

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,)	
)	CASE No. 2014-0674
Plaintiff-Appellee,)	
)	
v.)	
)	APPEAL FROM NINTH DISTRICT
)	COURT OF APPEALS,
DAVID M. ANDERSON,)	SUMMIT COUNTY COURT
Defendant-Appellant)	OF APPEALS
)	CASE NO. CA-26640
)	

BRIEF OF APPELLEE THE STATE OF OHIO

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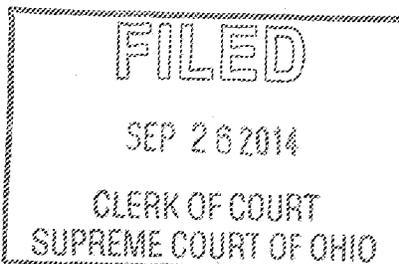
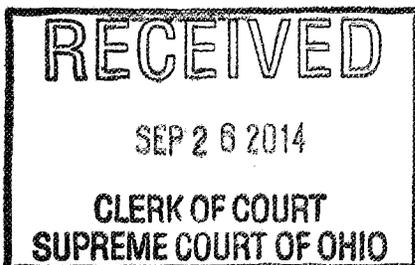


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STATEMENT OF THE FACTS AND CASE

The State agrees with Mr. Anderson's Statement of the Case and Facts.

ARGUMENT IN OPPOSITION OF PROPOSITION OF LAW

- I. A TRIAL COURT DOES NOT HAVE THE AUTHORITY TO ISSUE AGAINST THE DEFENDANT A "NO CONTACT" ORDER WITH THE VICTIM WHEN IT SENTENCES THE OFFENDER TO PRISON.

Waiver

Mr. Anderson argues that the State waived any argument in support of the Ninth District Court of Appeals decision in this matter, because it conceded error on this issue in its appellate brief.

"Waiver is the intentional relinquishment or abandonment of a right[.]" *State v. Payne*, 114 Ohio St. 3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 23, citing *State v. McKee*, 91 Ohio St.3d 292, 299, 2001-Ohio-41, 744 N.E.2d 737, fn. 3 (Cook, J., dissenting). The purpose of the waiver doctrine is to forestall a party from sitting "idly by until he or she loses on one ground only to avail himself or herself of another on appeal." *State ex rel. Quarto Mining Co. v. Foreman*, 79 Ohio St. 3d 78, 81, 679 N.E.2d 706 (1997). This doctrine aims to "protect the role of the courts and the dignity of the proceedings before them by imposing upon counsel the duty to exercise diligence in his or her own cause and to aid the court rather than silently mislead it into the commission of error." *Id.* "When an appellant makes a contradictory argument on appeal, it has more than just 'silently misled' the trial court into the commission of error; instead, it has affirmatively invited the error it complains of on appeal." *Zawahiri v. Alwattar*, 10th Dist. Franklin No. 07AP-925, 2008-Ohio-3473, ¶ 18.

"The theory upon which the case was submitted and argued in the district court cannot, when an adverse judgment results, be discarded and a new, contradictory theory be substituted and successfully invoked on appeal." *Corbin v. Baltimore & O. R. Co.*, 234 F.2d 78, 81 (6th Cir.1956). Parties are not permitted to avail themselves of an error that they induced the court to make. *Zawahiri, supra*.

In the instant matter, the waiver doctrine should not apply to the State. The State is not availing itself of an advantage that it created by sitting back and misleading the appellate court into committing error. The State did not mislead the Ninth District Court of Appeals into ruling that the no contact order could be ordered to now argue that the Ninth District was incorrect. The State is not discarding a losing argument for a new, contradictory theory in order to be successful with this Honorable Court. *Corbin, supra*. The State relied upon authority of other districts when it originally conceded error regarding the imposition of a no contact order. The State now realizes that the trial court could in fact impose a no contact order on Mr. Anderson based upon the authority the Ninth District cited in its decision. Therefore, the State is not foreclosed from arguing to uphold the Ninth District's decision, because it is not taking advantage of an error it induced the appellate court to make.

Statutory Authority for “No Contact” Orders for Offenders Sentenced to Prison and Community Control

Mr. Anderson argues that the Ohio Revised Code provides no authority to sentencing courts to impose no contact orders on offenders sentenced to imprisonment as no contact orders are community control sanctions.

