

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellant,

v.

SHAWN WARE

Appellee.

Case No. 14-0425

On Appeal From the Portage
County Court of Appeals,
Eleventh Appellate District

Court of Appeals
Case No. 2013-P-0011

Certified Conflict Case

MERIT BRIEF OF THE STATE OF OHIO

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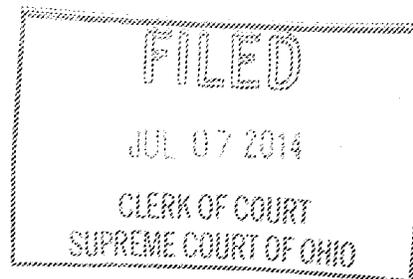
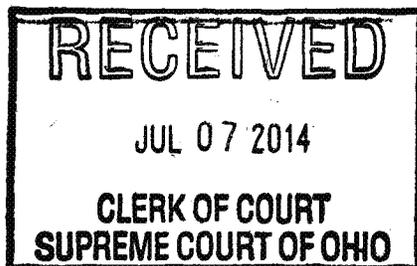


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STATEMENT OF THE CASE AND FACTS

PROCEDURAL HISTORY

This case originated in the Portage County Court of Common Pleas, Ohio. On September 17, 2009, the Portage County Grand Jury indicted Shawn Ware in a seven-count indictment charging three counts of trafficking in cocaine in an amount less than one gram pursuant to former R.C. 2925.03(A)(C)(4), one count of trafficking in cocaine in an amount less than one gram in the vicinity of a juvenile pursuant to former R.C. 2925.03(A)(C)(4)(b), one count of trafficking in cocaine in an amount greater than one gram but less than five grams in violation of former R.C. 2925.03(A)(C)(4)(c), one count of trafficking in cocaine in an amount greater than ten grams but less than twenty-five grams pursuant to former R.C. 2925.03(A)(C)(4)(e), and one count of possession of cocaine in violation of former R.C. 2925.03(A)(C)(4)(d). (Transcript of the docket, journal entries and original papers hereinafter "T.d." 1).

Following extensive plea negotiations, Ware entered a written plea of guilty to count five, trafficking in cocaine a felony of the fourth degree and count six, trafficking in cocaine a felony of the second degree. (T.d. 34, 36). The remaining charges were dismissed. The trial court accepted Ware's plea and referred the matter for a presentence investigation report. (T.d. 36).

On April 19, 2010, the matter proceeded to a sentencing hearing. The court said that Ware's trafficking in cocaine, felony of the second degree carried a prison sentence ranging from two to eight years and a fine from \$7,500 to \$15,000, and then stated on the record, "Before I sentence the Defendant, I'd like to hear from

defense counsel, with the understanding there is mandatory time on the felony of the second degree.” (Transcript of the April 19, 2010 Original Sentencing Hearing, hereinafter “T.p.” 2). The Court heard from both defense counsel and Ware. The state made no recommendation at the hearing. (T.p. 3). The court sentenced Ware to eighteen months in prison for the fourth degree trafficking offense with a concurrent term of four years in prison for the second degree trafficking offense. (T.d. 40). No appeal was taken from this April 23, 2010, sentencing entry.

The record reflects two nunc pro tunc entries and one modification were issued by the trial court regarding its original April 23, 2010, sentencing entry. The court responded to a request from the Ohio Department of Rehabilitation and Correction for a nunc pro tunc entry on July 20, 2010, by replacing the word, “may” with the word, “will” in the first sentence of the sixth paragraph to indicate that Ware was subject to a mandatory rather than a discretionary term of post release control. (T.d. 51). Nine days later, a nunc pro tunc entry was filed increasing Ware’s jail time credit from “forty-nine (49)” to “two hundred eighteen (218)” days to reflect credit for his time in jail, “and on house arrest.” (T.d. 54). The second nunc pro tunc entry was filed on December 29, 2011, and inserted, “a mandatory” before “four (4) years to be served for the felony two.” (T.d. 80).

Ware filed three motions for judicial release with the trial court. (T.d. 58, 74 and 90). The court denied Ware’s first motion, Ware withdrew his second motion and the court granted Ware’s third motion. (T.d. 68, 85 and 94). In his third motion, Ware argued the original April 23, 2010, sentencing entry failed to specify that his four years sentence was mandatory and, therefore, he was only responsible for serving a

'minimum-mandatory' term of two years. (T.d. 90). Over the state's opposition, the trial court granted Ware's third motion for judicial release and ordered him to intensive supervision under the Adult Parole Authority for one year and general supervision for an additional forty-eight months. (T.d. 94).

Before Ware was released, the court held another hearing on the matter and addressed the state's argument that Ware's entire sentence was mandatory rendering him ineligible for judicial release under the authority of a recent decision from the Eleventh District Court of Appeals, *State v. Warren*, 11th No. 2012-P-0069, 2013-Ohio-443. (T.d. 97). The trial court denied the state's request for a stay of its decision granting Ware judicial release. (T.d. 97).

The State filed a timely notice of appeal with the Eleventh District Court of Appeals and a motion requesting an ex parte temporary stay pursuant to Loc.App.R. 7(A)(2). The appellate court temporarily stayed the trial court's order but eventually overruled the state's motion for a stay of the trial court's order granting Ware judicial release pending the state's appeal.

On appeal, the state challenged the trial court's statutory authority to fashion a part mandatory prison term and part non-mandatory prison term for Ware's felony of the second degree, trafficking in cocaine. However, a unanimous panel of the Eleventh District held, "[A] hybrid sentence is permissible." *State v. Ware*, 11th Dist. No. 2013-P-0011, 2013-Ohio-5833, at ¶ 18. The state's appeal was sustained in part with regards to the trial court's failure to make the necessary findings of fact under R.C. 2929.20(J), before granting Ware's judicial release. However, the appellate court also remanded the matter with orders for the trial court to impose its intended

'hybrid' sentence with a new nunc pro tunc finding, "[T]o the extent that the state has challenged the trial court's authority to impose a hybrid sentence, its first assignment of error is not well-taken." *Id.*, at ¶ 44. It is from this portion of the Eleventh District's decision that the state sought a certified conflict determination. The appellate court granted the state's motion and certified a conflict between its decision in *Ware* and the Third Appellate District's opinion in *State v. Thomas*, 3d Dist. No. 1-04-88, 2005-Ohio-4616. *State v. Ware*, 11th Dist. No. 2013-P-0011 (Mar. 5, 2014). The Eleventh District provided the following certified conflict issue:

When the imposition of a mandatory prison term is statutorily-mandated for a specific felony offense, is the trial court permitted to impose a total prison term within the maximum allowed, only a portion of which is mandatory under the statute? *State v. Ware*, 11th Dist. No. 2013-P-0011 (Mar. 5, 2014).

This Court reviewed the order certifying a conflict and determined a conflict existed on May 19, 2014.

STATEMENT OF FACTS

As this appeal arose from a written plea of guilty, the relevant facts have been incorporated in the previous section.

ARGUMENT

Certified Conflict Issue: When the imposition of a mandatory prison term is statutorily-mandated for a specific felony offense, is the trial court permitted to impose a total prison term within the maximum allowed, only a portion of which is mandatory under the statute?

State of Ohio's Response to the Certified Conflict Issue: When the plain language of the statute requires a trial court to impose a mandatory prison term, it is for the entire length of the prison term.

Court's Authority to Sentence is Only as Provided by Law

“[T]he power to define crimes and establish penalties rests with the General Assembly alone.” *State v. Morris*, 55 Ohio St.2d 101, 113, 378 N.E.2d 708 (1978). Section 4 of Article IV of the Ohio Constitution provides, “[C]ourts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.” As this Court explained in *Madjorous v. State*, 113 Ohio St. 427, 430-431, 149 N.E. 393 (1925):

It should require no argument to show that if the jurisdiction can be either conferred or withheld by the Legislature, that jurisdiction can also be limited or controlled by conditions at the will of the legislative power. It seems clear enough that in conferring upon the Legislature the power to fix the jurisdiction of the courts of common pleas such power included the further power to establish the practice and procedure, and to make such limitations and impose such conditions upon the jurisdiction as the Legislature might see fit.

The General Assembly can limit the duration and the nature of a felony offender's confinement. An example of this limitation is the requirement of a mandatory prison term provided in the statutory language of a criminal offense. The “[C]ourt shall impose as a mandatory prison term one of the prison terms prescribed for a felony” of a specific degree, R.C. 2925.03(C)(4)(e), or “The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation” of a certain division of a felony offense section. R.C. 2903.08(B)(1). It is the imposition of this type of mandatory prison term that has given rise to the certified conflict issue in this case.

The Ohio appellate districts that have reviewed this certified conflict issue have reached different results and can be separated into two categories. The first

category applied the sentencing statutes as written, finding the clear and unambiguous language used by the General Assembly required a trial court to impose a mandatory sentence for the entire length of the prison term when the felony offense required a mandatory prison term. *Thomas*, 2005-Ohio-4616 at ¶ 7; see also, *State v. Bridges*, 8th Dist. No. 87633, 2006-Ohio-6280. The second category found statutory interpretation was necessary; determined legislative intent without considering legislative history, prior statutory provisions or the impact of the proposed construction; and allowed a 'hybrid' prison term. *State v. Ware*, 11th Dist. No. 2013-P-0011, 2013-Ohio-5833, ¶ 18; *State v. May*, 5th Dist. No. 2010CA2, 2010-Ohio-4625, ¶ 18. A review of these two categories of cases demonstrates that the approach taken by the Third District in *Thomas* is the correct analysis for this certified conflict issue because when the plain language of the statute requires a trial court to impose a mandatory prison term, it is for the entire length of the prison term.

Sentencing Statutes Applied Not Construed

"The first rule of statutory construction is that a statute which is clear is to be applied, not construed." *Vought Industries, Inc. v. Tracy*, 72 Ohio St.3d 261, 265, 648 N.E.2d 1364 (1995). "There is no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend or improve the provisions of the statute to meet a situation not provided for." *State ex rel. Foster v. Evatt*, 144 Ohio St. 65, 56 N.E.2d 265 (1944), paragraph eight of the syllabus. The court's obligation is to apply the statute as written. *R.W. Sidley, Inc. v. Limbach*, 66 Ohio St.3d 256, 257, 611 N.E.2d 815 (1993).

When the plain and unambiguous language of the statute requires the imposition of a mandatory prison term, it is for the entire length of the prison term. *Thomas*, 2005-Ohio-4616 at ¶ 7. In *Thomas*, the statutory section requiring a mandatory prison term was former R.C. 2925.11(C)(4)(e), “[P]ossession of cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.” Former R.C. 2925.11(C)(4)(e), 2002 H 490, eff. 1-1-04; see also, *Thomas*, 2005-Ohio-Ohio-4616 at ¶ 7. The *Thomas* Court found, “Ohio courts have consistently read this language as requiring the implementation of a mandatory sentence.” *Id.* Courts commit error when they accept a guilty plea from a defendant after indicating that community control sanctions are available on a R.C. 2925.11, offense. *Id.*

The Third District found there was a, “[C]lear statutory directive” and, therefore, held the statute, “[R]equired the trial court to impose a mandatory term for the full length of the sentence imposed.” *Id.* at ¶ 8. Policy arguments regarding rehabilitation were better addressed to the legislature and not the courts. *Id.* The Eighth District has adopted the Third District’s position regarding mandatory sentences. *Bridges*, 2006-Ohio-6280, ¶ 11.

The *Thomas* decision is in line with the state’s position that the trial court lacked authority to craft a part mandatory prison term and part non-mandatory prison term in *Ware*’s case. At issue in *Ware* was the sentence imposed for his conviction for trafficking in cocaine, a felony of the second degree. Under the version of R.C. 2925.03, effective at the time of *Ware*’s sentencing, if the drug involved in the violation of R.C. 2925.03(A)(2), was crack cocaine in a amount that exceeded ten

grams but was less than twenty-five grams, the person was guilty of trafficking in cocaine, “[A] felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.” Former R.C. 2925.03(C)(4)(e), 2008 H 129, eff. 9-30-08. The prison terms authorized for a felony of the second degree included, “[T]wo, three, four, five, six, seven, or eight years.” R.C. 2929.14(A)(2). Accordingly, the General Assembly limited the trial court’s authority in *Ware* to, “[I]mpose as a mandatory prison term” a length of “[T]wo, three, four, five, six, seven, or eight years.” R.C. 2929.14(A)(2).

Ware had actual notice that his prison term for the second degree trafficking in cocaine offense was a mandatory prison term. The record in *Ware* reflects a written plea of guilty that provided, “I understand the nature of the charge(s) to which I am pleading, to wit: Count 6 Trafficking w[ith] cocaine, a felony of the second degree, ORC 2925.03(A)(2), (C)(4)(e) * * * and that it/they may carry a maximum penalty of Count 6 \$15,000.00 [-] \$7,500.00 mandatory fine. 2, 3, 4, 5, 6, 7, or 8 years in prison mandatory.” (T.d. 34). Additionally, the trial court stated on the record at Ware’s sentencing hearing, “Before I sentence the Defendant, I’d like to hear from defense counsel, with the understanding there is mandatory time on the felony of the second degree.” (T.p. 2).

However, the court also stated that if Ware made every effort to change his life while in prison, his attorney may petition the court for judicial release. (T.p. 6). At the second hearing on Ware’s third judicial release motion, the court explained the Eleventh District Court had released a decision the same day she granted Ware judicial release that “stated that if an individual is given a definite or mandatory

period of time in prison, that they have to serve that time.” (Transcript of the February 13, 2013, Second Judicial Release Hearing, hereinafter “2JR-T.p.” 2). The court then explained its position, “My idea was if the mandatory minimum in a certain charge is two years and I gave you four, that you would be eligible after the two year period because that was the mandatory minimum.” (2JR-T.p. 2).

The trial court had the option of imposing a mandatory two years prison term for Ware’s drug trafficking offense as the range of possible sentences for a second degree felony was two to eight years. R.C. 2929.14(A)(2). Instead, the trial court imposed a four years prison term. (T.d. 40). Even though the court may have wanted to impose a four years sentence consisting of a two years mandatory prison term and a two years non-mandatory prison term (2JR-T.p. 2), there was no statutory authority for this type of prison term. “Crimes are statutory, as are the penalties therefor, and the only sentence which a trial judge may impose is that provided for by statute * * *. A court has no power to substitute a different sentence for that provided for by law.” *Colgrove v. Burns*, 175 Ohio St. 437, 438, 195 N.E.2d 811 (1964).

Moreover, to impose the sentencing court’s intended sentence, the court would have to impose both (1) a mandatory prison term and (2) a non-mandatory prison term, two terms, which the sentencing statutes prohibit. R.C. 2929.14(A), expressly provides, “[I]f 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.” Emphasis added.

Prison term is defined as either of the following sanctions for an offender, “(1) A stated prison term; (2) A term in prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073 of the Revised Code.” R.C. 2929.01(BB). The term “definite” is not defined in the code. “A legislative body need not define every word it uses in an enactment.” *State v. Dorso*, 4 Ohio St.3d 60, 62, 446 N.E.2d 449 (1983). Any term left undefined by statute is, “[T]o be accorded its common, everyday meaning. * * * Words in common use will be construed in their ordinary acceptance and significance and with the meaning commonly attributed to them.” *Id.* The ordinary definition of definite is, “[C]learly defined or determined; not vague or general; fixed; precise; exact.” Webster’s Encyclopedic Unabridged Dictionary (2 Ed. 1996) 379.

The General Assembly provided for, “a definite prison term” and limited the sentencing court to selecting “one” term from among the range of years allowed for the various level of felonies. Therefore, R.C. 2929.14(A), expressly prohibits a sentencing court from imposing a (1) mandatory prison term and (2) a non-mandatory prison term for a single felony offense. In *Ware*, the sentencing court was legislatively authorized to impose “one,” “definite prison term,” that was mandatory for the entire length of the prison term imposed. Former R.C. 2925.03(C)(4)(e), 2008 H 129, eff. 9-30-08; R.C. 2929.14(A)(2). Contrary to the Eleventh District’s opinion in *Ware*, the sentencing court’s intended sentence was expressly prohibited by the legislature.

The sentencing statutes necessary for imposing the mandatory prison terms in *Ware* and *Thomas* were clear and unambiguous. Accordingly, sentencing statutes

regarding the imposition of a mandatory prison term that is required for a specific felony offense should be applied and not construed. The Third District Court of Appeals reviewed the plain language of the sentencing statutes and found no authority to allow the imposition of a part mandatory prison term and a part non-mandatory prison term for a single felony offense. Moreover, the plain language of R.C. 2929.14(A), expressly prohibits a sentencing court from imposing this type of dual mandatory and non-mandatory prison terms for a single offense. A review of the clear and unambiguous language contained in the sentencing statutes is the best and only guidance this Court needs to determine that when the plain language of the statute requires a trial court to impose a mandatory prison term, it is for the entire length of the prison term.

Statutory Interpretation Flawed

It is a cardinal rule of statutory construction that where the terms of a statute are clear and unambiguous, the statute should be applied without interpretation. *Wingate v. Hordge*, 60 Ohio St.2d 55, 58, 396 N.E.2d 770 (1979). Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no reason to use the rules of statutory interpretation. It is impermissible to make an interpretation contrary to the plain and express words of the statute, the meaning of which the General Assembly must be credited with understanding. *In re Hinton's Estate*, 64 Ohio St. 485, 492, 60 N.E. 621 (1901). When the terms of the statute are unambiguous, the judicial inquiry is complete. *Rubin v. United States*, 449 U.S. 424, 430, 101 S.Ct. 698, 66 L.E.2d 633 (1981).

Opinions of the Eleventh and Fifth District Courts of Appeal comprise the second category of cases that have reviewed the certified conflict at issue here. As the Eleventh District primarily based its reasoning on the decision of the Fifth District, the state will review the opinion of *May*, 2010-Ohio-4625, and identify its flawed reasoning.

Without identifying what, if any, criminal statute was unclear or ambiguous, the Fifth District turned to the rules of statutory construction to interpret statutory terms. However, it is difficult to ascertain from the opinion why the appellate court believed *May's* appeal necessarily involved statutory interpretation when the sentencing statutes involved in his case were clear and unambiguous.

In *May*, the defendant pled no contest and was found guilty of aggravated vehicular assault, R.C. 2903.08(A)(1)(a). *May*, 2010-Ohio-4625 at ¶ 6. When determining the appropriate sentence for an offender like *May*, the sentencing court is guided first by the actual offense statute. The offense statute in *May* provided, "Whoever violates division (A)(1) of this section is guilty of aggravated vehicular assault. Except as otherwise provided in this division, aggravated vehicular assault is a felony of the third degree" and "The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(1) of this section." R.C. 2903.08(B)(1) and (D)(1).

May's offense statute also provided "mandatory prison term" as used in the statute had "[T]he same meaning as in section 2929.01 of the Revised Code." R.C. 2903.08(F)(1). R.C. 2929.01(X), defines a mandatory prison term as any of the following:

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (18) of section 2929.13 and division (D) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05 and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code.

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c) or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

The first section of the mandatory prison term definition would have directed the sentencing court in *May* to R.C. 2929.13(F)(4):

[T]he court shall impose a prison term or terms under sections 2929.02, to 2929.06, section 2929.14, section 2929.142, or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20, or 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code shall not reduce the term or terms pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code for any of the following offenses:

(4) A felony violation of section 2903.04, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, or 2907.07 of the Revised Code if the section requires the imposition of a prison term. R.C. 2929.13(F)(4).

Pursuant to R.C. 2929.14, “[I]f 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.” R.C. 2929.14(A). In *May*, “For a felony of the third degree, the prison term shall be one, two, three, four, or five years.” R.C. 2929.14(A)(3).

