shall provide a copy of the order to the delinquent child and the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04 or 2950.041 of the Revised Code* of the determination and reclassification.

(3) If a judge issues an order under division (A)(2)(b) of this section that declassifies the delinquent child as a juvenile offender registrant, the judge shall provide a copy of the order to the

bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04* or *2950.041 of the Revised Code* of the declassification.

(C) If a judge issues an order under division (A)(2)(a), (b), or (c) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and, if applicable, a notice containing the information described in divisions (A) and (B) of *section 2950.03 of the Revised Code*. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

(D) An order issued under division (A)(2)(a) or (c) of this section and any determinations included in the order shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a modification or termination of the order under *section 2152.85 of the Revised Code*, and *section 2152.851 of the Revised Code* applies regarding the order and the determinations. If an order is issued under division (A)(2)(a) or (c) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(E) The provisions of this section do not apply to a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code*.

HISTORY:

149 v S 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

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TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2152. DELINQUENT CHILDREN; JUVENILE TRAFFIC OFFENDERS
JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAW

ORC Ann. 2152.85 (2013)

§ 2152.85. Petition requesting reclassification or declassification

(A) Regardless of when the delinquent child was classified a juvenile offender registrant, upon the expiration of the applicable period of time specified in division (B)(1), (2), or (3) of this section, a delinquent child who has been classified pursuant to this section or *section 2152.82 or 2152.83 of the Revised Code* a juvenile offender registrant may petition the judge who made the classification, or that judge's successor in office, to do one of the following:

(1) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier III sex offender/child-victim offender, to enter, as applicable, an order that contains a determination that reclassifies the child as either a tier II sex offender/child-victim offender or a tier I sex offender/child-victim offender, the reason or reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*;

(2) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier II sex offender/child-victim offender, to enter, as applicable, an order that contains a determination that reclassifies the child as a tier I sex offender/child-victim offender, the reason or reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code*;

(3) If the order containing the juvenile offender registrant classification also includes a determination by the juvenile court judge that the delinquent child is a tier I sex offender/child-victim offender, to enter an order that contains a determination that the child no longer is a juvenile of-

fender registrant and no longer has a duty to comply with *sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code.*

(B) A delinquent child who has been adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense and who has been classified a juvenile offender registrant relative to that offense may file a petition under division (A) of this section requesting reclassification or declassification as described in that division after the expiration of one of the following periods of time:

(1) The delinquent child initially may file a petition not earlier than three years after the entry of the juvenile court judge's order after the mandatory hearing conducted under *section 2152.84 of the Revised Code.*

(2) After the delinquent child's initial filing of a petition under division (B)(1) of this section, the child may file a second petition not earlier than three years after the judge has entered an order deciding the petition under division (B)(1) of this section.

(3) After the delinquent child's filing of a petition under division (B)(2) of this section, thereafter, the delinquent child may file a petition under this division upon the expiration of five years after the judge has entered an order deciding the petition under division (B)(2) of this section or the most recent petition the delinquent child has filed under this division.

(C) Upon the filing of a petition under division (A) of this section, the judge may review the prior classification or determination in question and, upon consideration of all relevant factors and information, including, but not limited to the factors listed in division (D) of *section 2152.83 of the Revised Code*, the judge, in the judge's discretion, shall do one of the following:

(1) Enter an order denying the petition;

(2) Issue an order that reclassifies or declassifies the delinquent child in the requested manner.

(D) If a judge issues an order under division (C)(1) of this section that denies a petition, the prior classification of the delinquent child as a juvenile offender registrant, and the prior determination that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable, shall remain in effect.

A judge may issue an order under division (C)(2) of this section that contains a determination that reclassifies a child from a tier III sex offender/child-victim offender classification to a tier II sex offender/child-victim offender classification or to a tier I sex offender/child-victim offender classification.

A judge may issue an order under division (C)(2) of this section that contains a determination that reclassifies a child from a tier II sex offender/child-victim offender classification to a tier I sex offender/child-victim offender classification.