The people of the State of Ohio, possessing all governmental power by virtue of popular sovereignty, adopted a constitution completely distributing their power to appropriate departments. *Stetter v. R.J. Corman Derailment Servs.*, 125 Ohio St. 3d 280, 2010-Ohio-1029, 927 N.E.2d 1092, ¶ 87, citing *Hale v. State*, 55 Ohio St. 210, 214, 45 N.E. 199, 200 (1896). The people vested the legislative power in the General Assembly (Article II, Section 1 of the Ohio Constitution), the executive power in the Governor (Article III, Section 5 of the Ohio Constitution), and the judicial power in the courts (Article IV, Section 1 of the Ohio Constitution). The legislature defines crimes and fixes penalties, as well as authorizes the trial court to pass specified sentences upon offenders. *Ex parte Fleming*, 123 Ohio St. 16, 173 N.E. 441 (1931), paragraph one of the syllabus. The court’s “role, in the exercise of the judicial power granted to [it] by the Constitution, is to interpret the law that the General Assembly enacts, and the primary goal in construing a statute is to ascertain and give effect to the intent of the legislature.” *State v. Taylor*, 138 Ohio St. 3d 194, 2014-Ohio-460, 5 N.E.3d 612, ¶ 14, citing *State v. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, 919 N.E.2d 190, ¶ 18.

In Chapter 2929 of the Ohio Revised Code, the General Assembly set forth the guidelines for courts when imposing sentences upon convicted offenders. When imposing a sentence on offenders, the trial court must take into consideration the two overriding

purposes of felony sentencing: “to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.” R.C. 2929.11(A). Sentences shall be “commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim.” R.C. 2929.11(B). When imposing a sentence, the trial court “has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code.” R.C. 2929.12(A). “[T]he imposition of a no contact order to shield the victim from future harassment, in conjunction with a prison sentence, is consistent with the legislative intent relative to sentencing.” *State v. Anderson*, 9th Dist. Summit No. 26640, 2014-Ohio-1206, ¶ 35.

A sentencing court is permitted to impose as a sentence “any sanction or combination of sanctions on the offender that are provided in sections 2929.14 to 2929.18 of the Revised Code.” R. C. 2929.13(A). However, where a sentencing court is required to impose a mandatory prison term, the court “may not impose any additional sanction or combination of sanctions under section 2929.16 or 2929.17 of the Revised Code.” R.C. 2929.13(A). R.C. 2929.16 addresses residential sanctions, such as a term in a community based correctional facility, a county jail, or a halfway house, while R.C. 2929.17 allows for nonresidential sanctions to include a term of day reporting, house arrest, and community service. These sanctions deal with restricting offenders’ movements, because with these sanctions, the offenders still have the ability to be free in society. It would be illogical for a court to order such sanctions against a defendant who is ordered to prison because that offender, by definition, would be unable to leave the facility. Although the Third, Eighth

and Twelfth District Courts of Appeals have recognized that no contact orders are community control sanctions, “nowhere do R.C. 2929.16 and R.C. 2929.17 expressly identify no contact orders as community control sanctions.” *Anderson, supra* at ¶ 34.

No contact orders are more akin to restitution orders, as both attempt to make a victim whole after being subjected to a crime. “Not unlike restitution which, pursuant to R.C. 2929.18, may be ordered whether or not the defendant has been sentenced to prison, a no contact order provides a means to attempt to restore the victim, even where that restoration manifests as peace of mind.” *Id.* at ¶ 34. Although prisoners’ movements are restricted while confined in a prison, offenders still have access to the outside world through various forms of communications such as letters and phone calls. Even though a victim may wish to have no further interaction with his or her perpetrator, “mere imprisonment does not prevent a defendant from using various direct and indirect means to contact his victim to prolong the victim’s suffering, but a no contact order puts the defendant, and the prison, on notice about the victim’s wishes.” *Id.* at ¶ 35. No contact orders imposed on imprisoned offenders protect the victims from any unwanted contact with their perpetrators.

Although the General Assembly excluded those punishments that are allowable under R.C. 2929.16 and R.C. 2929.17 for offenders with a mandatory prison term, those sanctions permissible under R.C. 2929.14, R.C. 2929.15, and R.C. 2929.18 are available punishments for those offenders who are subject to mandatory prison. R.C. 2929.15(A)(1) provides that a court may sentence a defendant to any conditions which it deems appropriate. Thus, the legislature granted trial courts with broad discretion in imposing

sanctions on a defendant. *State v. Umphlette*, 5th Dist. Licking No. 10-CA-18, 2010-Ohio-5201, ¶ 32.