The above sentencing statutes relating to *May*’s case were all clear and unambiguous. *May* was convicted of R.C. 2903.08(A)(1), a felony of the third degree for which, “[T]he court shall impose a mandatory prison term.” R.C. 2903.08(B)(1) and (D)(1). The mandatory prison term was, “[T]he term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (18) of section 2929.13.” R.C. 2929.01(X)(1). R.C. 2929.13 directed, “[T]he court shall impose a prison term or terms under * * * section 2929.14” and “[S]hall not reduce the term or terms pursuant to section 2929.20,” for a felony violation of aggravated vehicular assault requiring a prison term. R.C. 2929.13(F)(4). As R.C. 2903.08(D)(1), required a mandatory prison term for a felony violation of aggravated vehicular assault, under R.C. 2929.14, “[T]he court shall impose a *definite prison term* that shall be *one* of the following,” from among the range of one to five years in prison for a felony of the third degree. Emphasis added, R.C. 2929.14(A)(3). As these sentencing statutes were clear and unambiguous, these statutes should have been applied, not construed. Accordingly, the first flaw in the *May* opinion was interpreting clear and unambiguous sentencing statutes without identifying what, if any, statutes involved in the sentencing of *May* were ambiguous.

In *May*, the appellate court embraced the defendant’s argument that a part mandatory prison term and part non-mandatory prison term for aggravated vehicular assault was supported by legislative intent. *May*, 2010-Ohio-4625 at ¶ 13. Without

explanation, the Fifth District apparently decided two phrases contained in the judicial release statute were ambiguous and controlling on a trial court's authority to impose a mandatory prison term. The Fifth District determined the legislative intent was to differentiate the two phrases, 'stated prison terms' and 'mandatory prison terms' which were both contained in the definition of an eligible offender. *May*, 2010-Ohio-4625 at ¶ 13. The appellate court's determination of the legislative intent was made without consideration of the legislative history, former statutory provisions or the consequences of its proposed construction.

The judicial release statute reviewed in *May* was former R.C. 2929.20, 2008 H 130, eff. 4-7-09, and provided:

"Eligible offender" means any person serving a stated prison term of ten years or less when either of the following applies:

- (i) The stated prison term does not include a mandatory prison term.
- (ii) The stated prison term includes a mandatory prison term, and the person has served the mandatory prison term. R.C. 2929.20 (A)(1)(a)(i),(ii), 2008 H 130, eff. 4-7-09.

Contrary to the statutory interpretation conducted by the Fifth District, statutory construction should give effect to the intent of the legislature:

In the construction of statutes the purpose in every instance is to ascertain and give effect to the legislative intent, and it is well settled that none of the language employed therein should be disregarded, and that all of the terms used should be given their usual and ordinary meaning and significance except where the lawmaking body has indicated that the language is not so used. *Carter v. Division of Water, City of Youngstown*, 146 Ohio St. 203, 65 N.E.2d 63 (1946), paragraph one of the syllabus.

If the Fifth District had reviewed the legislative history and former statutory provisions of R.C. 2929.20, the appellate court would have learned that judicial

release came into existence with the sweeping changes of Senate Bill 2 (SB2) in 1996. Pre-1996, Ohio had an indeterminate sentencing scheme where the sentencing judge selected a minimum term from a range that was set in the statute for each of the four felony levels. After an offender served the minimum term, which could be reduced by 'good time,' the offender would appear before the Parole Board. The Parole Board, a group that was not elected and met in private, would determine whether the offender could be released. The parole authority also had discretion to alter an offender's sentence with furlough and shock parole.

SB2 abolished parole release and indeterminate sentencing in favor of determinate sentencing; the sentence stated in court would be the actual sentence served by the offender. A Plan for Felony Sentencing in Ohio (July 1, 1993); see also, Ohio Criminal Sentencing Commission, 1996. Minor changes were recommended for the offenses that carried mandatory prison sentences. *Id.* Where mandatory sentences were retained, the sentencing judge would choose the appropriate length from within the sentencing ranges for the new five levels of felony offenses. *Id.* 'Good time,' which had been a means to reduce the minimum term of an indeterminate sentence was abolished by SB2 and replaced for a short time with 'bad time,' a disincentive for misbehaving while incarcerated that could add to an offender's actual prison sentence.

Early release from prison for non-mandatory prison terms was possible under SB2, pursuant to the new statute authorizing judicial release. Former R.C. 2929.20, 1995 S 2, eff. 7-1-96. SB2's judicial release expanded what had been known pre-1996, as shock parole under former R.C. 2967.31, into a judicially controlled parole

mechanism. *Id.* The original version of the judicial release statute defined an eligible offender as either of the following:

- (1) A person who has been convicted of or pleaded guilty to a felony, who is serving a stated prison term of five years or less, and who is not serving a mandatory prison term;
- (2) A person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term and another prison term of five years or less, and who has served the mandatory prison term. Former R.C. 2929.20, 1995 S 2, eff. 7-1-96.

But the first amendments to the section, also effective on 7-1-96, reflected an expansion to the definition of who was an eligible offender:

(A)(1) As used in this section, 'eligible offender' means any of the following:

- (a) A person who has been convicted of or pleaded guilty to a felony, who is serving a stated prison term of ten years or less, and who is not serving a mandatory prison term;
- (b) A person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term and another term of ten years or less, and who has served the mandatory prison term;
- (c) A person who had been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term pursuant to division (D)(1) of section 2929.14 of the Revised Code and another prison term of ten years or less, who is required by (E)(1) of section 2929.14 of the Revised Code to serve the mandatory prison term and the other prison term consecutively, and who has served the mandatory term. Former R.C. 2929.20(A)(1)(a), (b), and (c), 1996 S 269, eff. 7-1-96,

and who was not an eligible offender:

- (2) "Eligible offender" does not include any of the following:
 - (a) A person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term pursuant to division (D)(2) or (3) of section 2929.14 of the Revised Code and another prison term of ten years or less, and who is required by division (E)(2), (3), or, (4) of section 2929.14 of the Revised Code to serve the

mandatory prison term and the other prison term consecutively, whether or not the person has served the mandatory prison term.

(b) A person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term pursuant to divisions (D)(1) and (2), or division (D)(3) of section 2929.14 of the Revised Code and another prison term of ten years or less, and who is required by division (E)(1), (2), (3), or (4) of section 2929.14 of the Revised Code to serve any of the mandatory prison terms and the other prison term consecutively, whether or not the person has served the mandatory prison terms. Former R.C. 2929.20(A)(2)(a) and (b), 1996 S 269, eff. 7-16-96.

This definitional section was re-written three years later by 1999 S.B. 107, as:

Any person serving a stated prison term of ten years or less when either of the following applies:

(i) The stated prison term does not include a mandatory prison term.

(ii) The stated prison term includes a mandatory prison term, and the person has served the mandatory prison term. R.C. 2929.20 (A)(1)(a)(i),(ii).

The legislature's final analysis of 1999 S.B. 107, provided the act, "Clarifies that other sentencing criteria, in addition to mandatory prison terms, limit a court in its general discretion to determine the most effective way to sentence a felon in compliance with Ohio's purposes and principles of sentencing." Ohio Bill Analysis, 1999 S.B. 107. The analysis recognized that, "R.C. 2929.13 and 2929.14 contain limitations on a sentencing court's discretion, in addition to mandatory prison terms." Ohio Bill Analysis, 1999 S.B. 107. These statements demonstrate the legislature recognized the limitations mandatory prison terms placed on a court's ability to sentence offenders and the legislature's intent that R.C. 2929.13, and 2929.14, were also limitations on the court's sentencing discretion.

In this final analysis, the legislature stated its changes to the judicial release law were, “[I]ntended to streamline and simplify the section’s language.” Ohio Bill Analysis, 1999 S.B. 107. In 2009, the legislature added the (A)(1)(b), felony offender while holding public office limitations to the eligible offender definition. In 2011, the legislature again streamlined the definition of the (A)(1)(a), section to its current version, “[A]ny person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms.” R.C. 2929.20(A)(1)(a).

The Fifth District’s decision that two phrases contained in a definitional section of the judicial release statute were ambiguous and controlling on a trial court’s authority to impose mandatory prison terms for felony offenders was the second flaw in the *May* opinion. This flaw was then compounded when the appellate court determined the legislative intent without considering the legislative history, former statutory provisions or consequences of its proposed construction.

Nothing in the legislative history or the previous versions of the judicial release statute suggests that the eligible offender definition was ever intended to authorize multiple prison terms for a single felony offense. Rather, a review of the evolution of this definitional section reveals references to when an offender serving multiple prison terms for multiple felony offenses would be eligible for filing and application for judicial review:

[W]ho was sentenced to a mandatory prison term *and another prison term* of five years or less, and who has served the mandatory prison term. Emphasis added. Former R.C. 2929.20(A)(1)(b), 1995 S 2, eff. 7-1-96;

[and]

[W]ho was sentenced to a mandatory prison term *and another term* of ten years or less, and who has served the mandatory prison term. Emphasis added, Former R.C. 2929.20(A)(1)(b), 1996 S 269, eff. 7-1-96;

[and]

[W]ho was sentenced to a mandatory prison term pursuant to division (D)(1) of section 2929.14 of the Revised Code *and another prison term* of ten years or less, who is required by (E)(1) of section 2929.14 of the Revised Code to serve the mandatory prison term *and the other prison term* consecutively, and who has served the mandatory term. Emphasis added. Former R.C. 2929.20(A)(1)(c), 1996 S 269, eff. 7-1-96.

Furthermore, legislative history reveals the General Assembly intended R.C. 2929.13, 2929.14, and mandatory prison terms to limit not expand a sentencing court's discretion. Ohio Bill Analysis, 1999 S.B. 107.

A sentencing court is only authorized to impose a sentence as provided for by law. The Eleventh and Fifth District Courts of Appeal applied statutory interpretation to the judicial release statute as support for sentencing court decisions that either intended to impose or did impose (1) a part mandatory prison term and (2) a part non-mandatory prison term for a single felony offense. *Ware*, 2013-Ohio-5833 at ¶ 18; *May*, 2010-Ohio-4625 at ¶ 18. These appellate districts have used a definitional section contained in the judicial release statute to create a new type of dual prison term for a single offense that is not authorized by the sentencing statutes and is expressly prohibited by R.C. 2929.14(A). Neither the Eleventh nor the Fifth Districts' opinions identified which, if any, of the sentencing statutes involved in their cases was unclear or ambiguous warranting statutory interpretation. Moreover, neither appellate district provided any explanation why a definitional section of the judicial release statute was the controlling authority when a sentencing court imposed a

mandatory prison term that was required by a specific felony offense. Accordingly, these appellate districts' opinions contain flawed reasoning and offer no guidance on the certified conflict issue pending before this Court.

CONCLUSION

The answer to the certified-conflict question is when the plain language of the statute requires a trial court to impose a mandatory prison term, it is for the entire length of the prison term. This answer is in agreement with the decision of the Third District Court of Appeals in *State v. Thomas*, 3d Dist. No. 1-04-88, 2005-Ohio-4616. Accordingly, a reversal of the Eleventh District Court of Appeals' opinion in this case finding, "[A] hybrid sentence is permissible," is warranted.

Respectfully submitted,

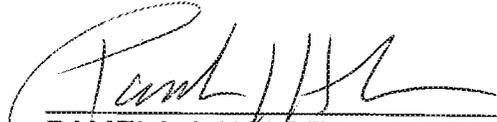
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit brief of the State of Ohio has been sent by ordinary U.S. mail to Terry G.P. Kane at 111 East Main Street, Suite B, P.O. Box 167, Ravenna, Ohio 44266, this 3rd day of July 2014.


PAMELA J. HOLDER (0072427)
Assistant Prosecuting Attorney

APPENDIX

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellant,

v.

SHAWN A. WARE

Appellee.

CASE NO.

On Appeal From the Portage
County Court of Appeals,
Eleventh Appellate District

Court of Appeals
Case No. 2013-P-0011

NOTICE OF CERTIFIED CONFLICT

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NOTICE

Now comes State of Ohio, by and through the undersigned counsel, and notifies this Court that the Eleventh District Court of Appeals filed an order on March 5, 2014, certifying a conflict with the present case, *State v. Ware*, 11th Dist. No. 2013-P-0011, 2013-Ohio-5833 and *State v. Thomas*, 3d Dist. No. 1-04-88, 2005-Ohio-4616. S.Ct.Prac.R. 8.02(A), (B). Specifically, the Eleventh District certified the following issue to this Court:

When the imposition of a mandatory prison term is statutorily-mandated for a specific felony offense, is the trial court permitted to impose a total prison term within the maximum allowed, only a portion of which is mandatory under the statute?

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been sent regular U.S. mail to Terry G.P. Kane at 111 Eat Main Street, Suite B, P.O. Box 167, Ravenna, Ohio 44266, this 10th day of March 2014.



PAMELA J. HOLDER
Assistant Prosecuting Attorney

ATTACHMENTS

Attachment A: Eleventh District Court of Appeal's March 5, 2014 Order Certifying a Conflict

Attachment B: *State v. Ware*, 11th Dist. No. 2013-P-0011, 2013-Ohio-5833

Attachment C: *State v. Thomas*, 3d Dist. No. 1-04-88, 2005-Ohio-4616

STATE OF OHIO)
)SS.
COUNTY OF PORTAGE)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

STATE OF OHIO,
Plaintiff-Appellant,

JUDGMENT ENTRY

- vs -

CASE NO. 2013-P-0011
FILED
COURT OF APPEALS

SHAWN A. WARE,
Defendant-Appellee.

MAR 05 2014

LINDA K FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

Appellant, the State of Ohio, moves this court to certify this appeal to the Supreme Court of Ohio on the basis of a conflict, pursuant to Section 3(B)(4), Article IV of the Ohio Constitution and App.R. 25(A). As part of our decision in *State v. Ware*, 11th Dist. Portage No, 2013-P-0011, 2013-Ohio-5833, this court held that a trial court is permitted to impose a "hybrid" sentence when a mandatory prison term is required for a felony of a specific degree; i.e., the imposed mandatory term can be shorter in length than the imposed stated sentence for a specific offense. The state contends that this aspect of our decision directly conflicts with Third Appellate District's opinion in *State v. Thomas*, 3rd Dist. Allen No. 1-04-88, 2005-Ohio-4616.

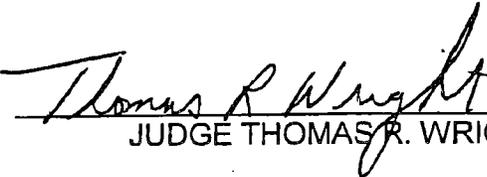
In analyzing the limited case law on this issue, our opinion expressly notes that the *Thomas* court previously rejected the proposition that a "hybrid" sentence is permissible under R.C. Chapter 2929. *Ware* at ¶42. According to the Third Appellate District, when a trial court is statutorily required to impose a mandatory prison, the length of the mandatory term must be the same as the length of the

stated term. *Thomas* at ¶8. Therefore, there is a direct conflict between our holding and *Thomas*.

When there a conflict between two appellate districts on a rule of law, certification is warranted. *Whitlock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, paragraph one of the syllabus (1993).

Accordingly, the state's motion to certify this appeal is granted. This case is hereby certified to the Supreme Court of Ohio for consideration of the following issue:

When the imposition of a mandatory prison term is statutorily-mandated for a specific felony offense, is the trial court permitted to impose a total prison term within the maximum allowed, only a portion of which is mandatory under the statute?



JUDGE THOMAS R. WRIGHT

FOR THE COURT

FILED
COURT OF APPEALS

MAR 05 2014

LINDA K FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO

FILED
COURT OF APPEALS
DEC 31 2013
LINDA K FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

STATE OF OHIO, : O P I N I O N
Plaintiff-Appellant, :
- vs - : CASE NO. 2013-P-0011
SHAWN A. WARE, :
Defendant-Appellee. :

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2009 CR 0563.

Judgment: Reversed and remanded.

Victor V. Viglucci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellant).

Terry G.P. Kane, Kane & Kane, 111 East Main Street, Suite B, P.O. Box 167, Ravenna, OH 44266 (For Defendant-Appellee).

THOMAS R. WRIGHT, J.

{¶1} This accelerated-calendar appeal is from a final judgment of the Portage County Court of Common Pleas, granting judicial release to appellee, Shawn A. Ware. Appellant, the State of Ohio, seeks reversal contending that appellee is not eligible for judicial release because his entire four-year prison term is mandatory.

{¶2} In September 2009, the Portage County Grand Jury indicted appellee on six counts of trafficking in cocaine and one count of possession of cocaine. The fifth

count alleged that, while in the vicinity of a juvenile, appellee sold, or offered to sell, cocaine in an amount less than one gram. The sixth count alleged that appellant prepared for distribution, or distributed, crack cocaine in an amount between ten grams and twenty-five grams. These two crimes are felonies of the fourth and second degree, respectively.

{¶3} Ultimately, appellee pled guilty to counts five and six, and the state dismissed the remaining counts. The trial court accepted the guilty plea and referred the case to the county adult probation department for preparation of a presentencing report.

{¶4} At the outset of the April 2010 sentencing hearing, the trial court stated that, because the second remaining trafficking charge was a second-degree felony, a mandatory prison term was required. However, when the court orally pronounced sentence, it did not refer to any mandatory term. Rather, the court said that appellee would receive a stated term of eighteen months on the fourth-degree trafficking count, a stated term of four years on the second-degree trafficking count, and the two terms would be served concurrently. As to judicial release, the trial court expressly stated at the end of the hearing that such relief would be considered if appellee could show that he was trying to change his life.

{¶5} In its April 23, 2010 sentencing entry, the trial court again did not deem any of the four-year prison term for the second-degree trafficking offense as mandatory. Instead, the court imposed two concurrent stated, but not mandatory, prison terms of eighteen months and four years on the respective counts. The state did not appeal.

{¶6} Over the next seventeen months, appellee twice moved for judicial

release. The first motion was filed in November 2010, approximately six months following the imposition of sentence. After an oral hearing on the matter, the trial court denied the first motion without addressing its substance. Three months later, in September 2011, appellee submitted his second motion for judicial release.

{¶7} While the second motion remained pending, appellee filed a pro se letter with the trial court, stating that he was confused as to the nature of his sentence on the second-degree trafficking count. Specifically, he noted that, even though the court said during the sentencing hearing that a mandatory term was required, the sentencing judgment did not impose mandatory time. In light of this, appellee asserted that he was uncertain as to when it would be permissible for him to move for judicial release.

{¶8} At approximately the same time appellee sent his pro se letter, his counsel submitted a motion for "leave" raising the same issue as the letter: i.e., the proper interpretation of the final sentencing judgment. The trial court did not issue a ruling on this motion, but instead rendered a nunc pro tunc entry in December 2011. The wording of the nunc pro tunc entry was virtually identical to that of the April 2010 sentencing judgment, with one significant exception. Regarding the second-degree trafficking count, the nunc pro tunc entry sentenced appellee to a stated mandatory term of four years, which would make him ineligible for judicial release.

{¶9} Through his trial counsel, appellee immediately requested the trial court to reconsider the nunc pro tunc entry, arguing that the new mandatory term on the second-degree trafficking count was inconsistent with the court's oral pronouncement during the sentencing hearing and her original sentencing entry. Citing the court's statement as to the potential for judicial release, appellee contended that the court intended to impose a

stated four-year term, with only the first two years being mandatory. He further argued that if the trial court intended for all four years to be mandatory, he would never be eligible for judicial release under the governing statutory law.

{¶10} The trial court did not render a written ruling on the motion to reconsider. On April 13, 2012, the court conducted an oral hearing on the second motion for judicial release. According to the court's subsequent judgment, appellee withdrew the second motion at that time.

{¶11} In October 2012, appellee filed his third motion for judicial release, arguing that he was now eligible for the requested relief. In support, he asserted that, since the original sentencing judgment did not deem any of his stated term as mandatory in regard to the second-degree trafficking count, the judgment should be interpreted to have only imposed a two-year mandatory term. In making this argument, appellee did not refer to the trial court's nunc pro tunc entry.