If a judge issues an order under this division that contains a determination that reclassifies a child, the judge shall provide a copy of the order to the delinquent child and the bureau of criminal identification and investigation, and the bureau, upon receipt of the copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04 or 2950.041 of the Revised Code* of the determination and reclassification.

If a judge issues an order under division (C)(2) of this section that declassifies the delinquent child, the order also terminates all prior determinations that the child is a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender, whichever is applicable. If a judge issues an order under division (C)(2) of this section that declassifies the delinquent child, the judge shall provide a copy of the order to the bureau of criminal identification and investigation, and the bureau, upon receipt of a copy of the order, promptly shall notify the sheriff with whom the child most recently registered under *section 2950.04* or *2950.041 of the Revised Code* of the declassification.

(E) If a judge issues an order under division (C)(1) or (2) of this section, the judge shall provide to the delinquent child and to the delinquent child's parent, guardian, or custodian a copy of the order and, if applicable, a notice containing the information described in divisions (A) and (B) of *section 2950.03 of the Revised Code*. The judge shall provide the notice at the time of the issuance of the order and shall comply with divisions (B) and (C) of that section regarding that notice and the provision of it.

(F) An order issued under division (C) of this section shall remain in effect for the period of time specified in *section 2950.07 of the Revised Code*, subject to a further modification or future termination of the order under this section. If an order is issued under division (C) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

(G) The provisions of this section do not apply to a delinquent child who is classified as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to *section 2152.86 of the Revised Code*.

HISTORY:

149 v S 3. Eff 1-1-2002; 150 v S 5, § 1, eff. 7-31-03; 152 v S 10, § 1, eff. 1-1-08.

Page's Ohio Revised Code Annotated:
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Current through Legislation passed by the 130th Ohio General Assembly
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*** Annotations current through April 22, 2013 ***

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

ORC Ann. 2929.14 (2013)

§ 2929.14. Basic prison terms

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

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

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

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

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

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

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

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

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

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

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

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

(c) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of *section 2923.161 of the Revised Code* or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in *section 2941.146 of the Revised Code* that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of *section 2923.161 of the Revised Code* or for the other felony offense under division (A), (B)(2), or (B)(3) of this section, shall impose an additional prison term of five years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (B)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (B)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (B)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in *section 2941.1411 of the Revised Code* that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a prison term of two years. The prison term so imposed, subject to divisions (C) to (I) of *section 2967.19 of the Re-*

vised Code, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(1)(d) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term under division (B)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (B)(1)(d) of this section.

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

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

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

(f) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1412 of the Revised Code* that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in *section 2935.01 of the Revised Code* or a corrections officer, as defined in *section 2941.1412 of the Revised Code*, the court, after imposing a prison term on the offender for the felony offense under division (A), (B)(2), or (B)(3) of this section, shall impose an additional prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. If an offender is convicted of or pleads guilty to two or more felonies that include, as an essential element, causing or attempting to cause the death or physical harm to another and also is convicted of or pleads guilty to a specification of the type described under division (B)(1)(f) of this section in connection with two or more of the felonies of which the offender is convicted or to which the offender pleads guilty, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(f) of this section for each of two of the specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications. If a court imposes an additional prison term on an offender under division (B)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (B)(1)(a) or (c) of this section relative to the same offense.

(g) If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified

under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of *section 2929.13 of the Revised Code*, the sentencing court shall impose upon the offender a mandatory prison term in accordance with that division. In addition to the mandatory prison term, if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced

for a third degree felony OVI offense, the sentencing court may sentence the offender to an additional prison term of any duration specified in division (A)(3) of this section. In either case, the additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the mandatory prison term. The total of the additional prison term imposed under division (B)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense. If the court imposes an additional prison term under division (B)(4) of this section, the offender shall serve the additional prison term after the offender has served the mandatory prison term required for the offense. In addition to the mandatory prison term or mandatory and additional prison term imposed as described in division (B)(4) of this section, the court also may sentence the offender to a community control sanction under *section 2929.16 or 2929.17 of the Revised Code*, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