A review of the sentencing hearing in the instant matter shows the intention of the trial court to restore the victim to peace of mind. On the day of Anderson's sentencing, the victim's letter was read by her boyfriend. (Sentencing Hearing Tr. 2). The victim wrote that she "chose not to appear and see the man who changed [her] life, who violated [her], who beat [her] and took [her] and [her] freedom of will." (Sentencing Hearing Tr. 3). The victim relayed that she wakes up each day crying and is scared and suicidal because of Mr. Anderson's actions. (Sentencing Hearing Tr. 3). Although she needed closure, the victim knew that seeing Mr. Anderson again would make her "relive that nightmare one more day." (Sentencing Hearing Tr. 6). This letter showed that the victim wanted no further contact with Mr. Anderson. Sentencing courts must consider the victim's physical or mental injury as a result of the offense when determining the appropriate sentence for an offender. R.C. 2929.12(B)(2). Imposition of no contact orders allow victims to rest assured that they will not receive communication from their perpetrators which could make them relive the pain they suffered. The trial court appropriately weighed the impact of Mr. Anderson's crimes on his victim when it imposed the no contact order.

As the sentencing statutes grant courts discretion in crafting appropriate sentences for each offender, the Ninth District Court of Appeals correctly held that sentencing courts are permitted to impose no contact orders on imprisoned offenders.

Ohio Constitution Lends Support for the Imposition of “No Contact” Orders on Imprisoned Offenders

Mr. Anderson incorrectly argues that the Ninth District Court of Appeals cited Article I, Section 10a of the Ohio Constitution in support of its finding that trial courts are authorized to impose no contact orders on imprisoned offenders. The Ninth District cited to the Ohio Constitution to demonstrate the importance of a victim’s involvement in the criminal justice system.

Article I, Section 10a of the Ohio Constitution provides: “Victims of criminal offenses shall be accorded fairness, dignity, and respect in the criminal justice process, and, as the general assembly shall define and provide by law, shall be accorded rights to reasonable and appropriate notice, information, access, and protection and to a meaningful role in the criminal justice process.” The Ninth District recognized that this section shows the significance of a victim’s involvement in the criminal process, because a victim’s involvement gives judges a greater understanding of how the defendant’s actions impacted the victim’s life. *Anderson, supra* at ¶ 37. “It would be an odd, and unfortunate, result if the victim, after being invited into the courtroom to participate in the process, could not be protected from the defendant after he leaves the courtroom and enters prison.” *Id.*

Mr. Anderson argues that victims have a mechanism through the prison system to prevent offenders from contacting their victims. However, victims would be able to request Cease and Desist orders with defendants only after they have initiated unwanted contact with the victims. State of Ohio Department of Rehabilitation and Correction Policy No. 03-OVS—1, VI(A)(4)(a). (“Cease and Desist Orders: When an inmate is making unwanted or inappropriate contact with a person the individual may request in writing

that this contact be stopped. OVS shall contact the Victim Coordinator at the institution in which the inmate is housed and request assistance in determining if a Cease and Desist Order (DRC2575) is necessary. If the person who is requesting the cease order is registered for notification with OVS, a copy of that order will be sent to OVS.) Additionally, such an order is not guaranteed. The request would have to be investigated to determine “if a Cease and Desist Order (DRC2575) is necessary.” *Id.* Despite a victim making it clear to the court that he or she does not want any communication with the perpetrator, that defendant can still initiate contact with the victim until the prison determines that a Cease and Desist Order is needed. Therefore, it is necessary for the trial court to have the ability to impose a no contact order as a part of the defendants’ sentence in order to protect victims from being further traumatized by their perpetrators.

Separation of Powers

Mr. Anderson also argues that a sentencing court’s imposition of a no contact order encroaches upon the executive branch’s authority to execute its constitutional duties.