{¶12} The state did not submit a written response to appellee's third motion for judicial release. On February 8, 2013, an oral hearing was held on the pending motion. Appellant did not assert any challenge to appellee's eligibility for judicial release. Instead, the state only argued that the motion should be denied because the trial court had already shown leniency to appellee by imposing a four-year term opposed to a possible eight-year term. The trial court rejected this argument, stating on the record that it would be in the best interest of society to release appellee early so that he could have an opportunity to change his life for the better.

{¶13} On February 11, 2013, the trial court rendered its final judgment granting appellee early judicial release. Two days later, and one day before the official date of

appellee's release from the county jail, the trial court conducted a second hearing on the third "release" motion. At the outset of this proceeding, the trial court informed appellee that this court had recently issued an opinion on the issue of judicial release, and that the state was now contesting whether he was eligible for the requested relief. The trial court further indicated that, even though it agreed with the state concerning the proper interpretation of our recent opinion, it was still going to allow appellee's release because its decision on appellee's third motion was rendered before it had knowledge of the new appellate precedent. In light of this, the court also overruled the state's motion to stay appellee's release while it appealed.

{¶14} In contesting the "release" judgment, the state asserts two assignments of error for review:

{¶15} "[1.] The Portage County Court of Common Pleas erred in finding an inmate imprisoned on a mandatory four year sentence was eligible for judicial release and erred in granting the same inmate judicial release.

{¶16} "[2.] Assuming arguendo Ware is an eligible offender, the Portage County Court of Common Pleas erred in granting Ware judicial release without making the findings required under R.C. 2929.20(J)(1)(a), (b) and (2)."

{¶17} Under its initial assignment, the state first challenges the legal propriety of the sentence that the trial court imposed for the second-degree trafficking offense in its original sentencing judgment of April 2010. The state maintains that, regardless of the total length of the sentence given for the second-degree offense, the court was required to make the entire prison term mandatory; i.e., according to the state, the trial court did not have the discretion to make only a portion of the total term mandatory. Based on

second hearing on the motion, this did not occur until after the trial court had rendered its written judgment ordering appellee's early release. Under these circumstances, the state waived the question of appellee's eligibility for judicial release. Nevertheless, given that a serious issue exists regarding whether the trial court has rendered a final judgment that properly sets forth the intended sentence on the second-degree trafficking offense, this court will address the merits of the state's first assignment.

{¶21} Appellee was sentenced to two concurrent terms of four years and eighteen months. The four-year term was predicated upon his conviction pursuant to R.C. 2925.03(A)(2), which forbids a person from knowingly preparing for distribution, or actually distributing, a controlled substance. According to the allegations under the sixth count, the controlled substance distributed was crack cocaine, and the amount of the substance involved was greater than ten grams, but less than twenty-five grams. Under the version of R.C. 2925.03(C)(4)(e) in effect when appellee was sentenced in April 2010, where the substance being distributed was crack cocaine at the prescribed amount, a trial court is required to impose "as a mandatory term one of the prison terms prescribed for a felony of the second degree."

{¶22} Thus, the state submits that the trial court was required to impose a mandatory term for appellee's second-degree trafficking offense, and that the court failed to fulfill this requirement in imposing the stated four-year term. In support, the state refers solely to the trial court's original sentencing judgment of April 2010.

{¶23} As noted above, the original sentencing judgment imposed a stated term of four years for the second-degree trafficking offense; none of the term was deemed mandatory despite the requirement for a mandatory term. In presenting its argument,

the state ignores the trial court's nunc pro tunc entry, issued on December 29, 2011, in which the entire four-year term for the second-degree offense is deemed mandatory. Although this court ultimately concludes that the nunc pro tunc entry, like the original sentencing judgment, is technically flawed, the wording of the nunc pro tunc imposes a mandatory term in compliance with R.C. 2925.03(C)(4)(e). Therefore, the issue before this court becomes whether, despite the imposition of the stated four-year mandatory term, appellee is eligible for judicial release under R.C. 2929.20.

{¶24} Under the definition of "eligible offender" in R.C. 2929.20(A)(1)(a), a prison inmate is not eligible for judicial release until after he has served the mandatory time imposed. Accordingly, if an inmate's entire prison term is mandatory, he will never be eligible for judicial release. See *State v. Warren*, 11th Dist. Portage No. 2012-P-0069, 2013-Ohio-443. Even though the trial court also imposed a nonmandatory eighteen-month term for the fourth-degree trafficking offense, the court further ordered the shorter term to run concurrently with the four-year term. As a result, pursuant to the specific language used in the trial court's nunc pro tunc entry, appellee's entire four-year sentence was mandatory.

{¶25} However, despite the express wording of the nunc pro tunc entry, the trial court always intended for appellee to be eligible for judicial release. During the sentencing hearing on April 19, 2010, the trial court twice informed appellee that he would be subject to a mandatory prison term as a consequence of pleading guilty to a second-degree felony. Nevertheless, at the end of the proceeding, the court also told appellee that it would consider releasing him early if he made a true effort to alter his way of life.

{¶26} At first blush, the foregoing statements by the trial court would appear to be contradictory; i.e., how could the trial court conclude that appellee would be eligible for judicial release if his entire four year stated term is mandatory? Although the trial court did not attempt to provide any explanation for its various statements during the April 2010 sentencing hearing, explanation was given as part of the second hearing on appellee's third "judicial release" motion in February 2013. Specifically, in discussing the possible effect of this court's recent holding in *Warren*, the trial court indicated that its sentencing order was based upon the following logic:

{¶27} "My idea was if the mandatory minimum in a certain charge is two years and I gave you four, that you would be eligible after the two year period because that was the mandatory minimum."

{¶28} Pursuant to R.C. 2929.14(A)(2), the permissible range of a prison term for a second-degree felony is between two years and eight years. Hence, notwithstanding the specific language used in the nunc pro tunc entry, the trial court appears to have believed that, since two years was the shortest term that can be imposed for a second-degree trafficking charge, only that amount of appellee's sentence would be mandatory regardless of whether a total of four years was imposed.

{¶29} In the nunc pro tunc entry, the trial court employed the following language: "IT IS THEREFORE ORDERED that the Defendant is sentenced * * * to a definite term of eighteen (18) months to be served for the felony four and a **mandatory** four (4) years to be served for the felony two, * * *." (Emphasis sic.) Given the lack of reference to any two-year minimum, the trial court's language did not convey that which the court intended: a four-year stated sentence of which the first two years are mandatory.

{¶30} This court was faced with a somewhat similar situation in *Warren*, 2013-Ohio-443. Initially, the original trial judge in *Warren* verbally sentenced the defendant to a stated four-year term for aggravated vehicular homicide, but only two of the four years would be mandatory. However, the original final judgment imposed a mandatory four-year term for aggravated vehicular homicide and a consecutive mandatory one-year term for aggravated vehicular assault. As a result of the discrepancy, the *Warren* defendant moved to vacate the final judgment. After conducting a separate “resentencing” hearing, the original judge issued a second judgment in which the defendant was ordered to serve a mandatory four-year prison term for aggravated vehicular homicide and a consecutive one-year prison term for aggravated vehicular assault. Approximately three years after her resentencing, the *Warren* defendant moved for judicial release. During the ensuing “motion” hearing, the new trial judge indicated that she had spoken to the original trial judge about the matter, and that the original judge stated that he had intended for the defendant to be eligible for judicial release at that time. Based upon this, the new judge ordered the defendant’s immediate release.

{¶31} On appeal in *Warren*, the state asserted that the defendant was ineligible for judicial release because the second sentencing judgment imposed a mandatory prison term of at least four years. *Id.* at ¶9. In response, the defendant argued that the new trial judge’s decision should be upheld because there was nothing in the record to refute the possibility that the original trial judge did not order a four-year mandatory term in open court during the “resentencing” hearing. *Id.* In reversing the trial court’s ruling on the “eligibility” issue, this court concluded that, as to the imposition of the mandatory

term, the unequivocal language of the second sentencing judgment was controlling over the new trial judge's statements regarding the original trial judge's intent. *Id.* at ¶14. As to the defendant's argument, we held that the lack of a transcript of the "resentencing" hearing precluded her from arguing that the original trial judge had only intended for two years of the four-year term to be mandatory. *Id.* at ¶15-16.

{¶32} The facts of our case are readily distinguishable from those in *Warren*. First, the trial record in *Warren* did not contain a transcript of the "resentencing" hearing; thus, it could not be determined whether the original trial judge's oral pronouncement at the "resentencing" hearing as to the length of the mandatory term conflicted with the wording of the second sentencing judgment. Second, unlike the trial judge in our case, the first trial judge in *Warren* was not present at the hearing on the motion for judicial release, and thus could not provide a proper explanation concerning whether part or all of the four-year term was intended to be mandatory.

{¶33} In our case, despite acknowledging during the sentencing hearing that a mandatory prison term had to be imposed for the second-degree trafficking offense, the trial court still indicated that appellee would be eligible to move for early judicial release. It is clear that neither judgment entry captured the trial court's intent: to impose a stated four-year sentence, with the first two years mandatory. Under these circumstances, it would be inequitable to deny appellee eligibility for judicial release simply because the trial court did not order the intended sentence.

{¶34} More importantly, though, since neither the original sentencing judgment nor the nunc pro tunc entry actually impose a stated four-year sentence with the first two years mandatory, a second nunc pro tunc order is in order. First, the original

sentencing judgment is flawed because it does not impose any mandatory term, as the trial court clearly intended and as is expressly mandated in R.C. 2925.03(C)(4)(e). Second, the nunc pro tunc entry is flawed because it too does not state the sentence the trial court intended to impose for the second-degree trafficking offense.

{¶35} As to the latter point, the only function of a nunc pro tunc entry "is not to correct or modify an existing judgment, but rather to make the record conform to that which has already occurred." *State v. Zawitz*, 8th Dist. Cuyahoga No. 99179, 2013-Ohio-2540, ¶13. Based upon the trial court's statements during the sentencing hearing and the second hearing on appellee's third "judicial release" motion, there is no dispute that the court intended to impose a stated prison term of four years for the second-degree trafficking offense, with only the first two years being mandatory. As noted above, the wording of the nunc pro tunc entry does not impose this sentence, but rather imposes a stated mandatory term of four years. To this extent, the nunc pro tunc does not adequately reflect what the trial court intended.

{¶36} Accordingly, upon remand of this action, the trial court must issue a nunc pro tunc entry which properly states its intended sentence for the second-degree trafficking offense. Specifically, the court must state that it is imposing a total definite prison term of four years for the offense, with the first two years mandatory.

{¶37} Given that the length of the mandatory term will not be equal to the total stated prison term for the second-degree trafficking offense, the trial court intended to impose a hybrid sentence. As part of its argument under its first assignment, the state contends that a hybrid sentence is impermissible. According to the state, regardless of how many years a trial court imposes for a second-degree felony, the entire term must

be mandatory in order to satisfy the statutory scheme.

{¶38} In support, the state submits that our *Warren* decision stands for the basic proposition that a “hybrid” sentence cannot be imposed under Ohio law. However, the state has clearly misinterpreted *Warren*, which does not even address the legal propriety of a hybrid sentence. The basic issue in *Warren* concerned whether the new trial judge could rely upon an off-the-record discussion with the original trial judge when the wording of the second sentencing judgment was unequivocal in regard to the length of the mandatory sentence.

{¶39} A review of the relevant case law indicates that the legality of hybrid prison sentences has been considered by a few Ohio appellate courts. In *State v. May*, 5th Dist. Morrow No. 2010 CA 2, 2010-Ohio-4625, the Fifth Appellate District concluded that a trial court has the discretion to impose a mandatory term that is shorter in length than the stated sentence for a specific offense. As the primary basis for its holding, the *May* court noted that the statutory sentencing scheme has provisions differentiating between a “stated prison term” and a “mandatory prison term.” *Id.* at ¶13. The principal example is R.C. 2929.01(FF), which provides:

{¶40} “‘Stated prison term’ means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142, or 2971.03 of the Revised Code or under 2919.25 of the Revised Code, * * *.”

{¶41} The logic of the *May* court is that the language of R.C. 2929.01(FF) and other statutes shows that the phrase “stated term” was not intended by the legislature to be synonymous with the phrase “mandatory term.” *Id.* at ¶18. In turn, the length of a

mandatory term does not have to necessarily coincide with the total "stated" term for one offense. In support of its holding, the *May* court also emphasized that the Ohio sentencing scheme does not have any provision that expressly prohibits the use of hybrid sentences. *Id.* Additionally, the *May* court emphasized that the allowance of a hybrid sentence is consistent with the general tenet that criminal statutes must be construed liberally in favor of the accused and strictly against the state. *Id.*, citing *State v. Fanti*, 147 Ohio App.3d 27, 30 (5th Dist.2001).

{¶42} Although at least one appellate district has rejected the contention that a hybrid sentence is permissible, see *State v. Thomas*, 3rd Dist. Allen No. 1-04-88, 2005-Ohio-4616, this court finds the logic of *May* to be persuasive. In addition to the reasons set forth in *May*, this court would indicate that the use of a hybrid sentence gives a trial court a degree of flexibility which can aid in the rehabilitation of the offender. By imposing a mandatory prison term which is shorter than the stated term for a particular offense, thereby making the offender eligible for early judicial release, the trial court can provide incentive to rehabilitate and modify behavior during the period of incarceration.

{¶43} In this case, the trial court sought to impose a mandatory term of two years for the second-degree trafficking offense, while imposing a stated term of four years. Given that a two-year term is a permissible sentence for a second-degree felony under R.C. 2929.12(A)(2), the trial court would not exceed the scope of its discretion should it impose the intended sentence. Furthermore, since appellee's "stated prison term" for the second-degree trafficking offense included a two-year nonmandatory term, he would be an "eligible offender" for judicial release under R.C. 2929.20(A)(1)(a).

{¶44} Even though the trial court intended to impose a hybrid sentence on the

second-degree trafficking offense, the trial court has not issued a sentencing order imposing such a sentence. Thus, to the extent that this case must be remanded so that the trial court can render a new nunc pro tunc entry with the necessary language for a hybrid sentence, the state's first assignment has merit. However, to the extent that the state has challenged the trial court's authority to impose a hybrid sentence, its first assignment is not well-taken.

{¶45} Under its second assignment, the state contends that the decision to grant appellee judicial release must be reversed because the trial court failed to make certain findings of fact. Citing R.C. 2929.20(J), the state asserts that appellee's release could not be justified unless the trial court made specific findings regarding the likelihood of recidivism and the seriousness of appellee's two convictions.

{¶46} R.C. 2929.20(J)(1) states that if an eligible offender's incarceration stems from a conviction for a first or second-degree felony, he cannot be given relief under the statute unless the trial court finds both of the following:

{¶47} "(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the eligible offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;

{¶48} "(b) That a sanction other than a prison term would not demean the seriousness of the offense because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense."

{¶49} In relation to these two findings, R.C. 2929.20(J)(2) states that, in granting judicial release to an eligible offender covered under division (J)(1), the trial court must “specify on the record both findings required in [division (J)(1)] and also shall list all the factors described in that division that were presented at the hearing.”

{¶50} As previously discussed, one of the two trafficking counts covered under appellee's guilty plea was a second-degree felony under R.C. 2925.03(C)(4); thus, the requirements of R.C. 2929.20(J) had to be met before appellee's third motion for judicial release could be granted. During the first hearing on the third motion, the trial court only made two findings in support of its decision: (1) appellee had tried to change his way of life while incarcerated; and (2) it would be in the best interest of the community to grant appellee early release. While these two points may have been relevant to the ultimate ruling on the third motion, no required findings were made either orally or in the trial court's final judgment on the third motion. Hence, the trial court did not comply with R.C. 2929.20(J) in rendering its decision.

{¶51} By including division (J) in the judicial release statute, the state legislature clearly intended to place a burden upon eligible offenders who were convicted of first or second-degree felonies. Accordingly, even if other factors weighed in favor of releasing appellee prior to the completion of his entire term, he still would not be entitled to the requested relief unless the trial court also made findings in his favor on the two specific factors listed in division (J). For this reason, this case must be remanded so that a new oral hearing can be held if the trial court concludes additional evidence or arguments is needed on the two statutory factors. Based upon that proceeding, the trial court must render findings on the two listed factors in division (J), and render a new determination

regarding appellee's judicial release.

{¶52} As the trial court failed to make the necessary findings for granting judicial release to a second-degree felon, the state's second assignment is well-taken.

{¶53} Pursuant to the foregoing discussion, the state's second assignment has merit, and its first assignment has merit in part.

{¶54} The judgment of the Portage County Court of Common Pleas is reversed, and the case is hereby remanded for further proceedings. Specifically, the trial court shall first issue a new nunc pro tunc entry which correctly states the nature of the sentence the court intended to impose for the second-degree trafficking offense: i.e., a total stated prison term of four years, only two of which are mandatory. Second, the trial court shall make the necessary findings of fact under R.C. 2929.20(J), holding a new hearing if necessary, and then render a new judgment on the merits of appellee's third motion for judicial release.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.

STATE OF OHIO)
)SS.
COUNTY OF PORTAGE)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

STATE OF OHIO,

JUDGMENT ENTRY

FILED
COURT OF APPEALS

CASE NO. 2013-P-0011

- vs -

DEC 31 2013

SHAWN A. WARE,

LINDA K. FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

Defendant-Appellee.

For the reasons stated in the opinion of this court, appellant's second assignment has merit. Therefore, it is the judgment and order of this court that the judgment of the Portage County Court of Common Pleas is reversed, and the case is hereby remanded for further proceedings. Specifically, the trial court shall first issue a new nunc pro tunc entry which correctly states the nature of the sentence the court intended to impose for the second-degree trafficking offense: i.e., a total stated prison term of four years, only two of which are mandatory. Second, the trial court shall make the necessary findings of fact under R.C. 2929.20(J), holding a new hearing if necessary, and then render a new judgment on the merits of appellee's third motion for judicial release.

Costs are taxed against appellee.



JUDGE THOMAS R. WRIGHT
FOR THE COURT

Court of Appeals of Ohio, Third District, Allen County.

STATE of Ohio Plaintiff-Appellee
v.
Marvin THOMAS Defendant-Appellant

No. 1-04-88.

Sept. 6, 2005.

Criminal Appeal from Common Pleas Court, Judgment Affirmed.

Kenneth J. Rexford, Attorney at Law, Reg. # 0064500, Lima, Ohio, for Appellant.

Jana E. Gutman, Asst. Allen Co. Prosecutor, Reg. # 0059550, Lima, Ohio, for Appellee.

OPINION

SHAW, J.

{¶ 1} Appellant, Marvin L. Thomas, appeals from the March 29, 2004 judgment and sentencing of the Court of Common Pleas, Allen County, Ohio, sentencing him to a mandatory prison term of seven years for possession of crack cocaine in violation of R.C. 2925.11(A) & (C)(4)(e).

{¶ 2} Thomas was charged by Bill of Information on February 23, 2004 with one count of possession of crack cocaine, a first degree felony. He subsequently pled guilty to the charge pursuant to a negotiated plea whereby the State of Ohio agreed to recommend an eight year prison sentence. A sentencing hearing was held on March 29, 2004, and the trial court imposed a mandatory prison sentence of seven years pursuant to R.C. 2925.11(C)(4)(e).

Thomas now appeals, asserting the following assignment of error:

The trial court erred in sentencing the defendant by imposing the entire sentence as mandatory time, without considering the merits of part-mandatory, part-non-mandatory sentencing.

{¶ 3} In his sole assignment of error, Thomas contends that the trial court erred in imposing a mandatory prison term. We review the sentencing decision of a trial court to determine whether the court's findings are supported by the record, and we may not substitute our judgment for that of the trial court without clear and convincing evidence of one of the errors described in R.C. 2953.08. *State v. Martin* (1999), 136 Ohio App.3d 355, 361, 736 N.E.2d 907. Clear and convincing evidence is that "which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established." *Cross v. Ledford* (1954), 161 Ohio St. 469, 477, 120 N.E.2d 118.