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

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

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

(7) (a) If an offender is convicted of or pleads guilty to a felony violation of *section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1422 of the Revised Code* that charges

that the offender knowingly committed the offense in furtherance of human trafficking, the court shall impose on the offender a mandatory prison term that is one of the following:

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

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

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

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

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

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

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

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

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

(2) If an offender who is an inmate in a jail, prison, or other residential detention facility violates *section 2917.02, 2917.03, or 2921.35 of the Revised Code* or division (A)(1) or (2) of *section 2921.34 of the Revised Code*, if an offender who is under detention at a detention facility commits a felony violation of *section 2923.131 of the Revised Code*, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of division (A)(1) or (2) of *section 2921.34 of the Revised Code*, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) If the offender previously has been convicted of or pleaded guilty to one or more felony or misdemeanor violations of *section 2907.22, 2907.23, 2907.24, 2907.241, or 2907.25 of the Revised Code* and also was convicted of or pleaded guilty to a specification of the type described in *section 2941.1421 of the Revised Code* regarding one or more of those violations, an ad-

ditional prison term of one, two, three, four, five, six, seven, eight, nine, ten, eleven, or twelve months.

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

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

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

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

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

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

in *section 5120.031 or 5120.032 of the Revised Code* and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

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

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 88 (Eff 9-3-96); 146 v H 445 (Eff 9-3-96); 146 v H 154 (Eff 10-4-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 151 (Eff 9-16-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 2 (Eff 1-1-99); 148 v S 1 (Eff 8-6-99); 148 v H 29 (Eff 10-29-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 130. Eff 4-7-2003; 149 v S 123, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04*; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 137, § 1, eff. 7-11-06; 151 v H 137, § 3, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 151 v S 281, § 1, eff. 1-4-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v S 184, § 1, eff. 9-9-08; 152 v S 220, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09; 152 v H 130, § 1, eff. 4-7-09; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 SB 337, § 1, eff. Sept. 28, 2012.

Page's Ohio Revised Code Annotated:
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Current through Legislation passed by the 130th Ohio General Assembly
and filed with the Secretary of State through File 18
*** Annotations current through April 22, 2013 ***

TITLE 51. PUBLIC WELFARE
CHAPTER 5139. YOUTH SERVICES
REGULATIONS

ORC Ann. 5139.35 (2013)

§ 5139.35. Prior court consent required for placement in less restrictive setting

(A) Except as provided in division (C) of this section and division (C)(2) of *section 5139.06 of the Revised Code*, the department of youth services shall not place a child committed to it pursuant to section 2152.16 or divisions (A) and (B) of *section 2152.17 of the Revised Code* who has not been institutionalized or institutionalized in a secure facility for the prescribed minimum period of institutionalization in an institution with a less restrictive setting than that in which the child was originally placed, other than an institution under the management and control of the department, without first obtaining the prior consent of the committing court.

(B) Except as provided in division (C) of this section, the department of youth services shall notify the committing court, in writing, of any placement of a child committed to it pursuant to division (A)(1)(b), (c), (d), or (e) of section 2152.16 or divisions (A) and (B) of *section 2152.17 of the Revised Code* who has been institutionalized or institutionalized in a secure facility for the prescribed minimum period of institutionalization under those divisions in an institution with a less restrictive setting than that in which the child was originally placed, other than an institution under the management and control of the department, at least fifteen days before the scheduled date of placement.

(C) If, pursuant to division (C)(2) of *section 5139.06 of the Revised Code*, the department of youth services transfers a child committed to it pursuant to division (A)(1)(b), (c), (d), or (e) of section 2152.16 or divisions (A) and (B) of *section 2152.17 of the Revised Code* to a correctional medical center established by the department of rehabilitation and correction, the department of youth services shall send the committing court a certified copy of the transfer order.

HISTORY:

139 v H 440 (Eff 11-23-81); 140 v H 291 (Eff 7-1-83); 144 v S 331 (Eff 11-13-92); 146 v H 1 (Eff 1-1-96); 147 v H 1 (Eff 7-1-98); 148 v S 179, § 3. Eff 1-1-2002.