The constitutional concept of separation of powers is implicitly embedded in the entire framework of those sections which define the substance and scope of the powers granted to the three branches of state government. *Stetter v. R.J. Corman Derailment Servs.*, 125 Ohio St. 3d 280, 2010-Ohio-1029, 927 N.E.2d 1092, ¶ 87, citing *State ex rel. Bray v. Russell*, 89 Ohio St. 3d 132, 134, 2000-Ohio-116, 729 N.E.2d 359. This doctrine represents the constitutional diffusion of power within our tripartite government and was a deliberate design to secure liberty by simultaneously fostering autonomy and comity, as well as

interdependence and independence, among the three branches. *Id.*, citing *Fairview v. Giffie*, 73 Ohio St. 183, 187, 76 N.E. 865 (1905); *Zanesville v. Zanesville Tel. & Tel. Co.*, 63 Ohio St. 442, 451, 59 N.E. 109 (1900); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring). “Each of the three grand divisions of the government must be protected from encroachments by the others, so far that its integrity and independence may be preserved.” *State v. Sterling*, 113 Ohio St. 3d 255, 259, 2007-Ohio-1790, 864 N.E.2d 630, ¶ 25, citing *Giffie*, 73 Ohio St. at 187. The United States Supreme Court opined in *Morrison v. Olson*, 487 U.S. 654, 693 (1988), quoting *Buckley v. Valeo*, 424 U.S. 1, 122 (1976) (internal quotations omitted), that “the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.”

“Correctional and penal institutions are under the control and administration of the executive branch of the government.” *In re Baker*, 18 Ohio App. 2d 276, 282-283, 248 N.E.2d 620 (4th Dist.1969). “The director of rehabilitation and correction is the executive head of the department of rehabilitation and correction.” R.C. 5120.01. All responsibilities granted to the various institutions “shall be performed under the rules and regulations that the director prescribes and shall be under the director’s control.” *Id.* Thus, courts cannot “prescribe the type of training and the methods of rehabilitation used.” *Baker, supra* at 283.

Mr. Anderson is correct that trial courts have the power to sentence defendants while the executive branch carries out punishment. No contact orders are sanctions placed upon a defendant as punishment for their crimes. The trial court’s order of no contact does

not enter the realm of how a prison should be run or what methods of rehabilitation should be used. Prisons can use their rules and regulations to enforce the no contact orders. Here, the trial court did not proscribe the punishment for a violation of the no contact order. Therefore, the order does not impinge upon the prison's ability to discipline Mr. Anderson if he violates the order. Punishment for the violation would still be in the realm of the prison system, as regulated by the prison's pre-existing rules and regulations. Imposition of a no contact orders only puts the prison on notice that a specific offender is not allowed to have contact with his or her victim.

Conflict Cases

Mr. Anderson points to decisions from the Third, Eighth, and Twelfth Appellate Districts for the notion that no contact orders are community control sanctions. *See State v. Heffelfinger*, 3rd Dist. Wyandot No. 16-13-06, 2013-Ohio-5667; *State v. Snyder*, 3rd Dist. Seneca No. 13-12-38, 2013-Ohio-2046; *State v. Walton*, 3rd Dist. Wyandot No. 16-12-13, 16-12-14, 2013-Ohio-2147; *State v. Holly*, 8th Dist. Cuyahoga No. 95454, 2011-Ohio-2284; *State v. Rogers*, 8th Dist. Cuyahoga No. 97093, 2012-Ohio-2496; *State v. Wright*, 8th Dist. Cuyahoga No. 100283, 2014-Ohio-3321; *State v. Miller*, 12th Dist. Butler No. CA2010-12-336, 2011-Ohio-3909. Although the Third, Eighth and Twelfth District Court of Appeals have recognized that no contact orders are community control sanctions, "nowhere do R.C. 2929.16 and R.C. 2929.17 expressly identify no contact orders as community control sanctions." *Anderson, supra* at ¶ 34.

Further, the Ohio Revised Code allows sentencing courts discretion when crafting sanctions which would be appropriate for each individual offender. R. C. 2929.13(A). However, the General Assembly restricted those sanctions available to courts for those offenders who are required to serve a prison term. *Id.* These sanctions deal with restricting an offender's movements while he or she is free in society. R.C. 2929.16 and R.C. 2929.17. It would be illogical for a court to order such sanctions against a defendant who is ordered to prison because that offender by definition would be unable to leave the facility.