{¶ 4} Thomas does not assert that the trial court lacked the authority to sentence him to a mandatory prison term. Rather, Thomas argues that the trial court was not required to impose mandatory prison time for the *entire* length of the sentence imposed under R.C. 2925.11(C)(4)(e) and that judicial release should have been available after Thomas served the minimum term required for a first degree felony. He interprets R.C. 2925.11 and 2929.20 as allowing a trial court to impose a mandatory prison term of three years, the shortest term available for a first degree felony pursuant to R.C. 2929.14(A)(1), while making any additional prison time non-mandatory. This practice, he argues, is the better policy in that it would allow courts to promote offender rehabilitation.

{¶ 5} Thomas' arguments are not well-taken for several reasons. First, he does not assert any error on the part of the trial court in imposing the entire term as mandatory. Thomas concedes that R.C. 2925.11(C)(4)(e), at a minimum, authorizes a court to impose a

mandatory prison term. Thus, he does not claim that the trial court acted improperly, and has failed to demonstrate by clear and convincing evidence that the trial court's sentence was in error.

{¶ 6} Second, Thomas has not provided any evidence that the trial court wished to impose a portion of his sentence as non-mandatory time but felt constrained by the statute. On the contrary, the trial court's judgment entry includes specific findings that Thomas was not amenable to community control sanctions and that such sanctions would demean the seriousness of Thomas' conduct. Accordingly, he presents no justification for remanding his case for consideration of a sentence that allows for community control sanctions.

*2 {¶ 7} Finally, the plain and unambiguous language of R.C. 2925.11(C)(4)(e) requires imposition of a mandatory prison term. That section provides: "possession of [25-99 grams of crack cocaine] is a felony of the first degree, and the court *shall* impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree." R.C. 2925.11(C)(4)(e). Ohio courts have consistently read this language as requiring the implementation of a mandatory sentence. As a result, courts in Ohio have found that a trial court errs when it accepts a guilty plea to an offense under R.C. 2925.11 after indicating to the defendant that community control sanctions are available. *State v. Ruby*, 4th Dist. No. 03CA780, 2004-Ohio-3708, ¶ 11; see also *State v. Davis*, 2nd Dist. No.2003-CA-87, 2004-Ohio-5979.

{¶ 8} Accordingly, we hold that R.C. 2925.11(C)(4)(e) required the trial court to impose a mandatory term for the full length of the sentence imposed. Appellant's public policy arguments in favor of promoting criminal rehabilitation are better addressed to the legislature.

When faced with a clear statutory directive we must refrain from interfering with the policy determinations of the legislative branch.

{¶ 9} Appellant's assignment of error is overruled, and the judgment and sentence of the Court of Common Pleas, Allen County, is affirmed.

Judgment Affirmed.

BRYANT and ROGERS, J.J., concur.

Ohio App. 3 Dist., 2005.

State v. Thomas

Not Reported in N.E.2d, 2005 WL 2129914 (Ohio App. 3 Dist.), 2005 -Ohio- 4616

The Supreme Court of Ohio

FILED

MAY 14 2014

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

Case No. 2014-0425

v.

ENTRY

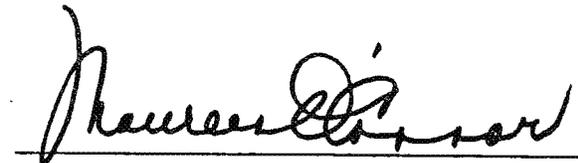
Shawn A. Ware

This cause is pending before the court on the certification of a conflict by the Court of Appeals for Portage County. On review of the order certifying a conflict, it is determined that a conflict exists. The parties are to brief the issue stated at page 2 of the court of appeals' Judgment Entry filed March 5, 2014, as follows:

"When the imposition of a mandatory prison term is statutorily-mandated for a specific felony offense, is the trial court permitted to impose a total prison term within the maximum allowed, only a portion of which is mandatory under the statute?"

It is ordered by the court that the clerk shall issue an order for the transmittal of the record from the Court of Appeals for Portage County.

(Portage County Court of Appeals; No. 2013-P-0011)



Maureen O'Connor
Chief Justice

B

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

FILED
COURT OF COMMON PLEAS
APR 23 2010
LINDA K. FANKHAUSER, CLERK,
PORTAGE COUNTY, OHIO

STATE OF OHIO,)	CASE NO. 2009 CR 0563
)	
Plaintiff)	JUDGE LAURIE J. PITTMAN
)	
-vs-)	
)	
SHAWN A. WARE,)	<u>JUDGMENT ENTRY</u>
)	
Defendant)	

On Monday, April 19, 2010, Defendant's Sentencing hearing was held pursuant to Ohio Revised Code Section 2929.19.

Defense Attorney, Eric Fine, the Assistant Prosecuting Attorney, Eugene Muldowney, were present as was the Defendant, Shawn A. Ware, who was afforded all rights pursuant to Crim. R. 32. Also present was Michael Guarnieri of Adult Probation Department.

The Court has considered evidence presented by counsel, oral statements, any victim impact statement, the pre sentence report and Defendant's statement.

The Court further finds that the Defendant, Shawn A. Ware, has entered a Written Plea of Guilty to Count Five, of the Indictment charging the Defendant with the offense of "Trafficking in Cocaine," a felony of the fourth degree, in violation of R.C. 2925.03(A)(C)(4)(b) and Count Six, "Trafficking in Cocaine" a felony of second degree, in violation of R.C. 2925.03(A)(2)(C)(4)(e).

IT IS THEREFORE ORDERED that the Defendant is sentenced to the Ohio Department of Rehabilitation and Correction, Grafton, Ohio to a definite term of imprisonment of eighteen (18) months to be served for the felony four and four (4) years to be served for the felony two, of which shall run concurrent to one another, or until such time as he is otherwise legally released.

The Court thereupon notified the Defendant that after release from prison, the Defendant may be supervised under post release control R.C. 2967.28 for three years and that if the Defendant violates the terms of the post-release control the Defendant could receive an additional prison term

not to exceed 50 percent of his original prison term which will be two years.

IT IS FURTHER ORDERED Defendant shall receive credit for the forty-nine (49) days he has spent in the Portage County Jail in the above styled offense(s). This credit included jail time up to the date of sentencing and does not include any subsequent time awaiting conveyance to the reception facility. That time is to be calculated by reception facility.

IT IS FURTHER ORDERED Defendant shall pay restitution through adult probation in the amount of \$560.00 to the drug task force within eight years.

The Court notified Defendant under federal law persons convicted of felonies can never lawfully possess a firearm and that if you are ever found with a firearm, even one belonging to someone else, you may be prosecuted by federal authorities and subject to imprisonment.

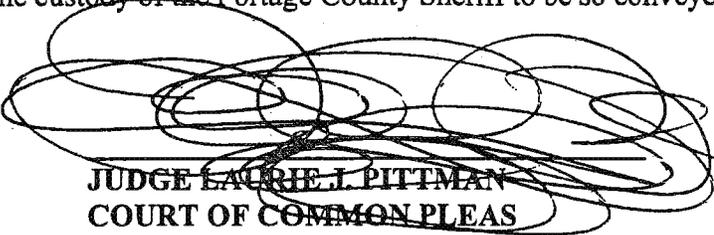
IT IS FURTHER ORDERED the bond previously fixed herein is discharged.

IT IS FURTHER ORDERED that the pre sentence investigation report and any victim impact statements that may have been provided to the Court are made part of the record and sealed.

IT IS FURTHER ORDERED that the Defendant is assessed a mandatory drug fine of \$7,500.00 and the costs of these proceedings, to be paid within ten years for all of which execution shall issue.

IT IS FURTHER ORDERED that the Clerk of this Court prepare a warrant to issue to the Sheriff of Portage County commanding him to convey this Defendant as hereinabove directed, and that the Defendant be remanded into the custody of the Portage County Sheriff to be so conveyed.

IT IS SO ORDERED.


JUDGE LAURIE J. PITTMAN
COURT OF COMMON PLEAS

cc: Eugene Muldowney, Assistant Prosecuting Attorney
Eric Fink, Attorney for Defendant
Michael Guarnieri, Adult Probation Department
Sheriff

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

FILED
COURT OF COMMON PLEAS

JUL 20 2010

LINDA K. FANKHAUSER, CLERK,
PORTAGE COUNTY, OHIO

STATE OF OHIO,)
)
 Plaintiff)
)
 -vs-)
)
 SHAWN A. WARE,)
)
 Defendant)

CASE NO. 2009 CR 0563

JUDGE LAURIE J. PITTMAN

ORDER AND JOURNAL ENTRY

The Court finds the matter is before the Court on Monday, July 19, 2010 for *Nunc Pro Tunc Sentencing Hearing pursuant to State v. Jordan and Gensley v. Eberlin 2006-Ohio-4474, per the request of Ohio Department of Rehabilitation and Correction, Bureau of Sentence Computation. (See attached exhibit A).*

Present in Court was the Assistant Prosecuting Attorney, Eugene Muldowney and the Defendant, Shawn A. Ware, represented by Attorney Eric Fink.

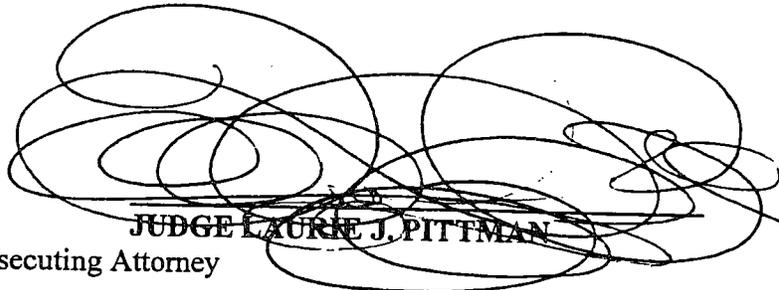
The Court finds the sentence previously imposed on April 19, 2010, shall remain in effect.

The Court finds the Defendant is sentenced to the Ohio Department of Rehabilitation and Correction, Grafton, Ohio to a definite term of imprisonment of eighteen (18) months to be served for the felony four and four (4) years to be served for the felony two, of which shall run concurrent to one another, or until such time Defendant is otherwise legally released.

The Court finds the Defendant shall receive credit for all the time served in this matter to date.

The Court hereby notifies the Defendant that after release from prison, the Defendant will be supervised under post release control R.C. 2967.28 for three years and that if the Defendant violates the terms of the post-release control, the Defendant could receive an additional prison term not to exceed 50 percent of his original prison term which will be two years.

IT IS SO ORDERED.



JUDGE LAURIE J. PITTMAN

C: Eugene Muldowney, Assistant Prosecuting Attorney
Eric Fink, Attorney for Defendant
ODC, Bureau of Sentence Computation

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

STATE OF OHIO,
Plaintiff

-vs-

SHAWN A. WARE,
Defendant

FILED
PORTAGE COUNTY COMMON PLEAS
JUL 29 2010
LINDA K. FANKHAUSER, CLERK
BAVENNA OH

CASE NO. 2009 CR 0563

JUDGE LAURIE J. PITTMAN

JUDGMENT ENTRY

Nunc Pro Tunc

On Monday, April 19, 2010, Defendant's Sentencing hearing was held pursuant to Ohio Revised Code Section 2929.19.

Defense Attorney, Eric Fine, the Assistant Prosecuting Attorney, Eugene Muldowney, were present as was the Defendant, Shawn A. Ware, who was afforded all rights pursuant to Crim. R. 32. Also present was Michael Guarnieri of Adult Probation Department.

The Court has considered evidence presented by counsel, oral statements, any victim impact statement, the pre sentence report and Defendant's statement.

The Court further finds that the Defendant, Shawn A. Ware, has entered a Written Plea of Guilty to Count Five, of the Indictment charging the Defendant with the offense of "Trafficking in Cocaine," a felony of the fourth degree, in violation of R.C. 2925.03(A)(C)(4)(b) and Count Six, "Trafficking in Cocaine" a felony of second degree, in violation of R.C. 2925.03(A)(2)(C)(4)(e).

IT IS THEREFORE ORDERED that the Defendant is sentenced to the Ohio Department of Rehabilitation and Correction, Grafton, Ohio to a definite term of imprisonment of eighteen (18) months to be served for the felony four and four (4) years to be served for the felony two, of which shall run concurrent to one another, or until such time as he is otherwise legally released.

The Court thereupon notified the Defendant that after release from prison, the Defendant may be supervised under post release control R.C. 2967.28 for three years and that if the Defendant violates the terms of the post-release control the Defendant could receive an additional prison term

not to exceed 50 percent of his original prison term which will be two years.

IT IS FURTHER ORDERED Defendant shall receive credit for the **two hundred eighteen (218) days** he has spent in the Portage County Jail **and on house arrest** in the above styled offense(s). This credit included jail time up to the date of sentencing and does not include any subsequent time awaiting conveyance to the reception facility. That time is to be calculated by reception facility.

IT IS FURTHER ORDERED Defendant shall pay restitution through adult probation in the amount of \$560.00 to the drug task force within eight years.

The Court notified Defendant under federal law persons convicted of felonies can never lawfully possess a firearm and that if you are ever found with a firearm, even one belonging to someone else, you may be prosecuted by federal authorities and subject to imprisonment.

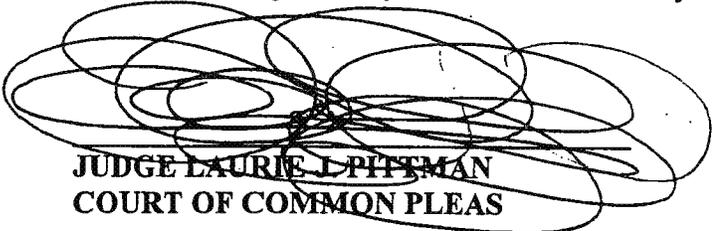
IT IS FURTHER ORDERED the bond previously fixed herein is discharged.

IT IS FURTHER ORDERED that the pre sentence investigation report and any victim impact statements that may have been provided to the Court are made part of the record and sealed.

IT IS FURTHER ORDERED that the Defendant is assessed a mandatory drug fine of \$7,500.00 and the costs of these proceedings, to be paid within ten years for all of which execution shall issue.

IT IS FURTHER ORDERED that the Clerk of this Court prepare a warrant to issue to the Sheriff of Portage County commanding him to convey this Defendant as hereinabove directed, and that the Defendant be remanded into the custody of the Portage County Sheriff to be so conveyed.

IT IS SO ORDERED.


JUDGE LAURIE J. PITTMAN
COURT OF COMMON PLEAS

cc: Eugene Muldowney, Assistant Prosecuting Attorney
Eric Fink, Attorney for Defendant
Michael Guarnieri, Adult Probation Department
Sheriff

violates the terms of the post-release control the Defendant could receive an additional prison term not to exceed 50 percent of his original prison term which will be two years.

IT IS FURTHER ORDERED Defendant shall receive credit for the two hundred eighteen (218) days he has spent in the Portage County Jail and on house arrest in the above styled offense(s). This credit included jail time up to the date of sentencing and does not include any subsequent time awaiting conveyance to the reception facility. That time is to be calculated by reception facility.

IT IS FURTHER ORDERED Defendant shall pay restitution through adult probation in the amount of \$560.00 to the drug task force within eight years.

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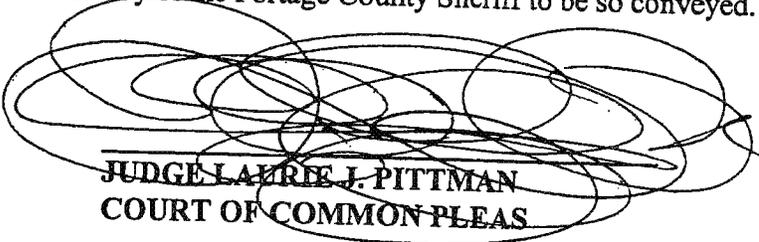
IT IS FURTHER ORDERED the bond previously fixed herein is discharged.

IT IS FURTHER ORDERED that the pre sentence investigation report and any victim impact statements that may have been provided to the Court are made part of the record and sealed.

IT IS FURTHER ORDERED that the Defendant is assessed a mandatory drug fine of \$7,500.00 and the costs of these proceedings, to be paid within ten years for all of which execution shall issue.

IT IS FURTHER ORDERED that the Clerk of this Court prepare a warrant to issue to the Sheriff of Portage County commanding him to convey this Defendant as hereinabove directed, and that the Defendant be remanded into the custody of the Portage County Sheriff to be so conveyed.

IT IS SO ORDERED.


JUDGE LAURIE J. PITTMAN
COURT OF COMMON PLEAS

cc: Eugene Muldowney, Assistant Prosecuting Attorney
Eric Fink, Attorney for Defendant
Michael Guarnieri, Adult Probation Department

~~SECRET~~
ODC

Court of Appeals of Ohio, Fifth District, Morrow County.

STATE of Ohio, Plaintiff-Appellant
v.
Timothy R. MAY, Defendant-Appellee.

No. 2010CA2.

Decided Sept. 27, 2010.

Criminal Appeal from the Court of Common Pleas, Case No. 08 CR 178.

Charles Howland, Prosecuting Attorney, Jocelyn Stefancin, Assistant Prosecutor, Mt. Gilead, OH, for plaintiff-appellant.

Robert W. Wilson, Marion, OH, for defendant-appellee.

OPINION

WISE, J.

{¶ 1} Appellant State of Ohio appeals from the conviction and sentencing of Appellee Timothy R. May, in the Richland County Court of Common Pleas, for aggravated vehicular assault and OVI. The relevant facts leading to this appeal are as follows:

{¶ 2} On the afternoon of June 1, 2008, Appellee May was driving his Chevrolet pickup truck on County Road 20 in Morrow County. With him were his two young grandchildren. At some point, the truck left the roadway, struck a guardrail, and overturned into a creek.

{¶ 3} Several Good Samaritans happened by and helped appellee rescue the two children from the water. EMS personnel also responded, as well as Trooper Holloway of

the Ohio State Highway Patrol. Holloway's subsequent investigation included interviewing appellee at Morrow County Hospital. Furthermore, a hospital lab technician drew a blood sample from appellee at the trooper's direction.

{¶ 4} In September 2008, the Morrow County Grand Jury indicted appellee on one count of aggravated vehicular assault (R.C. 2903.08(A)(1)(a)), a felony of the third degree, and one count of OVI (R.C. 4511.19(A)(1)(f)), a misdemeanor of the first degree.

{¶ 5} On February 3, 2009, appellee filed a motion to suppress the evidence obtained as a result of his detention by Trooper Holloway. The trial court conducted a hearing on March 10, 2009, and thereafter denied the motion to suppress.

{¶ 6} The matter proceeded to a plea hearing October 13, 2009. Appellee at that time entered pleas of no contest to aggravated vehicular assault and OVI, which the court accepted.

{¶ 7} Following a hearing on December 16, 2009, after reviewing a presentence investigation, the trial court sentenced appellee to two years in prison (with one year of the term ordered as mandatory) on the aggravated vehicular assault count, plus a fine and a suspension of appellee's driver's license for five years. The court imposed no additional sentence for the OVI count.

{¶ 8} On February 18, 2010, the State of Ohio filed a notice of appeal.^{FN1} It herein raises the following sole Assignment of Error:

FN1. On or about the same day, Mr. May filed a notice of appeal regarding suppression issues. That appeal has been numbered Morrow County 2010CA0001.

{¶ 9} “I. WHEN A MANDATORY PRISON TERM IS REQUIRED, DOES THE SENTENCING JUDGE HAVE THE AUTHORITY TO IMPOSE A PRISON TERM FROM THE PERMISSIBLE RANGE AND MAKE ONLY A PORTION OF THE TERM MANDATORY?”

I.

{¶ 10} In its sole Assignment of Error, the State of Ohio contends the trial court erred in issuing a sentence for aggravated vehicular assault with only a portion of the term being mandatory. We disagree.

{¶ 11} Generally, trial courts have full discretion to impose a prison sentence within the statutory ranges. See *State v. Freeman*, Delaware App. No. 07CAA01-0001, 2008-Ohio-1410. In order to find an abuse of discretion, we must find that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 12} As noted in our recitation of facts, appellee herein was convicted under R.C. 2903.08(A)(1)(a) for aggravated vehicular assault, a felony of the third degree. The General Assembly has set forth the following sentencing requirement for this offense in R.C. 2903.08(D)(1): “The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(1) of this section.”

{¶ 13} The State argues that the trial court's sentence in this case, consisting of a one-year “mandatory” term within a two-year prison term, is not authorized by statute and is erroneous as a matter of law. Appellee responds in part that various sections of R.C. Chapter 29 evince a legislative intent to differentiate “stated prison terms” and “mandatory prison terms.”

{¶ 14} For example, R.C. 2929.01(FF) states as follows:

{¶ 15} “ ‘Stated prison term’ means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142, or 2971.03 of the Revised Code or under section 2919.25 of the Revised Code. * * *.”

{¶ 16} Furthermore, R.C. 2929.20(C)(2) states:

{¶ 17} “If the stated prison term is at least two years but less than five years, the eligible offender may file [a judicial release] motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution or, *if the prison term includes a mandatory prison term or terms*, not earlier than one hundred eighty days after the expiration of all mandatory prison terms.” (Emphasis added).

{¶ 18} We recognize that subsequent to the filing of the briefs in this matter, this Court decided *State v. Hess*, Morrow App. No.2009CA0015, 2010-Ohio-3695, in which we applied the holding of *State v. Thomas*, Allen App.No. 1-04-88, 2005-Ohio-4616, to conclude the trial court was required to impose a mandatory prison term for the entire length of the sentence prescribed and not create a “hybrid sentence.” *Id.* at ¶ 32.

However, the Generally Assembly has not specifically disallowed the type of partially mandatory sentence crafted by the trial court in the case sub judice, and, as R.C. 2929.01(FF) and R.C. 2929.20(C)(2) indicate, a “stated term” is not necessarily synonymous with a “mandatory term.” It is well-established that the sentencing provisions set forth in the Revised Code are to be strictly construed against the state and liberally construed in favor of the accused. See, e.g., *State v. Fanti*, 147 Ohio App.3d 27, 30, 768 N.E.2d 718, 2001-Ohio-7028; R.C. 2901.04(A).

{¶ 19} Accordingly, we decline to herein adopt our previous rationale in *Hess*. We find the trial court acted within its discretion in imposing a one-year “mandatory” term, which comports with R.C. 2903.08(D)(1) and is within the range of penalties for a third-degree felony, even though the “stated term” was ordered to be two years.

{¶ 20} The State's sole Assignment of Error is therefore overruled.

{¶ 21} For the foregoing reasons, the sentencing entry of the Court of Common Pleas, Morrow County, Ohio, is hereby affirmed.

WISE, J., FARMER, J., concurs.

EDWARDS, P.J., concurs separately.

EDWARDS, P.J., concurring opinion.

{¶ 22} I concur in the majority's analysis and disposition of appellant's assignment of error. I write separately only to note that I have reconsidered my prior position on this issue in *State v. Hess*, Morrow App. No.2009 CA 0015, 2010-Ohio3695, based upon the majority's persuasive analysis concerning the legislative intent and statutory construction of R.C. 2903.08(D)(1).

Ohio App. 5 Dist.,2010.

State v. May

Slip Copy, 2010 WL 3766720 (Ohio App. 5 Dist.), 2010 -Ohio- 4625

END OF DOCUMENT

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes--Procedure (Refs & Annos)

Homicide and Assault

2903.08 Aggravated vehicular assault; enhancement of penalty; prior convictions; penalties

(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause serious physical harm to another person or another's unborn in any of the following ways:

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

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

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

(2) In one of the following ways:

(a) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this division applies only if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply as described in division (E) of this section;

(b) Recklessly.

(3) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that this division applies only if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in division (E) of this section.

(B)(1) Whoever violates division (A)(1) of this section is guilty of aggravated vehicular assault. Except as otherwise provided in this division, aggravated vehicular assault is a felony of the third degree. Aggravated vehicular assault is a felony of the second degree if any of the following apply:

(a) At the time of the offense, the offender was driving under a suspension imposed under Chapter 4510. or any other provision of the Revised Code.

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

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

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

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

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

(g) The offender previously has been convicted of or pleaded guilty to three or more prior violations of any combination of the offenses listed in division (B)(1)(d), (e), or (f) of this section.

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

(2) In addition to any other sanctions imposed pursuant to division (B)(1) of this section, except as otherwise provided in this division, the court shall impose upon the offender a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of section 4510.02 of the Revised Code. If the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder, felonious assault, or attempted murder offense, the court shall impose either a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of that section or a class one suspension as specified in division (A)(1) of that section.

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

(2) Except as otherwise provided in this division, vehicular assault committed in violation of division (A)(2) of this section is a felony of the fourth degree. Vehicular assault committed in violation of division (A)(2) of this section is a felony of the third degree if, at the time of the offense, the offender was driving under a suspension imposed under Chapter 4510. or any other provision of the Revised Code, if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense, or if, in the same course of conduct that resulted in the violation of division (A)(2) of this section, the offender also violated section 4549.02, 4549.021, or 4549.03 of the Revised Code.

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

(3) Except as otherwise provided in this division, vehicular assault committed in violation of division (A)(3) of this section is a misdemeanor of the first degree. Vehicular assault committed in violation of division (A)(3) of this section is a felony of the fourth degree if, at the time of the offense, the offender was driving under a suspension imposed under Chapter 4510. or any other provision of the Revised Code or if the offender previously has been convicted of or pleaded

guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense.

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

(D)(1) The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(1) of this section.

(2) The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(2) of this section or a felony violation of division (A)(3) of this section if either of the following applies:

(a) The offender previously has been convicted of or pleaded guilty to a violation of this section or section 2903.06 of the Revised Code.

(b) At the time of the offense, the offender was driving under suspension under Chapter 4510. or any other provision of the Revised Code.

(3) The court shall impose a mandatory jail term of at least seven days on an offender who is convicted of or pleads guilty to a misdemeanor violation of division (A)(3) of this section and

may impose upon the offender a longer jail term as authorized pursuant to section 2929.24 of the Revised Code.

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

(F) As used in this section:

(1) “Mandatory prison term” and “mandatory jail term” have the same meanings as in section 2929.01 of the Revised Code.

(2) “Traffic-related homicide, manslaughter, or assault offense” and “traffic-related murder, felonious assault, or attempted murder offense” have the same meanings as in section 2903.06 of the Revised Code.

(3) “Construction zone” has the same meaning as in section 5501.27 of the Revised Code.

(4) “Reckless operation offense” and “speeding offense” have the same meanings as in section 2903.06 of the Revised Code.

(G) For the purposes of this section, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially

equivalent municipal ordinance, former law of this state, or current or former law of another state or the United States.

CREDIT(S)

(2006 H 461, eff. 4-4-07; 2004 H 163, eff. 9-23-04; 2004 H 52, eff. 6-1-04; 2003 H 50, § 4, eff. 1-1-04; 2003 H 50, § 1, eff. 10-21-03; 2002 S 123, eff. 1-1-04; 1999 S 107, eff. 3-23-00; 1996 S 269, eff. 7-1-96; 1996 S 239, eff. 9-6-96; 1995 S 2, eff. 7-1-96; 1994 H 236, eff. 9-29-94; 1993 S 62, § 4, eff. 9-1-93; 1992 S 275; 1990 S 131)

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes—Procedure (Refs & Annos)

Chapter 2925. Drug Offenses (Refs & Annos)

Drug Offenses

2925.03 Trafficking offenses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

vicinity of a juvenile, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

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

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

(g) If the amount of the drug involved equals or exceeds one thousand grams of cocaine that is not crack cocaine or equals or exceeds one hundred grams of crack cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony

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

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

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

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

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

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate,

liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

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

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

(g) If the amount of the drug involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

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

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

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

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

in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

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

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

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

(g) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

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

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

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

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

committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

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

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

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams of hashish in a solid form or equals or exceeds two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is

a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

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

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

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

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

(E) When a person is charged with the sale of or offer to sell a bulk amount or a multiple of a bulk amount of a controlled substance, the jury, or the court trying the accused, shall determine the amount of the controlled substance involved at the time of the offense and, if a guilty verdict is returned, shall return the findings as part of the verdict. In any such case, it is unnecessary to find and return the exact amount of the controlled substance involved, and it is sufficient if the finding and return is to the effect that the amount of the controlled substance involved is the requisite amount, or that the amount of the controlled substance involved is less than the requisite amount.

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

that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section.

(2)(a) Prior to receiving any fine moneys under division (F)(1) of this section or division (B) of section 2925.42 of the Revised Code, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under section 149.43 of the Revised Code. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

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

and the speaker of the house of representatives a written notification that does all of the following:

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

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

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

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

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

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

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

(H)(1) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, in addition to any other penalty or sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may impose upon the offender an additional fine specified for the offense in division (B)(4) of section 2929.18 of the Revised Code. A fine imposed under division (H)(1) of this section is not subject to division (F) of this section and shall be used solely for the support of one or more eligible alcohol and drug addiction programs in accordance with divisions (H)(2) and (3) of this section.

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

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

(4) Each alcohol and drug addiction program that receives in a calendar year any fine moneys under division (H)(3) of this section shall file an annual report covering that calendar year with the court of common pleas and the board of county commissioners of the county in which the program is located, with the court of common pleas and the board of county commissioners of each county from which the program received the moneys if that county is different from the county in which the program is located, and with the attorney general. The alcohol and drug addiction program shall file the report no later than the first day of March in the calendar year following the calendar year in which the program received the fine moneys. The report shall include statistics on the number of persons served by the alcohol and drug addiction program, identify the types of alcohol and drug addiction services provided to those persons, and include a specific accounting of the purposes for which the fine moneys received were used. No information contained in the report shall identify, or enable a person to determine the identity of, any person served by the alcohol and drug addiction program. Each report received by a court of common pleas, a board of county commissioners, or the attorney general is a public record open for inspection under section 149.43 of the Revised Code.

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

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

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

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

CREDIT(S)

(2008 H 195, eff. 9-30-08; 2006 H 241, eff. 7-1-07; 2006 S 154, eff. 5-17-06; 2002 S 123, eff. 1-1-04; 2000 H 528, eff. 2-13-01; 2000 H 241, eff. 5-17-00; 1999 S 107, eff. 3-23-00; 1998 S 66, eff. 7-22-98; 1998 S 164, eff. 1-15-98; 1996 S 166, eff. 10-17-96; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1994 H 391, eff. 7-21-94; 1993 H 377, eff. 9-30-93; 1992 H 591, S 174; 1991 H 62; 1990 S 258, H 266, H 261, H 215; 1986 S 67; 1975 H 300)

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes—Procedure

Chapter 2925. Drug Offenses (Refs & Annos)

Drug Offenses

2925.11 Drug possession offenses

(A) No person shall knowingly obtain, possess, or use a controlled substance.

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

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

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

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

(4) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

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

(1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, and

hashish, whoever violates division (A) of this section is guilty of aggravated possession of drugs.

The penalty for the offense shall be determined as follows:

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

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated possession of drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved equals or exceeds one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(2) If the drug involved in the violation is a compound, mixture, preparation, or substance

included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), or (d) of this section, possession of drugs is a misdemeanor of the third degree or, if the offender previously has been convicted of a drug abuse offense, a misdemeanor of the second degree. If the drug involved in the violation is an anabolic steroid included in schedule III and if the offense is a misdemeanor of the third degree under this division, in lieu of sentencing the offender to a term of imprisonment in a detention facility, the court may place the offender under a community control sanction, as defined in section 2929.01 of the Revised Code, that requires the offender to perform supervised community service work pursuant to division (B) of section 2951.02 of the Revised Code.

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, possession of drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount, possession of drugs is a felony of the second degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

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

- (a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), or (f) of this section, possession of marihuana is a minor misdemeanor.
- (b) If the amount of the drug involved equals or exceeds one hundred grams but is less than two hundred grams, possession of marihuana is a misdemeanor of the fourth degree.
- (c) If the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, possession of marihuana is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.
- (d) If the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, possession of marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.
- (e) If the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, possession of marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.
- (f) If the amount of the drug involved equals or exceeds twenty thousand grams, possession of marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.
- (4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of possession of cocaine. The penalty for the offense shall be determined as follows:
- (a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), or (f) of this section, possession of cocaine is a felony of the fifth degree, and division (B) of section 2929.13 of the

Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds five grams but is less than twenty-five grams of cocaine that is not crack cocaine or equals or exceeds one gram but is less than five grams of crack cocaine, possession of cocaine is a felony of the fourth degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved equals or exceeds twenty-five grams but is less than one hundred grams of cocaine that is not crack cocaine or equals or exceeds five grams but is less than ten grams of crack cocaine, possession of cocaine is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.

(d) If the amount of the drug involved equals or exceeds one hundred grams but is less than five hundred grams of cocaine that is not crack cocaine or equals or exceeds ten grams but is less than twenty-five grams of crack cocaine, possession of cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved equals or exceeds five hundred grams but is less than one thousand grams of cocaine that is not crack cocaine or equals or exceeds twenty-five grams but is less than one hundred grams of crack cocaine, possession of cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one thousand grams of cocaine that is not crack cocaine or equals or exceeds one hundred grams of crack cocaine, possession of cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall

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

(5) If the drug involved in the violation is L.S.D., whoever violates division (A) of this section is guilty of possession of L.S.D. The penalty for the offense shall be determined as follows:

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

(b) If the amount of L.S.D. involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of L.S.D. involved equals or exceeds fifty unit doses, but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of L.S.D. involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty-five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of L.S.D. involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of L.S.D. involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

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

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

(b) If the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, possession of heroin is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved equals or exceeds fifty unit doses but is less than one

hundred unit doses or equals or exceeds five grams but is less than ten grams, possession of heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, possession of heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than two thousand five hundred unit doses or equals or exceeds fifty grams but is less than two hundred fifty grams, possession of heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams, possession of heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

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

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), or (f) of this section, possession of hashish is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of

hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds ten grams but is less than fifty grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) If the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(e) If the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) If the amount of the drug involved equals or exceeds one thousand grams of hashish in a solid form or equals or exceeds two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term or jail term authorized or required by division (C) of this section and sections 2929.13, 2929.14, 2929.22, 2929.24, and 2929.25 of the Revised Code and in addition to any other sanction that is imposed for the offense under this section, sections 2929.11 to 2929.18, or sections 2929.21 to 2929.28 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1)(a) If the violation is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent.

(b) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

(c) If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail pursuant to division (E)(1)(b) of this section as if it were a mandatory fine imposed under division (E)(1)(a)

of this section.

(2) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(3) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

(F) It is an affirmative defense, as provided in section 2901.05 of the Revised Code, to a charge of a fourth degree felony violation under this section that the controlled substance that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed under any other circumstances, that indicate that the substance was possessed solely for personal use. Notwithstanding any contrary provision of this section, if, in accordance with section 2901.05 of the Revised Code, an accused who is charged with a fourth degree felony violation of division (C)(2), (4), (5), or (6) of this section sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in this division, the accused may be prosecuted for and may plead guilty to or be convicted of a misdemeanor violation of division (C)(2) of this section or a fifth degree felony violation of division (C)(4), (5), or (6) of this section respectively.

(G) When a person is charged with possessing a bulk amount or multiple of a bulk amount, division (E) of section 2925.03 of the Revised Code applies regarding the determination of the amount of the controlled substance involved at the time of the offense.

(2002 H 490, eff. 1-1-04; 2002 S 123, eff. 1-1-04; 2000 H 241, eff. 5-17-00; 1999 S 107, eff. 3-23-00; 1998 S 66, eff. 7-22-98; 1997 S 2, eff. 6-20-97; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1995 H 249, eff. 7-17-95; 1994 H 391, eff. 7-21-94; 1993 H 377, eff. 9-30-93; 1991 H 298, H 62; 1990 S 258; 1980 S 184, § 5)

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes--Procedure (Refs & Annos)

Penalties and Sentencing (Refs & Annos)

Definitions

2929.01 Definitions

As used in this chapter:

(A)(1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

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

(D) “Community-based correctional facility” means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to sections 2301.51 to 2301.58 of the Revised Code.

(E) “Community control sanction” means a sanction that is not a prison term and that is described in section 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code or a sanction that is not a jail term and that is described in section 2929.26, 2929.27, or 2929.28 of the Revised Code. “Community control sanction” includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

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

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

(H) “Day reporting” means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

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

(J) “Drug and alcohol use monitoring” means a program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(K) “Drug treatment program” means any program under which a person undergoes assessment

and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

(L) "Economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Education or training" includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy curricula or their equivalent.

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

(O) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to section 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.

(P) "House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:

(1) The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.

(2) The offender is required to report periodically to a person designated by the court or parole board.

(3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

(Q) "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28 of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(R) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.

(S) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(T) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) of section 2903.06

or division (D) of section 2903.08 of the Revised Code, division (E) or (G) of section 2929.24 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

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

(V) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to section 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

(W) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of cocaine; at least two thousand five hundred unit doses or two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; at least fifty grams of a controlled substance analog; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

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

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (18) of section 2929.13 and division (B) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code.

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Y) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

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

(AA) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(BB) "Prison term" includes either of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.143, 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073 of the Revised Code.

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

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

(a) Aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (CC)(1)(a) of this section.

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

(DD) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed

pursuant to any provision of sections 2929.14 to 2929.18 or 2929.24 to 2929.28 of the Revised Code.

(EE) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(FF) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142, or 2971.03 of the Revised Code or under section 2919.25 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 of the Revised Code. If an offender is serving a prison term as a risk reduction sentence under sections 2929.143 and 5120.036 of the Revised Code, "stated prison term" includes any period of time by which the prison term imposed upon the offender is shortened by the offender's successful completion of all assessment and treatment or programming pursuant to those sections.

(GG) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(HH) "Fourth degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree.

(II) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential

facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.

(JJ) “Designated homicide, assault, or kidnapping offense,” “violent sex offense,” “sexual motivation specification,” “sexually violent offense,” “sexually violent predator,” and “sexually violent predator specification” have the same meanings as in section 2971.01 of the Revised Code.

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

(LL) An offense is “committed in the vicinity of a child” if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

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

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

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

(PP) “Third degree felony OVI offense” means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree.

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

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

(SS) “Body armor” has the same meaning as in section 2941.1411 of the Revised Code.

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

(UU) “Electronic monitoring device” means any of the following:

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (UU)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (UU)(1)(a) of this section, can transmit continuously those signals by a wireless or landline telephone connection to a central monitoring computer of

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

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

(2) Any device that is not a device of the type described in division (UU)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(3) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

(VV) “Non-economic loss” means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

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

(XX) “Continuous alcohol monitoring” means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(YY) A person is “adjudicated a sexually violent predator” if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

(ZZ) An offense is “committed in proximity to a school” if the offender commits the offense in a school safety zone or within five hundred feet of any school building or the boundaries of any

school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

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

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

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

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

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

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

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

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

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

CREDIT(S)

(2012 H 334, eff. 12-20-12; 2012 H 487, eff. 9-10-12; 2011 H 86, eff. 9-30-11; 2010 S 235, eff. 3-24-11; 2010 S 162, eff. 9-13-10; 2008 H 130, eff. 4-7-09; 2008 H 280, eff. 4-7-09; 2008 S 220, eff. 9-30-08; 2007 S 10, eff. 1-1-08; 2006 H 461, eff. 4-4-07; 2006 S 260, eff. 1-2-07; 2006 H 162, eff. 10-12-06; 2006 H 95, eff. 8-3-06; 2004 H 473, eff. 4-29-05; 2004 H 163, eff. 9-23-04; 2004 H 52, eff. 6-1-04; 2003 S 57, eff. 1-1-04; 2003 S 5, § 3, eff. 1-1-04; 2003 S 5, § 1, eff. 7-31-03; 2002 H 490, eff. 1-1-04; 2002 S 123, eff. 1-1-04; 2002 H 327, eff. 7-8-02; 2000 S 179, § 3, eff. 1-1-02; 2000 S 222, eff. 3-22-01; 2000 H 349, eff. 9-22-00; 1999 S 22, eff. 5-17-00; 1999 S 107, eff. 3-23-00; 1999 S 9, eff. 3-8-00; 1997 S 111, eff. 3-17-98; 1997 H 378, eff. 3-10-98; 1996 S 166, eff. 10-17-96; 1996 H 180, eff. 1-1-97; 1996 S 269, eff. 7-1-96; 1996 H 480, eff. 10-16-96; 1996 H 445, eff. 9-3-96; 1995 S 2, eff. 7-1-96)

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes--Procedure (Refs & Annos)

Penalties and Sentencing (Refs & Annos)

Felony Sentencing

2929.13 Sentencing guidelines for various specific offenses and degrees of offenses

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

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

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

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

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

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

(i) The offender previously has not been convicted of or pleaded guilty to a felony offense.