No contact orders are analogous to restitution orders, as both attempt to make a victim whole after being subjected to a crime. "Not unlike restitution which, pursuant to R.C. 2929.18, may be ordered whether or not the defendant has been sentenced to prison, a no contact order provides a means to attempt to restore the victim, even where that restoration manifests as peace of mind." *Anderson, supra* at ¶ 34. Although a prisoner's movements are restricted while confined in a prison, that offender still has the ability to have contact with the outside world through letters and phone calls. Furthermore, a prisoner could enlist the assistance of others to communicate a victim. Although a victim may wish to have no further interaction with his or her perpetrator, "mere imprisonment does not prevent a defendant from using various direct and indirect means to contact his victim to prolong the victim's suffering, but a no contact order puts the defendant, and the prison, on notice about the victim's wishes." *Id.* at ¶ 35.

The Ninth District Court of Appeals was correct not to follow these other districts, because it found support in the Ohio Revised Code and the Ohio Constitution to support its finding that sentencing courts may impose no contact orders on imprisoned offenders.

Unnecessary Burden on Government Resources

A court mandated no contact order would not put any extra onus on the prison system. As the Ninth District Court of Appeals noted, “[t]here are already mechanisms in place which require the prison system to protect victims.” *Anderson, supra* at ¶ 38, citing State of Ohio Department of Rehabilitation and Correction Policy No. 03-OVS—1, VI(A)(4)(a) (providing that a victim may request in writing a cease and desist order from the institution, directing the inmate to stop unwanted or inappropriate contact). In order to initiate the imposition of a no contact order through a prison, the victim must start the process to put the no contact order in place. *Id.* “Accordingly, a court-issued no contact order, i.e., a writing evidencing the victim’s wishes expressed in court in person or through an advocate, would place no greater burden on the institution or any government resources.” *Id.* The request for a no contact order would only be coming from a different source, the court, rather than the victim. Therefore, the prison would not be required to take any additional steps if the court orders the defendant to have no contact with the victim.

Public Policy Argument

The Ninth District Court of Appeals did recognize that the imposition of a no contact order could pose issues in certain circumstances. However, because Mr. Anderson did not raise the issue, the appellate court did not address those potential situations. *Anderson, supra* at ¶ 39.

Trial courts must balance the concept of public protection against punishment of the offender using the minimum sanctions which would not diminish the seriousness of the

crime and its impact on the victim. R.C. 2929.11(A) and (B). When imposing a sentence, the trial court “has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code.” R.C. 2929.12(A). “[T]he imposition of a no contact order to shield the victim from future harassment, in conjunction with a prison sentence, is consistent with the legislative intent relative to sentencing.” *Anderson, supra* at ¶ 35.

As with any sentence imposed, the court must weigh the factors set forth by statute when imposing a no contact order. A trial court can determine if the imposition of a no contact order is appropriate for that particular defendant. Additionally, the trial court has the ability to craft the proper terms for a no contact order. The trial court can consider the unique circumstances of each case when determining the appropriate restrictions of contact that the defendant can have with the victim depending on their relationship.

Mr. Anderson advances that victims have the ability to obtain legal remedies through the court system by obtaining a protection order. However, such an order is a waste of judicial resources that would further burden the victim. Forcing victims to apply for a protection order would require them to relive the horror of the crime they suffered in front of a separate court, even though the sentencing court would be in the best position to determine if such an order is necessary on a case by case basis. Thus, the Ninth District Court of Appeals correctly found that sentencing courts have the authority to impose no contact orders on imprisoned offenders.

CONCLUSION

For the foregoing reasons, the State of Ohio respectfully requests that this Honorable Court affirm the decision of the Ninth District Court of Appeals that a trial court may impose a no contact order as a part of a prison sentence.

Respectfully Submitted,

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I hereby certify that a copy of Appellee's Merit Brief has been forwarded to Counsel for Appellant, Neil P. Agarwal, 3766 Fishcreek Road, Number 289, Stow, Ohio 44224-4376, on this day 24th of September, 2014 by regular U.S. Mail.



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APPENDIX



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CONSTITUTION OF THE STATE OF OHIO
ARTICLE II. LEGISLATIVE

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Oh. Const. Art. II, § 1 (2014)

§ 1. In whom legislative power is vested

The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.



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CONSTITUTION OF THE STATE OF OHIO
ARTICLE III. EXECUTIVE

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Oh. Const. Art. III, § 5 (2014)

§ 5. Executive power vested in governor

The supreme executive power of this state shall be vested in the governor.