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

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

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

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

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

(ii) If the offense is a qualifying assault offense, the offender caused serious physical harm to another person while committing the offense, and, if the offense is not a qualifying assault offense, the offender caused physical harm to another person while committing the offense.

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

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

(v) The offense is a sex offense that is a fourth or fifth degree felony violation of any provision of Chapter 2907. of the Revised Code.

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

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

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

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

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

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

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

division that relates to a particular offender, a court shall defer sentencing of that offender until it receives from the department the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court or for forty-five days, whichever is the earlier.

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

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

(2) If division (B)(1) of this section does not apply, except as provided in division (E), (F), or (G) of this section, in determining whether to impose a prison term as a sanction for a felony of the fourth or fifth degree, the sentencing court shall comply with the purposes and principles of

sentencing under section 2929.11 of the Revised Code and with section 2929.12 of the Revised Code.

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

(D)(1) Except as provided in division (E) or (F) of this section, for a felony of the first or second degree, for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, and for a violation of division (A)(4) or (B) of section 2907.05 of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code. Division (D)(2) of this section does not apply to a presumption established under this division for a violation of division (A)(4) of section 2907.05 of the Revised Code.

(2) Notwithstanding the presumption established under division (D)(1) of this section for the offenses listed in that division other than a violation of division (A)(4) or (B) of section 2907.05 of the Revised Code, the sentencing court may impose a community control sanction or a combination of community control sanctions instead of a prison term on an offender for a felony of the first or second degree or for a felony drug offense that is a violation of any provision of

Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable if it makes both of the following findings:

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

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

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

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

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

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

(3) A court that sentences an offender for a drug abuse offense that is a felony of the third, fourth, or fifth degree may require that the offender be assessed by a properly credentialed professional within a specified period of time. The court shall require the professional to file a written assessment of the offender with the court. If the offender is eligible for a community control sanction and after considering the written assessment, the court may impose a community control sanction that includes treatment and recovery support services authorized by section 3793.02 of the Revised Code. If the court imposes treatment and recovery support services as a community control sanction, the court shall direct the level and type of treatment and recovery support services after considering the assessment and recommendation of treatment and recovery support services providers.

(F) Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under sections 2929.02 to 2929.06, section 2929.14, section 2929.142, or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20, divisions (C) to (I) of section 2967.19, or section 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code shall not reduce the term or terms pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code for any of the following offenses:

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

- (2) Any rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape if, had the offender completed the rape that was attempted, the offender would have been guilty of a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and would be sentenced under section 2971.03 of the Revised Code;
- (3) Gross sexual imposition or sexual battery, if the victim is less than thirteen years of age and if any of the following applies:
- (a) Regarding gross sexual imposition, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and the victim of the previous offense was less than thirteen years of age;
 - (b) Regarding gross sexual imposition, the offense was committed on or after August 3, 2006, and evidence other than the testimony of the victim was admitted in the case corroborating the violation.
 - (c) Regarding sexual battery, either of the following applies:
 - (i) The offense was committed prior to August 3, 2006, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.
 - (ii) The offense was committed on or after August 3, 2006.
- (4) A felony violation of section 2903.04, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2905.32, or 2907.07 of the Revised Code if the section requires the imposition of a prison term;
- (5) A first, second, or third degree felony drug offense for which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, or

4729.99 of the Revised Code, whichever is applicable regarding the violation, requires the imposition of a mandatory prison term;

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

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

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

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

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

(B)(1)(a) of section 2929.14 of the Revised Code for having the firearm;

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

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

(11) Any violent sex offense or designated homicide, assault, or kidnapping offense if, in relation to that offense, the offender is adjudicated a sexually violent predator;

(12) A violation of division (A)(1) or (2) of section 2921.36 of the Revised Code, or a violation of division (C) of that section involving an item listed in division (A)(1) or (2) of that section, if the offender is an officer or employee of the department of rehabilitation and correction;

(13) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if 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, with respect to the portion of the sentence imposed pursuant to division (B)(5) of section 2929.14 of the Revised Code;

(14) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the offender 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, with respect to the portion of the sentence imposed pursuant to division (B)(6) of section 2929.14 of the Revised Code;

(15) Kidnapping, in the circumstances specified in section 2971.03 of the Revised Code and when no other provision of division (F) of this section applies;

(16) Kidnapping, abduction, compelling prostitution, promoting prostitution, engaging in a pattern of corrupt activity, illegal use of a minor in a nudity-oriented material or performance in violation of division (A)(1) or (2) of section 2907.323 of the Revised Code, or endangering children in violation of division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code, if the offender is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense;

(17) A felony violation of division (A) or (B) of section 2919.25 of the Revised Code if division (D)(3), (4), or (5) of that section, and division (D)(6) of that section, require the imposition of a prison term;

(18) A felony violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code, if the victim of the offense was a woman that the offender knew was pregnant at the time of the violation, with respect to a portion of the sentence imposed pursuant to division (B)(8) of section 2929.14 of the Revised Code.

(G) Notwithstanding divisions (A) to (E) of this section, if an offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, the court shall impose upon the offender a mandatory term of local incarceration or a mandatory prison term in accordance with the following:

(1) If the offender is being sentenced for a fourth degree felony OVI offense and if the offender has not been convicted of and has not pleaded guilty to a specification of the type described in section 2941.1413 of the Revised Code, the court may impose upon the offender a mandatory

term of local incarceration of sixty days or one hundred twenty days as specified in division (G)(1)(d) of section 4511.19 of the Revised Code. The court shall not reduce the term pursuant to section 2929.20, 2967.193, or any other provision of the Revised Code. The court that imposes a mandatory term of local incarceration under this division shall specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender shall serve the term in the type of facility specified by the court. A mandatory term of local incarceration imposed under division (G)(1) of this section is not subject to any other Revised Code provision that pertains to a prison term except as provided in division (A)(1) of this section.

(2) If the offender is being sentenced for a third degree felony OVI offense, or if the offender is being sentenced for a fourth degree felony OVI offense and the court does not impose a mandatory term of local incarceration under division (G)(1) of this section, the court shall impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or shall impose upon the offender a mandatory prison term of sixty days or one hundred twenty days as specified in division (G)(1)(d) or (e) of section 4511.19 of the Revised Code if the offender has not been convicted of and has not pleaded guilty to a specification of that type. Subject to divisions (C) to (I) of section 2967.19 of the Revised Code, the court shall not reduce the term pursuant to section 2929.20, 2967.19, 2967.193, or any other provision of the Revised Code. The offender shall serve the one-, two-, three-, four-, or five-year mandatory prison term consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense. In no case shall an offender who once has been sentenced to a mandatory term of

local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OVI offense be sentenced to another mandatory term of local incarceration under that division for any violation of division (A) of section 4511.19 of the Revised Code. In addition to the mandatory prison term described in division (G)(2) of this section, the court 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 the prison term prior to serving the community control sanction. The department of rehabilitation and correction may place an offender sentenced to a mandatory prison term under this division in an intensive program prison established pursuant to section 5120.033 of the Revised Code if the department gave the sentencing judge prior notice of its intent to place the offender in an intensive program prison established under that section and if the judge did not notify the department that the judge disapproved the placement. Upon the establishment of the initial intensive program prison pursuant to section 5120.033 of the Revised Code that is privately operated and managed by a contractor pursuant to a contract entered into under section 9.06 of the Revised Code, both of the following apply:

- (a) The department of rehabilitation and correction shall make a reasonable effort to ensure that a sufficient number of offenders sentenced to a mandatory prison term under this division are placed in the privately operated and managed prison so that the privately operated and managed prison has full occupancy.
- (b) Unless the privately operated and managed prison has full occupancy, the department of rehabilitation and correction shall not place any offender sentenced to a mandatory prison term under this division in any intensive program prison established pursuant to section 5120.033 of the Revised Code other than the privately operated and managed prison.

(H) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a felony committed on or after January 1, 1997, the judge shall require the offender to submit to a DNA specimen collection procedure pursuant to section 2901.07 of the Revised Code.

(I) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under division (A)(2) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that section, or, if required under division (A)(6) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that division.

(J)(1) Except as provided in division (J)(2) of this section, when considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit an offense in violation of section 2923.02 of the Revised Code, the sentencing court shall consider the factors applicable to the felony category of the violation of section 2923.02 of the Revised Code instead of the factors applicable to the felony category of the offense attempted.

(2) When considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense, the sentencing court shall consider the factors applicable to the felony category that the drug abuse offense attempted would be if that drug abuse offense had been

committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt.

(K) As used in this section:

(1) "Drug abuse offense" has the same meaning as in section 2925.01 of the Revised Code.

(2) "Qualifying assault offense" means a violation of section 2903.13 of the Revised Code for which the penalty provision in division (C)(8)(b) or (C)(9)(b) of that section applies.

(L) At the time of sentencing an offender for any sexually oriented offense, if the offender is a tier III sex offender/child-victim offender relative to that offense and the offender does not serve a prison term or jail term, the court may require that the offender be monitored by means of a global positioning device. If the court requires such monitoring, the cost of monitoring shall be borne by the offender. If the offender is indigent, the cost of compliance shall be paid by the crime victims reparations fund.

CREDIT(S)

(2013 H 59, eff. 9-29-13; 2012 S 160, eff. 3-22-13; 2012 H 62, eff. 3-22-13; 2012 H 262, eff. 6-27-12; 2011 H 86, eff. 9-30-11; 2010 S 58, eff. 9-17-10; 2008 H 130, eff. 4-7-09; 2008 H 280, eff. 4-7-09; 2008 S 183, eff. 9-11-08; 2007 S 10, eff. 1-1-08; 2006 S 281, eff. 4-5-07; 2006 H 461, eff. 4-4-07; 2006 S 260, eff. 1-2-07; 2006 H 95, eff. 8-3-06; 2004 H 473, eff. 4-29-05; 2004 H 163, eff. 9-23-04; 2004 H 52, eff. 6-1-04; 2003 S 5, § 3, eff. 1-1-04; 2003 S 5, § 1, eff. 7-31-03; 2002 S 123, eff. 1-1-04; 2002 H 485, eff. 6-13-02; 2002 H 327, eff. 7-8-02; 2000 S 222, eff. 3-22-01; 2000 H 528, eff. 2-13-01; 1999 S 22, eff. 5-17-00; 1999 S 107, eff. 3-23-00; 1999 S 142, eff. 2-3-00; 1998 H 122, eff. 7-29-98; 1998 H 293, eff. 3-17-98; 1997 S 111, eff. 3-17-98; 1997 H 32, eff. 3-10-98; 1996 H 180, eff. 1-1-97; 1996 S 166, eff. 10-17-96; 1996 S 269, eff. 7-1-96; 1996 H 445, eff. 9-3-96; 1995 S 2, eff. 7-1-96)

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes--Procedure (Refs & Annos)

Penalties and Sentencing (Refs & Annos)

Felony Sentencing

2929.14 Prison terms

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

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

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

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

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

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

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

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

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

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

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

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

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

impose a prison term under division (B)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

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

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

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

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

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

not impose a prison term under division (B)(1)(a) or (c) of this section relative to the same offense.

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

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

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

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

attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

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

(iv) The court finds that the prison terms imposed pursuant to division (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 marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in section 2941.1410 of the Revised Code charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of section 2907.02 of the Revised Code and, had the offender completed the violation of section 2907.02 of the Revised Code that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of section 2907.02 of the Revised Code, the court shall impose upon the offender for the felony violation a 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

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

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

(I) 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.

CREDIT(S)

(2012 S 337, eff. 9-28-12; 2011 H 86, eff. 9-30-11; 2008 H 130, eff. 4-7-09; 2008 H 280, eff. 4-7-09; 2008 S 220, eff. 9-30-08; 2008 S 184, eff. 9-9-08; 2007 S 10, eff. 1-1-08; 2006 S 281, eff. 4-5-07; 2006 H 461, eff. 4-4-07; 2006 S 260, eff. 1-2-07; 2006 H 137, § 3, eff. 8-3-06; 2006 H 137, § 1, eff. 7-11-06; 2006 H 95, eff. 8-3-06; 2004 H 473, eff. 4-29-05; 2004 H 163, eff. 9-23-04; 2004 H 52, eff. 6-1-04; 2004 H 12, § 3, eff. 4-8-04; 2004 H 12, § 1, eff. 4-8-04; 2002 H 130, eff. 4-7-03; 2002 S 123, eff. 1-1-04; 2002 H 485, eff. 6-13-02; 2002 H 327, eff. 7-8-02; 2000 S 222, eff. 3-22-01; 1999 S 22, eff. 5-17-00; 1999 S 107, eff. 3-23-00; 1999 H 29, eff. 10-29-99; 1999 S 1, eff. 8-6-99; 1998 H 2, eff. 1-1-99; 1997 S 111, eff. 3-17-98; 1997 H 32, eff. 3-10-98; 1997 H 151, eff. 9-16-97; 1996 H 180, eff. 1-1-97; 1996 S 166, eff. 10-17-96; 1996 H 154, eff. 10-4-96; 1996 S 269, eff. 7-1-96; 1996 H 445, eff. 9-3-96; 1996 H 88, eff. 9-3-96; 1995 S 2, eff. 7-1-96)

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIX CRIMES--PROCEDURE
CHAPTER 2929 PENALTIES AND SENTENCING
FELONY SENTENCING

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2929.20 JUDICIAL RELEASE

(A) As used in this section, "eligible offender" means either of the following:

- (1) A person who has been convicted of or pleaded guilty to a felony, who is serving a stated prison term of five years or less, and who is not serving a mandatory prison term;
- (2) A person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term and another prison term of five years or less, and who has served the mandatory prison term.

(B) Upon the filing of a motion by the eligible offender or upon its own motion, a sentencing court may reduce the offender's stated prison term through a judicial release in accordance with this section. An eligible offender may file a motion for judicial release with the sentencing court within the following applicable period of time:

- (1) If the stated prison term was imposed for a felony of the fourth or fifth degree, the eligible offender shall file the motion not earlier than thirty days or later than ninety days after the offender is delivered to a state correctional institution.
- (2) If the stated prison term was imposed for a felony of the first, second, or third degree, the eligible offender shall file the motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution.
- (3) If the offender was sentenced to a mandatory prison term and a consecutive prison term other than a mandatory prison term that is five years or less, the offender shall file the motion within

the time authorized under division (B)(1) or (2) of this section for the felony for which the prison term other than the mandatory prison term was imposed, but the time for filing the motion does not begin to run until after the expiration of the mandatory prison term.

(C) Upon receipt of a timely motion for judicial release filed by an eligible offender under division (B) of this section or upon the sentencing court's own motion made within the appropriate time period specified in that division, the court may schedule a hearing on the motion. The court may deny the motion without a hearing but shall not grant the motion in any case without a hearing. If a court denies the motion filed by an eligible offender, the court shall not consider a judicial release on its own motion. The court shall hold only one hearing for any eligible offender.

A hearing under this section shall be conducted in open court within sixty days after the date on which the motion is filed, provided that the court may delay the hearing for a period not to exceed one hundred eighty additional days. If the court schedules a hearing on the motion, the court shall enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed.

(D) If a court schedules a hearing on the motion filed by an eligible offender under this section or on its own motion, the court shall notify the eligible offender of the hearing. The eligible offender promptly shall serve a copy of the motion on the head of the state correctional institution in which the eligible offender is confined. If the court schedules a hearing on its own motion for judicial release, the court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the eligible offender was indicted. Upon receipt of the notice from the court, the prosecuting attorney shall notify the victim of the offense for which the stated

prison term was imposed or the victim's representative, pursuant to section 2930.16 of the Revised Code, of the hearing.

(E) Prior to the date of the hearing on a motion for judicial release under this section, the head of the state correctional institution in which the eligible offender in question is confined shall send to the court a report on the eligible offender's conduct in the institution and in any institution from which the eligible offender may have been transferred. The report shall cover the eligible offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the eligible offender. The report shall be made part of the record of the hearing.

(F) If the court grants a hearing on a motion for judicial release under this section, the eligible offender shall attend the hearing if ordered to do so by the court. Upon receipt of a copy of the journal entry containing the order, the head of the state correctional institution in which the eligible offender is incarcerated shall deliver the eligible offender to the sheriff of the county in which the hearing is to be held. The sheriff shall convey the eligible offender to the hearing and return him to the institution after the hearing.

(G) At the hearing on a motion for judicial release under this section, the court shall afford the eligible offender and the eligible offender's counsel an opportunity to present oral or written information relevant to the motion. The court shall afford a similar opportunity to the prosecuting attorney, the victim or the victim's representative, as defined in section 2930.01 of the Revised Code, and any other person the court determines is likely to present additional relevant information. The court shall consider any statement of a victim made pursuant to section 2930.14 or 2930.17 of the Revised Code and any victim impact statement prepared pursuant to

section 2947.051 of the Revised Code. After ruling on the motion, the court shall notify the victim of the ruling in accordance with sections 2930.03 and 2930.16 of the Revised Code.

(H)(1) A court shall not grant a judicial release under this section to an eligible offender who is imprisoned for a felony of the first or second degree, or to an eligible offender who committed an offense contained in Chapter 2925. or 3719. of the Revised Code and for whom there was a presumption under section 2929.13 of the Revised Code in favor of a prison term, unless the court, with reference to factors described in section 2929.12 of the Revised Code, finds both of the following:

(a) That a sanction other than a prison term should adequately protect the public from future criminal violations by the eligible offender because factors in favor of release presented at the hearing conducted under this section outweigh any factors presented at the hearing indicating a likelihood of recidivism;

(b) That a sanction other than a prison term would not demean the seriousness of the offense because factors presented at the hearing conducted under this section indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors presented at the hearing indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense.

(2) A court that grants a judicial release to an eligible offender under division (H)(1) of this section shall specify on the record both findings required in that division and also shall list all the factors described in that division that were presented at the hearing.

(I) If the court grants a motion for judicial release under this section, the court shall order the release of the eligible offender, shall place the eligible offender on post-release control under an appropriate community control sanction and under the supervision of the department of

probation serving the court, and shall reserve the right to reimpose the sentence that it reduced pursuant to the judicial release if the offender violates the sanction. If the court reimposes the reduced sentence pursuant to this reserved right, it may do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation. The period of post-release control shall be no longer than five years, less the amount of time the eligible offender spent in jail for the offense and in prison. If the court made any findings pursuant to division (H)(1) of this section, the court shall serve a copy of the findings upon counsel for the parties within fifteen days after the date on which the court grants the motion for judicial release.

Prior to being released pursuant to a judicial release granted under this section, the eligible offender shall serve any extension of sentence that was imposed under section 2967.11 of the Revised Code.

RELATED TERMS

CREDIT(S)

(1995 S 2, eff. 7-1-96)

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIX. CRIMES--PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
FELONY SENTENCING

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2929.20 JUDICIAL RELEASE

(A)(1) As used in this section, "eligible offender" means any of the following:

(a) A person who has been convicted of or pleaded guilty to a felony, who is serving a stated prison term of ten years or less, and who is not serving a mandatory prison term;

(b) A person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term and another prison term of ten years or less, and who has served the mandatory prison term;

(c) A person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term pursuant to division (D)(1) of section 2929.14 of the Revised Code and another prison term of ten years or less, who is required by division (E)(1) of section 2929.14 of the Revised Code to serve the mandatory prison term and the other prison term consecutively, and who has served the mandatory prison term.

(2) "Eligible offender" does not include any of the following:

(a) A person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term pursuant to division (D)(2) or (3) of section 2929.14 of the Revised Code and another prison term of ten years or less, and who is required by division (E)(2), (3), or, (4) of section 2929.14 of the Revised Code to serve the mandatory prison term and the other prison term consecutively, whether or not the person has served the mandatory prison term.

(b) A person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term pursuant to divisions (D)(1) and (2), or division (D)(3) of section 2929.14 of the Revised Code and another prison term of ten years or less, and who is required by division (E)(1), (2), (3), or (4) of section 2929.14 of the Revised Code to serve any of the mandatory prison terms and the other prison term consecutively, whether or not the person has served the mandatory prison terms.

(B) Upon the filing of a motion by the eligible offender or upon its own motion, a sentencing court may reduce the offender's stated prison term through a judicial release in accordance with this section. An eligible offender may file a motion for judicial release with the sentencing court within the following applicable period of time:

(1) If the stated prison term was imposed for a felony of the fourth or fifth degree, the eligible offender shall file the motion not earlier than thirty days or later than ninety days after the offender is delivered to a state correctional institution.

(2) Except as otherwise provided in division (B)(3) of this section, if the stated prison term was imposed for a felony of the first, second, or third degree, the eligible offender shall file the motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution.

(3) If the stated prison term is five years or more and less than ten years, the eligible offender shall file the motion after the eligible offender has served five years of the stated prison term.

(4) If the offender was sentenced to a mandatory prison term pursuant to division (D)(1) of section 2929.14 of the Revised Code and a consecutive prison term other than a mandatory prison term that is ten years or less, the offender shall file the motion within the time authorized under division (B)(1), (2), or (3) of this section for the felony for which the prison term other

than the mandatory prison term was imposed, but the time for filing the motion does not begin to run until after the expiration of the mandatory prison term.

(C) Upon receipt of a timely motion for judicial release filed by an eligible offender under division (B) of this section or upon the sentencing court's own motion made within the appropriate time period specified in that division, the court may schedule a hearing on the motion. The court may deny the motion without a hearing but shall not grant the motion in any case without a hearing. If a court denies without a hearing a motion filed by an eligible offender or on its own motion that relates to an eligible offender, the court may consider a subsequent judicial release for that eligible offender on its own motion or a subsequent motion for judicial release filed by that eligible offender. If a court denies after a hearing a motion filed by an eligible offender or its own motion that relates to an eligible offender, the court shall not consider a subsequent motion for that eligible offender. The court shall hold only one hearing for any eligible offender.

A hearing under this section shall be conducted in open court within sixty days after the date on which the motion is filed, provided that the court may delay the hearing for a period not to exceed one hundred eighty additional days. If the court schedules a hearing on the motion, the court shall enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed.

(D) If a court schedules a hearing on the motion filed by an eligible offender under this section or on its own motion, the court shall notify the eligible offender of the hearing. The eligible offender promptly shall serve a copy of the notice of the hearing on the head of the state correctional institution in which the eligible offender is confined. If the court schedules a hearing

for judicial release, the court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the eligible offender was indicted. Upon receipt of the notice from the court, the prosecuting attorney shall notify the victim of the offense for which the stated prison term was imposed or the victim's representative, pursuant to section 2930.16 of the Revised Code, of the hearing.

(E) Prior to the date of the hearing on a motion for judicial release under this section, the head of the state correctional institution in which the eligible offender in question is confined shall send to the court a report on the eligible offender's conduct in the institution and in any institution from which the eligible offender may have been transferred. The report shall cover the eligible offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the eligible offender. The report shall be made part of the record of the hearing.

(F) If the court grants a hearing on a motion for judicial release under this section, the eligible offender shall attend the hearing if ordered to do so by the court. Upon receipt of a copy of the journal entry containing the order, the head of the state correctional institution in which the eligible offender is incarcerated shall deliver the eligible offender to the sheriff of the county in which the hearing is to be held. The sheriff shall convey the eligible offender to the hearing and return the offender to the institution after the hearing.

(G) At the hearing on a motion for judicial release under this section, the court shall afford the eligible offender and the eligible offender's counsel an opportunity to present written information relevant to the motion and shall afford the eligible offender, if present, and the eligible offender's attorney to present oral information relevant to the motion. The court shall afford a similar opportunity to the prosecuting attorney, the victim or the victim's representative, as defined in

section 2930.01 of the Revised Code, and any other person the court determines is likely to present additional relevant information. The court shall consider any statement of a victim made pursuant to section 2930.14 or 2930.17 of the Revised Code and any victim impact statement prepared pursuant to section 2947.051 of the Revised Code. After ruling on the motion, the court shall notify the victim of the ruling in accordance with sections 2930.03 and 2930.16 of the Revised Code.

(H)(1) A court shall not grant a judicial release under this section to an eligible offender who is imprisoned for a felony of the first or second degree, or to an eligible offender who committed an offense contained in Chapter 2925. or 3719. of the Revised Code and for whom there was a presumption under section 2929.13 of the Revised Code in favor of a prison term, unless the court, with reference to factors under section 2929.12 of the Revised Code, finds both of the following:

(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the eligible offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;

(b) That a sanction other than a prison term would not demean the seriousness of the offense because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense.

(2) A court that grants a judicial release to an eligible offender under division (H)(1) of this section shall specify on the record both findings required in that division and also shall list all the factors described in that division that were presented at the hearing.

(I) If the court grants a motion for judicial release under this section, the court shall order the release of the eligible offender, shall place the eligible offender under an appropriate community control sanction, under a mandatory condition of the type described in division (A) of section 2967.131 of the Revised Code, and under the supervision of the department of probation serving the court, and shall reserve the right to reimpose the sentence that it reduced pursuant to the judicial release if the offender violates the sanction. If the court reimposes the reduced sentence pursuant to this reserved right, it may do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation. The period of the community control sanction shall be no longer than five years. The court, in its discretion, may reduce the period of the community control sanction by the amount of time the eligible offender spent in jail for the offense and in prison. If the court made any findings pursuant to division (H)(1) of this section, the court shall serve a copy of the findings upon counsel for the parties within fifteen days after the date on which the court grants the motion for judicial release.

Prior to being released pursuant to a judicial release granted under this section, the eligible offender shall serve any extension of sentence that was imposed under section 2967.11 of the Revised Code.

CREDIT(S)

(1997 H 151, eff. 9-16-97; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96)

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIX. CRIMES--PROCEDURE
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2929.20 JUDICIAL RELEASE

(A) As used in this section, "eligible offender" means any person serving a stated prison term of ten years or less when either of the following applies:

(1) The stated prison term does not include a mandatory prison term.

(2) The stated prison term includes a mandatory prison term, and the person has served the mandatory prison term.

(B) Upon the filing of a motion by the eligible offender or upon its own motion, a sentencing court may reduce the offender's stated prison term through a judicial release in accordance with this section. The court shall not reduce the stated prison term of an offender who is not an eligible offender. An eligible offender may file a motion for judicial release with the sentencing court within the following applicable period of time:

(1) (a) Except as otherwise provided in division (B)(1)(b) or (c) of this section, if the stated prison term was imposed for a felony of the fourth or fifth degree, the eligible offender may file the motion not earlier than thirty days or later than ninety days after the offender is delivered to a state correctional institution.

(b) If the stated prison term is five years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term.

(c) If the stated prison term is more than five years and less than ten years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term.

(2) Except as otherwise provided in division (B)(3) or (4) of this section, if the stated prison term was imposed for a felony of the first, second, or third degree, the eligible offender may file the motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution.

(3) If the stated prison term is five years, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term.

(4) If the stated prison term is more than five years and less than ten years, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term.

(5) If the offender's stated prison term includes a mandatory prison term, the offender shall file the motion within the time authorized under division (B)(1), (2), (3), or (4) of this section for the nonmandatory portion of the prison term, but the time for filing the motion does not begin to run until after the expiration of the mandatory portion of the prison term.

(C) Upon receipt of a timely motion for judicial release filed by an eligible offender under division (B) of this section or upon the sentencing court's own motion made within the appropriate time period specified in that division, the court may schedule a hearing on the motion. The court may deny the motion without a hearing but shall not grant the motion without a hearing. If a court denies a motion without a hearing, the court may consider a subsequent judicial release for that eligible offender on its own motion or a subsequent motion filed by that eligible offender. If a court denies a motion after a hearing, the court shall not consider a

subsequent motion for that eligible offender. The court shall hold only one hearing for any eligible offender.

A hearing under this section shall be conducted in open court within sixty days after the date on which the motion is filed, provided that the court may delay the hearing for a period not to exceed one hundred eighty additional days. If the court holds a hearing on the motion, the court shall enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed.

(D) If a court schedules a hearing under division (C) of this section, the court shall notify the eligible offender of the hearing. The eligible offender promptly shall give a copy of the notice of the hearing to the head of the state correctional institution in which the eligible offender is confined. If the court schedules a hearing for judicial release, the court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the eligible offender was indicted. Upon receipt of the notice from the court, the prosecuting attorney shall notify the victim of the offense for which the stated prison term was imposed or the victim's representative, pursuant to section 2930.16 of the Revised Code, of the hearing.

(E) Prior to the date of the hearing on a motion for judicial release under this section, the head of the state correctional institution in which the eligible offender in question is confined shall send to the court a report on the eligible offender's conduct in the institution and in any institution from which the eligible offender may have been transferred. The report shall cover the eligible offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the eligible offender. The report shall be made part of the record of the hearing.

(F) If the court grants a hearing on a motion for judicial release under this section, the eligible offender shall attend the hearing if ordered to do so by the court. Upon receipt of a copy of the journal entry containing the order, the head of the state correctional institution in which the eligible offender is incarcerated shall deliver the eligible offender to the sheriff of the county in which the hearing is to be held. The sheriff shall convey the eligible offender to the hearing and return the offender to the institution after the hearing.

(G) At the hearing on a motion for judicial release under this section, the court shall afford the eligible offender and the eligible offender's attorney an opportunity to present written information relevant to the motion and shall afford the eligible offender, if present, and the eligible offender's attorney an opportunity to present oral information relevant to the motion. The court shall afford a similar opportunity to the prosecuting attorney, the victim or the victim's representative, as defined in section 2930.01 of the Revised Code, and any other person the court determines is likely to present additional relevant information. The court shall consider any statement of a victim made pursuant to section 2930.14 or 2930.17 of the Revised Code, any victim impact statement prepared pursuant to section 2947.051 of the Revised Code, and any report made under division (E) of this section. After ruling on the motion, the court shall notify the victim of the ruling in accordance with sections 2930.03 and 2930.16 of the Revised Code.

(H)(1) A court shall not grant a judicial release under this section to an eligible offender who is imprisoned for a felony of the first or second degree, or to an eligible offender who committed an offense contained in Chapter 2925. or 3719. of the Revised Code and for whom there was a presumption under section 2929.13 of the Revised Code in favor of a prison term, unless the court, with reference to factors under section 2929.12 of the Revised Code, finds both of the following:

(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the eligible offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;

(b) That a sanction other than a prison term would not demean the seriousness of the offense because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense.

(2) A court that grants a judicial release to an eligible offender under division (H)(1) of this section shall specify on the record both findings required in that division and also shall list all the factors described in that division that were presented at the hearing.

(I) If the court grants a motion for judicial release under this section, the court shall order the release of the eligible offender, shall place the eligible offender under an appropriate community control sanction, under appropriate community control conditions, and under the supervision of the department of probation serving the court, and shall reserve the right to reimpose the sentence that it reduced pursuant to the judicial release if the offender violates the sanction. If the court reimposes the reduced sentence pursuant to this reserved right, it may do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation that is a new offense. The period of the community control sanction shall be no longer than five years. The court, in its discretion, may reduce the period of the community control sanction by the amount of time the eligible offender spent in jail for the offense and in prison. If the court made any findings pursuant to division (H)(1) of this section, the court shall

serve a copy of the findings upon counsel for the parties within fifteen days after the date on which the court grants the motion for judicial release.

Prior to being released pursuant to a judicial release granted under this section, the eligible offender shall serve any extension of sentence that was imposed under section 2967.11 of the Revised Code.

CREDIT(S)

(1999 S 107, eff. 3-23-00; 1997 H 151, eff. 9-16-97; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96)

Baldwin's Ohio Revised Code Annotated Currentness
Title XXIX. Crimes—Procedure (Refs & Annos)
Chapter 2929. Penalties and Sentencing (Refs & Annos)
Felony Sentencing

2929.20 Judicial release (later effective date)

(A) As used in this section:

(1)(a) Except as provided in division (A)(1)(b) of this section, “eligible offender” means any person serving a stated prison term of ten years or less when either of the following applies:

(i) The stated prison term does not include a mandatory prison term.

(ii) The stated prison term includes a mandatory prison term, and the person has served the mandatory prison term.

(b) “Eligible offender” does not include any person who is serving a stated prison term for any of the following criminal offenses that was a felony and was committed while the person held a public office in this state:

(i) A violation of section 2921.02, 2921.03, 2921.05, 2921.31, 2921.32, 2921.41, 2921.42, or 2923.32 of the Revised Code;

(ii) A violation of section 2913.42, 2921.04, 2921.11, or 2921.12 of the Revised Code, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office;

(iii) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (A)(1)(b)(i) of this section;

(iv) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (A)(1)(b)(ii) of this section, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office;

(v) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in division (A)(1)(b)(i) or described in division (A)(1)(b)(iii) of this section;

(vi) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in division (A)(1)(b)(ii) or described in division (A)(1)(b)(iv) of this section, if the conduct constituting the offense that was the subject of the conspiracy, that would have constituted the offense attempted, or constituting the offense in which the offender was complicit was or would have been related to the duties of the offender's public office or to the offender's actions as a public official holding that public office.

(2) "Public office" means any elected federal, state, or local government office in this state.

(B) On the motion of an eligible offender or upon its own motion, the sentencing court may reduce the eligible offender's stated prison term through a judicial release under this section..

(C) An eligible offender may file a motion for judicial release with the sentencing court within the following applicable periods:

(1) If the stated prison term is less than two years, the eligible offender may file the motion not earlier than thirty days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than thirty days after the expiration of all mandatory prison terms.

(2) If the stated prison term is at least two years but less than five years, the eligible offender may file the motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than one hundred eighty days after the expiration of all mandatory prison terms.

(3) If the stated prison term is five years or more but not more than ten years, the eligible offender may file the motion not earlier than five years after the eligible offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than five years after the expiration of all mandatory prison terms.

(D) Upon receipt of a timely motion for judicial release filed by an eligible offender under division (C) of this section or upon the sentencing court's own motion made within the appropriate time specified in that division, the court may deny the motion without a hearing or schedule a hearing on the motion. The court shall not grant the motion without a hearing. If a court denies a motion without a hearing, the court later may consider judicial release for that eligible offender on a subsequent motion filed by that eligible offender unless the court denies the motion with prejudice. If a court denies a motion with prejudice, the court may later consider judicial release on its own motion. If a court denies a motion after a hearing, the court shall not consider a subsequent motion for that eligible offender. The court shall hold only one hearing for any eligible offender.

A hearing under this section shall be conducted in open court within sixty days after the motion is filed, provided that the court may delay the hearing for one hundred eighty additional days. If the court holds a hearing, the court shall enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed.

(E) If a court schedules a hearing under division (D) of this section, the court shall notify the eligible offender and the head of the state correctional institution in which the eligible offender is confined prior to the hearing. The head of the state correctional institution immediately shall notify the appropriate person at the department of rehabilitation and correction of the hearing, and the department within twenty-four hours after receipt of the notice, shall post on the database it maintains pursuant to section 5120.66 of the Revised Code the offender's name and all of the information specified in division (A)(1)(c)(i) of that section. If the court schedules a hearing for judicial release, the court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the eligible offender was indicted. Upon receipt of the notice from the court, the prosecuting attorney shall notify the victim of the offense or the victim's representative pursuant to section 2930.16 of the Revised Code.

(F) Upon an offender's successful completion of rehabilitative activities, the head of the state correctional institution may notify the sentencing court of the successful completion of the activities.

(G) Prior to the date of the hearing on a motion for judicial release under this section, the head of the state correctional institution in which the eligible offender is confined shall send to the court a report on the eligible offender's conduct in the institution and in any institution from which the eligible offender may have been transferred. The report shall cover the eligible offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the eligible offender. The report shall be made part of the record of the hearing.

(H) If the court grants a hearing on a motion for judicial release under this section, the eligible offender shall attend the hearing if ordered to do so by the court. Upon receipt of a copy of the

journal entry containing the order, the head of the state correctional institution in which the eligible offender is incarcerated shall deliver the eligible offender to the sheriff of the county in which the hearing is to be held. The sheriff shall convey the eligible offender to and from the hearing.

(I) At the hearing on a motion for judicial release under this section, the court shall afford the eligible offender and the eligible offender's attorney an opportunity to present written and, if present, oral information relevant to the motion. The court shall afford a similar opportunity to the prosecuting attorney, the victim or the victim's representative, as defined in section 2930.01 of the Revised Code, and any other person the court determines is likely to present additional relevant information. The court shall consider any statement of a victim made pursuant to section 2930.14 or 2930.17 of the Revised Code, any victim impact statement prepared pursuant to section 2947.051 of the Revised Code, and any report made under division (G) of this section. The court may consider any written statement of any person submitted to the court pursuant to division (L) of this section. After ruling on the motion, the court shall notify the victim of the ruling in accordance with sections 2930.03 and 2930.16 of the Revised Code.

(J)(1) A court shall not grant a judicial release under this section to an eligible offender who is imprisoned for a felony of the first or second degree, or to an eligible offender who committed an offense under Chapter 2925. or 3719. of the Revised Code and for whom there was a presumption under section 2929.13 of the Revised Code in favor of a prison term, unless the court, with reference to factors under section 2929.12 of the Revised Code, finds both of the following:

(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the eligible offender because the applicable factors

indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;

(b) That a sanction other than a prison term would not demean the seriousness of the offense because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense.

(2) A court that grants a judicial release to an eligible offender under division (J)(1) of this section shall specify on the record both findings required in that division and also shall list all the factors described in that division that were presented at the hearing.

(K) If the court grants a motion for judicial release under this section, the court shall order the release of the eligible offender, shall place the eligible offender under an appropriate community control sanction, under appropriate conditions, and under the supervision of the department of probation serving the court and shall reserve the right to reimpose the sentence that it reduced if the offender violates the sanction. If the court reimposes the reduced sentence, it may do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation that is a new offense. The period of community control shall be no longer than five years. The court, in its discretion, may reduce the period of community control by the amount of time the eligible offender spent in jail or prison for the offense and in prison. If the court made any findings pursuant to division (J)(1) of this section, the court shall serve a copy of the findings upon counsel for the parties within fifteen days after the date on which the court grants the motion for judicial release.

If the court grants a motion for judicial release, the court shall notify the appropriate person at the department of rehabilitation and correction, and the department shall post notice of the release on the database it maintains pursuant to section 5120.66 of the Revised Code.

(L) In addition to and independent of the right of a victim to make a statement pursuant to section 2930.14, 2930.17, or 2946.051 FN;B1[FN1] of the Revised Code and any right of a person to present written information or make a statement pursuant to division (I) of this section, any person may submit to the court, at any time prior to the hearing on the offender's motion for judicial release, a written statement concerning the effects of the offender's crime or crimes, the circumstances surrounding the crime or crimes, the manner in which the crime or crimes were perpetrated, and the person's opinion as to whether the offender should be released.