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CONSTITUTION OF THE STATE OF OHIO
ARTICLE IV. JUDICIAL

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Oh. Const. Art. IV, § 1 (2014)

§ 1. In whom judicial power vested

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.

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

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ORC Ann. 2929.14 (2014)

§ 2929.14. Basic prison terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

each of two of the specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications. If a court imposes an additional prison term on an offender under division (B)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (B)(1)(a) or (c) of this section relative to the same offense.

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

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

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

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

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

(iv) The court finds that the prison terms imposed pursuant to division (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*.



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Current through Legislation passed by the 130th General Assembly
 and filed with the Secretary of State through File 140

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

Go to the Ohio Code Archive Directory

ORC Ann. 2929.16 (2014)

§ 2929.16. Residential sanctions

(A) Except as provided in this division, the court imposing a sentence for a felony upon an offender who is not required to serve a mandatory prison term may impose any community residential sanction or combination of community residential sanctions under this section. The court imposing a sentence for a fourth degree felony OVI offense under division (G)(1) or (2) of *section 2929.13 of the Revised Code* or for a third degree felony OVI offense under division (G)(2) of that section may impose upon the offender, in addition to the mandatory term of local incarceration or mandatory prison term imposed under the applicable division, a community residential sanction or combination of community residential sanctions under this section, and the offender shall serve or satisfy the sanction or combination of sanctions after the offender has served the mandatory term of local incarceration or mandatory prison term required for the offense. Community residential sanctions include, but are not limited to, the following:

- (1) A term of up to six months at a community-based correctional facility that serves the county;
- (2) Except as otherwise provided in division (A)(3) of this section and subject to division (D) of this section, a term of up to six months in a jail;
- (3) If the offender is convicted of a fourth degree felony OVI offense and is sentenced under division (G)(1) of *section 2929.13 of the Revised Code*, subject to division (D) of this section, a term of up to one year in a jail less the mandatory term of local incarceration of sixty or one hundred twenty consecutive days of imprisonment imposed pursuant to that division;
- (4) A term in a halfway house;
- (5) A term in an alternative residential facility.

(B) The court that assigns any offender convicted of a felony to a residential sanction under this section may authorize the offender to be released so that the offender may seek or maintain employment, receive education or training, or receive treatment. A release pursuant to this division shall be only for the duration of time that is needed to fulfill the purpose of the release and for travel that reasonably is necessary to fulfill the purposes of the release.

(C) If the court assigns an offender to a county jail that is not a minimum security misdemeanor jail in a county that has established a county jail industry program pursuant to *section 5147.30 of the Revised Code*, the court shall specify, as part of the sentence, whether the sheriff of that county may consider the offender for participation in the county jail industry program. During the offender's term in the county jail, the court shall retain jurisdiction to modify its specification upon a reassessment of the offender's qualifications for participation in the program.

(D) If a court sentences an offender to a term in jail under division (A)(2) or (3) of this section and if the sentence is imposed for a felony of the fourth or fifth degree that is not an offense of violence, the court may specify that it prefers that the offender serve the term in a minimum security jail established under *section 341.34 or 753.21 of the Revised Code*. If the court includes a specification of that type in the sentence and if the administrator of the appropriate minimum security jail or the designee of that administrator classifies the offender in accordance with *section 341.34 or 753.21 of the Revised Code* as a minimal security risk, the offender shall serve the term in the minimum security jail established under *section 341.34 or 753.21 of the Revised Code*. Absent a specification of that type and a finding of that type, the offender shall serve the term in a jail other than a minimum security jail established under *section 341.34 or 753.21 of the Revised Code*.

(E) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a community residential sanction as described in division (A) of this section, at the time of reception and at other times the person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place at which the offender will serve the residential sanction determines to be appropriate, the person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place may cause the convicted offender to be examined and tested for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, and other contagious diseases. The person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place at which the offender will serve the residential sanction may cause a convicted offender in the community-based correctional facility, jail, halfway house, alternative residential facility, or other place who refuses to be tested or treated for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, or another contagious disease to be tested and treated involuntarily.