CREDIT(S)

(2008 H 130, eff. 4-7-09; 2008 S 108, eff. 4-7-09; 2005 H 15, eff. 11-23-05; 2002 H 327, eff. 7-8-02; 1999 S 107, eff. 3-23-00; 1997 H 151, eff. 9-16-97; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96)

R.C. § 2929.20

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes--Procedure (Refs & Annos)

Penalties and Sentencing (Refs & Annos)

Felony Sentencing

2929.20 Judicial release

(A) As used in this section:

(1)(a) Except as provided in division (A)(1)(b) of this section, “eligible offender” means any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms.

(b) “Eligible offender” does not include any person who, on or after April 7, 2009, is serving a stated prison term for any of the following criminal offenses that was a felony and was committed while the person held a public office in this state:

(i) A violation of section 2921.02, 2921.03, 2921.05, 2921.31, 2921.32, 2921.41, 2921.42, or 2923.32 of the Revised Code;

(ii) A violation of section 2913.42, 2921.04, 2921.11, or 2921.12 of the Revised Code, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office;

(iii) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (A)(1)(b)(i) of this section;

(iv) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (A)(1)(b)(ii) of

this section, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office;

(v) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in division (A)(1)(b)(i) or described in division (A)(1)(b)(iii) of this section;

(vi) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in division (A)(1)(b)(ii) or described in division (A)(1)(b)(iv) of this section, if the conduct constituting the offense that was the subject of the conspiracy, that would have constituted the offense attempted, or constituting the offense in which the offender was complicit was or would have been related to the duties of the offender's public office or to the offender's actions as a public official holding that public office.

(2) "Nonmandatory prison term" means a prison term that is not a mandatory prison term.

(3) "Public office" means any elected federal, state, or local government office in this state.

(B) On the motion of an eligible offender or upon its own motion, the sentencing court may reduce the eligible offender's aggregated nonmandatory prison term or terms through a judicial release under this section.

(C) An eligible offender may file a motion for judicial release with the sentencing court within the following applicable periods:

(1) If the aggregated nonmandatory prison term or terms is less than two years, the eligible offender may file the motion not earlier than thirty days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than thirty days after the expiration of all mandatory prison terms.

(2) If the aggregated nonmandatory prison term or terms is at least two years but less than five years, the eligible offender may file the motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than one hundred eighty days after the expiration of all mandatory prison terms.

(3) If the aggregated nonmandatory prison term or terms is five years, the eligible offender may file the motion not earlier than four years after the eligible offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than four years after the expiration of all mandatory prison terms.

(4) If the aggregated nonmandatory prison term or terms is more than five years but not more than ten years, the eligible offender may file the motion not earlier than five years after the eligible offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than five years after the expiration of all mandatory prison terms.

(5) If the aggregated nonmandatory prison term or terms is more than ten years, the eligible offender may file the motion not earlier than the later of the date on which the offender has served one-half of the offender's stated prison term or the date specified in division (C)(4) of this section.

(D) Upon receipt of a timely motion for judicial release filed by an eligible offender under division (C) of this section or upon the sentencing court's own motion made within the appropriate time specified in that division, the court may deny the motion without a hearing or schedule a hearing on the motion. The court shall not grant the motion without a hearing. If a court denies a motion without a hearing, the court later may consider judicial release for that

eligible offender on a subsequent motion filed by that eligible offender unless the court denies the motion with prejudice. If a court denies a motion with prejudice, the court may later consider judicial release on its own motion. If a court denies a motion after a hearing, the court shall not consider a subsequent motion for that eligible offender. The court shall hold only one hearing for any eligible offender.

A hearing under this section shall be conducted in open court within sixty days after the motion is filed, provided that the court may delay the hearing for one hundred eighty additional days. If the court holds a hearing, the court shall enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed.

(E) If a court schedules a hearing under division (D) of this section, the court shall notify the eligible offender and the head of the state correctional institution in which the eligible offender is confined prior to the hearing. The head of the state correctional institution immediately shall notify the appropriate person at the department of rehabilitation and correction of the hearing, and the department within twenty-four hours after receipt of the notice, shall post on the database it maintains pursuant to section 5120.66 of the Revised Code the offender's name and all of the information specified in division (A)(1)(c)(i) of that section. If the court schedules a hearing for judicial release, the court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the eligible offender was indicted. Upon receipt of the notice from the court, the prosecuting attorney shall notify the victim of the offense or the victim's representative pursuant to section 2930.16 of the Revised Code.

(F) Upon an offender's successful completion of rehabilitative activities, the head of the state correctional institution may notify the sentencing court of the successful completion of the activities.

(G) Prior to the date of the hearing on a motion for judicial release under this section, the head of the state correctional institution in which the eligible offender is confined shall send to the court a report on the eligible offender's conduct in the institution and in any institution from which the eligible offender may have been transferred. The report shall cover the eligible offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the eligible offender. The report shall be made part of the record of the hearing.

(H) If the court grants a hearing on a motion for judicial release under this section, the eligible offender shall attend the hearing if ordered to do so by the court. Upon receipt of a copy of the journal entry containing the order, the head of the state correctional institution in which the eligible offender is incarcerated shall deliver the eligible offender to the sheriff of the county in which the hearing is to be held. The sheriff shall convey the eligible offender to and from the hearing.

(I) At the hearing on a motion for judicial release under this section, the court shall afford the eligible offender and the eligible offender's attorney an opportunity to present written and, if present, oral information relevant to the motion. The court shall afford a similar opportunity to the prosecuting attorney, the victim or the victim's representative, as defined in section 2930.01 of the Revised Code, and any other person the court determines is likely to present additional relevant information. The court shall consider any statement of a victim made pursuant to section 2930.14 or 2930.17 of the Revised Code, any victim impact statement prepared pursuant to

section 2947.051 of the Revised Code, and any report made under division (G) of this section. The court may consider any written statement of any person submitted to the court pursuant to division (L) of this section. After ruling on the motion, the court shall notify the victim of the ruling in accordance with sections 2930.03 and 2930.16 of the Revised Code.

(J)(1) A court shall not grant a judicial release under this section to an eligible offender who is imprisoned for a felony of the first or second degree, or to an eligible offender who committed an offense under Chapter 2925. or 3719. of the Revised Code and for whom there was a presumption under section 2929.13 of the Revised Code in favor of a prison term, unless the court, with reference to factors under section 2929.12 of the Revised Code, finds both of the following:

(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the eligible offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;

(b) That a sanction other than a prison term would not demean the seriousness of the offense because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense.

(2) A court that grants a judicial release to an eligible offender under division (J)(1) of this section shall specify on the record both findings required in that division and also shall list all the factors described in that division that were presented at the hearing.

(K) If the court grants a motion for judicial release under this section, the court shall order the release of the eligible offender, shall place the eligible offender under an appropriate community

control sanction, under appropriate conditions, and under the supervision of the department of probation serving the court and shall reserve the right to reimpose the sentence that it reduced if the offender violates the sanction. If the court reimposes the reduced sentence, it may do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation that is a new offense. The period of community control shall be no longer than five years. The court, in its discretion, may reduce the period of community control by the amount of time the eligible offender spent in jail or prison for the offense and in prison. If the court made any findings pursuant to division (J)(1) of this section, the court shall serve a copy of the findings upon counsel for the parties within fifteen days after the date on which the court grants the motion for judicial release.

If the court grants a motion for judicial release, the court shall notify the appropriate person at the department of rehabilitation and correction, and the department shall post notice of the release on the database it maintains pursuant to section 5120.66 of the Revised Code.

(L) In addition to and independent of the right of a victim to make a statement pursuant to section 2930.14, 2930.17, or 2946.051 of the Revised Code [FN1] and any right of a person to present written information or make a statement pursuant to division (I) of this section, any person may submit to the court, at any time prior to the hearing on the offender's motion for judicial release, a written statement concerning the effects of the offender's crime or crimes, the circumstances surrounding the crime or crimes, the manner in which the crime or crimes were perpetrated, and the person's opinion as to whether the offender should be released.

(M) The changes to this section that are made on the effective date of this division apply to any judicial release decision made on or after the effective date of this division for any eligible offender.

CREDIT(S)

(2011 H 86, eff. 9-30-11; 2008 H 130, eff. 4-7-09; 2008 S 108, eff. 4-7-09; 2005 H 15, eff. 11-23-05; 2002 H 327, eff. 7-8-02; 1999 S 107, eff. 3-23-00; 1997 H 151, eff. 9-16-97; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96)

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes--Procedure (Refs & Annos)

Penalties and Sentencing (Refs & Annos)

Felony Sentencing

2929.20 Judicial release

(A) As used in this section:

(1)(a) Except as provided in division (A)(1)(b) of this section, "eligible offender" means any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms.

(b) "Eligible offender" does not include any person who, on or after April 7, 2009, is serving a stated prison term for any of the following criminal offenses that was a felony and was committed while the person held a public office in this state:

(i) A violation of section 2921.02, 2921.03, 2921.05, 2921.31, 2921.32, 2921.41, 2921.42, or 2923.32 of the Revised Code;

(ii) A violation of section 2913.42, 2921.04, 2921.11, or 2921.12 of the Revised Code, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office;

(iii) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (A)(1)(b)(i) of this section;

(iv) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (A)(1)(b)(ii) of

this section, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office;

(v) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in division (A)(1)(b)(i) or described in division (A)(1)(b)(iii) of this section;

(vi) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in division (A)(1)(b)(ii) or described in division (A)(1)(b)(iv) of this section, if the conduct constituting the offense that was the subject of the conspiracy, that would have constituted the offense attempted, or constituting the offense in which the offender was complicit was or would have been related to the duties of the offender's public office or to the offender's actions as a public official holding that public office.

(2) "Nonmandatory prison term" means a prison term that is not a mandatory prison term.

(3) "Public office" means any elected federal, state, or local government office in this state.

(4) "Victim's representative" has the same meaning as in section 2930.01 of the Revised Code.

(B) On the motion of an eligible offender or upon its own motion, the sentencing court may reduce the eligible offender's aggregated nonmandatory prison term or terms through a judicial release under this section.

(C) An eligible offender may file a motion for judicial release with the sentencing court within the following applicable periods:

(1) If the aggregated nonmandatory prison term or terms is less than two years, the eligible offender may file the motion not earlier than thirty days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than thirty days after the expiration of all mandatory prison terms.

(2) If the aggregated nonmandatory prison term or terms is at least two years but less than five years, the eligible offender may file the motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than one hundred eighty days after the expiration of all mandatory prison terms.

(3) If the aggregated nonmandatory prison term or terms is five years, the eligible offender may file the motion not earlier than four years after the eligible offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than four years after the expiration of all mandatory prison terms.

(4) If the aggregated nonmandatory prison term or terms is more than five years but not more than ten years, the eligible offender may file the motion not earlier than five years after the eligible offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than five years after the expiration of all mandatory prison terms.

(5) If the aggregated nonmandatory prison term or terms is more than ten years, the eligible offender may file the motion not earlier than the later of the date on which the offender has served one-half of the offender's stated prison term or the date specified in division (C)(4) of this section.

(D) Upon receipt of a timely motion for judicial release filed by an eligible offender under division (C) of this section or upon the sentencing court's own motion made within the appropriate time specified in that division, the court may deny the motion without a hearing or schedule a hearing on the motion. The court shall not grant the motion without a hearing. If a court denies a motion without a hearing, the court later may consider judicial release for that

eligible offender on a subsequent motion filed by that eligible offender unless the court denies the motion with prejudice. If a court denies a motion with prejudice, the court may later consider judicial release on its own motion. If a court denies a motion after a hearing, the court shall not consider a subsequent motion for that eligible offender. The court shall hold only one hearing for any eligible offender.

A hearing under this section shall be conducted in open court not less than thirty or more than sixty days after the motion is filed, provided that the court may delay the hearing for one hundred eighty additional days. If the court holds a hearing, the court shall enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed.

(E) If a court schedules a hearing under division (D) of this section, the court shall notify the eligible offender and the head of the state correctional institution in which the eligible offender is confined prior to the hearing. The head of the state correctional institution immediately shall notify the appropriate person at the department of rehabilitation and correction of the hearing, and the department within twenty-four hours after receipt of the notice, shall post on the database it maintains pursuant to section 5120.66 of the Revised Code the offender's name and all of the information specified in division (A)(1)(c)(i) of that section. If the court schedules a hearing for judicial release, the court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the eligible offender was indicted. Upon receipt of the notice from the court, the prosecuting attorney shall do whichever of the following is applicable:

(1) Subject to division (E)(2) of this section, notify the victim of the offense or the victim's representative pursuant to division (B) of section 2930.16 of the Revised Code;

(2) If the offense was an offense of violence that is a felony of the first, second, or third degree, except as otherwise provided in this division, notify the victim or the victim's representative of the hearing regardless of whether the victim or victim's representative has requested the notification. The notice of the hearing shall not be given under this division to a victim or victim's representative if the victim or victim's representative has requested pursuant to division (B)(2) of section 2930.03 of the Revised Code that the victim or the victim's representative not be provided the notice. If notice is to be provided to a victim or victim's representative under this division, the prosecuting attorney may give the notice by any reasonable means, including regular mail, telephone, and electronic mail, in accordance with division (D)(1) of section 2930.16 of the Revised Code. If the notice is based on an offense committed prior to the effective date of this amendment, the notice also shall include the opt-out information described in division (D)(1) of section 2930.16 of the Revised Code. The prosecuting attorney, in accordance with division (D)(2) of section 2930.16 of the Revised Code, shall keep a record of all attempts to provide the notice, and of all notices provided, under this division. Division (E)(2) of this section, and the notice-related provisions of division (K) of this section, division (D)(1) of section 2930.16, division (H) of section 2967.12, division (E)(1)(b) of section 2967.19, division (A)(3)(b) of section 2967.26, division (D)(1) of section 2967.28, and division (A)(2) of section 5149.101 of the Revised Code enacted in the act in which division (E)(2) of this section was enacted, shall be known as "Roberta's Law."

(F) Upon an offender's successful completion of rehabilitative activities, the head of the state correctional institution may notify the sentencing court of the successful completion of the activities.

(G) Prior to the date of the hearing on a motion for judicial release under this section, the head of the state correctional institution in which the eligible offender is confined shall send to the court an institutional summary report on the eligible offender's conduct in the institution and in any institution from which the eligible offender may have been transferred. Upon the request of the prosecuting attorney of the county in which the eligible offender was indicted or of any law enforcement agency, the head of the state correctional institution, at the same time the person sends the institutional summary report to the court, also shall send a copy of the report to the requesting prosecuting attorney and law enforcement agencies. The institutional summary report shall cover the eligible offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the eligible offender. The report shall be made part of the record of the hearing.

(H) If the court grants a hearing on a motion for judicial release under this section, the eligible offender shall attend the hearing if ordered to do so by the court. Upon receipt of a copy of the journal entry containing the order, the head of the state correctional institution in which the eligible offender is incarcerated shall deliver the eligible offender to the sheriff of the county in which the hearing is to be held. The sheriff shall convey the eligible offender to and from the hearing.

(I) At the hearing on a motion for judicial release under this section, the court shall afford the eligible offender and the eligible offender's attorney an opportunity to present written and, if present, oral information relevant to the motion. The court shall afford a similar opportunity to the prosecuting attorney, the victim or the victim's representative, and any other person the court determines is likely to present additional relevant information. The court shall consider any statement of a victim made pursuant to section 2930.14 or 2930.17 of the Revised Code, any

victim impact statement prepared pursuant to section 2947.051 of the Revised Code, and any report made under division (G) of this section. The court may consider any written statement of any person submitted to the court pursuant to division (L) of this section. After ruling on the motion, the court shall notify the victim of the ruling in accordance with sections 2930.03 and 2930.16 of the Revised Code.

(J)(1) A court shall not grant a judicial release under this section to an eligible offender who is imprisoned for a felony of the first or second degree, or to an eligible offender who committed an offense under Chapter 2925. or 3719. of the Revised Code and for whom there was a presumption under section 2929.13 of the Revised Code in favor of a prison term, unless the court, with reference to factors under section 2929.12 of the Revised Code, finds both of the following:

(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the eligible offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;

(b) That a sanction other than a prison term would not demean the seriousness of the offense because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense.

(2) A court that grants a judicial release to an eligible offender under division (J)(1) of this section shall specify on the record both findings required in that division and also shall list all the factors described in that division that were presented at the hearing.

(K) If the court grants a motion for judicial release under this section, the court shall order the release of the eligible offender, shall place the eligible offender under an appropriate community control sanction, under appropriate conditions, and under the supervision of the department of probation serving the court and shall reserve the right to reimpose the sentence that it reduced if the offender violates the sanction. If the court reimposes the reduced sentence, it may do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation that is a new offense. The period of community control shall be no longer than five years. The court, in its discretion, may reduce the period of community control by the amount of time the eligible offender spent in jail or prison for the offense and in prison. If the court made any findings pursuant to division (J)(1) of this section, the court shall serve a copy of the findings upon counsel for the parties within fifteen days after the date on which the court grants the motion for judicial release.

If the court grants a motion for judicial release, the court shall notify the appropriate person at the department of rehabilitation and correction, and the department shall post notice of the release on the database it maintains pursuant to section 5120.66 of the Revised Code. The court also shall notify the prosecuting attorney of the county in which the eligible offender was indicted that the motion has been granted. Unless the victim or the victim's representative has requested pursuant to division (B)(2) of section 2930.03 of the Revised Code that the victim or victim's representative not be provided the notice, the prosecuting attorney shall notify the victim or the victim's representative of the judicial release in any manner, and in accordance with the same procedures, pursuant to which the prosecuting attorney is authorized to provide notice of the hearing pursuant to division (E)(2) of this section. If the notice is based on an offense committed prior to the effective date of this amendment, the notice to the victim or victim's

representative also shall include the opt-out information described in division (D)(1) of section 2930.16 of the Revised Code.

(L) In addition to and independent of the right of a victim to make a statement pursuant to section 2930.14, 2930.17, or 2946.051 of the Revised Code [FN1] and any right of a person to present written information or make a statement pursuant to division (I) of this section, any person may submit to the court, at any time prior to the hearing on the offender's motion for judicial release, a written statement concerning the effects of the offender's crime or crimes, the circumstances surrounding the crime or crimes, the manner in which the crime or crimes were perpetrated, and the person's opinion as to whether the offender should be released.

(M) The changes to this section that are made on September 30, 2011, apply to any judicial release decision made on or after September 30, 2011, for any eligible offender.

CREDIT(S)

(2012 S 160, eff. 3-22-13; 2011 H 86, eff. 9-30-11; 2008 H 130, eff. 4-7-09; 2008 S 108, eff. 4-7-09; 2005 H 15, eff. 11-23-05; 2002 H 327, eff. 7-8-02; 1999 S 107, eff. 3-23-00; 1997 H 151, eff. 9-16-97; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96)

OH Const. Art. IV, § 4

Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs & Annos)

Judicial (Refs & Annos)

OH Const IV Sec. 4 Organization and jurisdiction of common pleas courts

(A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state. Any judge of a court of common pleas or a division thereof may temporarily hold court in any county. In the interests of the fair, impartial, speedy, and sure administration of justice, each county shall have one or more resident judges, or two or more counties may be combined into districts having one or more judges resident in the district and serving the common pleas courts of all counties in the district, as may be provided by law.

Judges serving a district shall sit in each county in the district as the business of the court requires. In counties or districts having more than one judge of the court of common pleas, the judges shall select one of their number to act as presiding judge, to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge until selection is made by vote. The presiding judge shall have such duties and exercise such powers as are prescribed by rule of the supreme court.

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

(C) Unless otherwise provided by law, there shall be a probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to

such probate division and to such other divisions. The judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts.

CREDIT(S)

(1973 SJR 30, am. eff. 11-6-73; 132 v HJR 42, adopted eff. 5-7-68)