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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
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ORC Ann. 2929.18 (2014)

§ 2929.18. Financial sanctions; restitution; reimbursements

(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to *section 2947.23 of the Revised Code*, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in *section 2929.32 of the Revised Code*, may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

If the court imposes restitution, the court may order that the offender pay a surcharge of not more than five per cent of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision, or as described in division (B)(2) of this section to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense. A fine ordered under this division shall not exceed the maximum conventional fine amount authorized for the level of the offense under division (A)(3) of this section.

(3) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or as described in division (B)(2) of this section to one or more law enforcement agencies, in the following amount:

- (a) For a felony of the first degree, not more than twenty thousand dollars;
- (b) For a felony of the second degree, not more than fifteen thousand dollars;
- (c) For a felony of the third degree, not more than ten thousand dollars;
- (d) For a felony of the fourth degree, not more than five thousand dollars;
- (e) For a felony of the fifth degree, not more than two thousand five hundred dollars.

(4) A state fine or costs as defined in *section 2949.111 of the Revised Code*.

(5) (a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:

(i) All or part of the costs of implementing any community control sanction, including a supervision fee under *section 2951.021 of the Revised Code*;

(ii) All or part of the costs of confinement under a sanction imposed pursuant to *section 2929.14, 2929.142, or 2929.16 of the Revised Code*, provided that the amount of reimbursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement;

(iii) All or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under *section 4510.13 of the Revised Code*.

(b) If the offender is sentenced to a sanction of confinement pursuant to *section 2929.14 or 2929.16 of the Revised Code* that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another local governmental entity, if, pursuant to *section 307.93, 341.14, 341.19, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code* and *section 2929.37 of the Revised Code*, the board, legislative authority, or other local governmental entity requires prisoners to reimburse the county, municipal corporation, or other entity for its expenses incurred by reason of the prisoner's confinement, and if the court does not impose a financial sanction under division (A)(5)(a)(ii) of this section, confinement costs may be assessed pursuant to *section 2929.37 of the Revised Code*. In addition, the offender may be required to pay the fees specified in *section 2929.38 of the Revised Code* in accordance with that section.

(c) Reimbursement by the offender for costs pursuant to *section 2929.71 of the Revised Code*.

(B) (1) For a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to division (A)(3) of this section. If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.

(2) Any mandatory fine imposed upon an offender under division (B)(1) of this section and any fine imposed upon an offender under division (A)(2) or (3) of this section for any fourth or fifth degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code shall be paid to law enforcement agencies pursuant to division (F) of *section 2925.03 of the Revised Code*.

(3) For a fourth degree felony OVI offense and for a third degree felony OVI offense, the sentencing court shall impose upon the offender a mandatory fine in the amount specified in division (G)(1)(d) or (e) of *section 4511.19 of the Revised Code*, whichever is applicable. The mandatory fine so imposed shall be disbursed as provided in the division pursuant to which it is imposed.

(4) Notwithstanding any fine otherwise authorized or required to be imposed under division (A)(2) or (3) or (B)(1) of this section or *section 2929.31 of the Revised Code* for a violation of *section 2925.03 of the Revised Code*, in addition to any penalty or sanction imposed for that offense under *section 2925.03* 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 for a violation of *section 2925.03 of the Revised Code* may impose upon the offender a fine in addition to any fine imposed under division (A)(2) or (3) of this section and in addition to any mandatory fine imposed under division (B)(1) of this section. The fine imposed under division (B)(4) of this section shall be used as provided in division (H) of *section 2925.03 of the Revised Code*. A fine imposed under division (B)(4) of this section shall not exceed whichever of the following is applicable:

(a) The total value of any personal or real property in which the offender has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of *section 2925.03 of the Revised Code*, including any property that constitutes proceeds derived from that offense;

(b) If the offender has no interest in any property of the type described in division (B)(4)(a) of this section or if it is not possible to ascertain whether the offender has an interest in any property of that type in which the offender may have an interest, the amount of the mandatory fine for the offense imposed under division (B)(1) of this section or, if no mandatory fine is imposed under division (B)(1) of this section, the amount of the fine authorized for the level of the offense imposed under division (A)(3) of this section.

(5) Prior to imposing a fine under division (B)(4) of this section, the court shall determine whether the offender has an interest in any property of the type described in division (B)(4)(a) of this section. Except as provided in division (B)(6) or (7) of this section, a fine that is authorized and imposed under division (B)(4) of this section does not limit or affect the imposition of the penalties and sanctions for a violation of *section 2925.03 of the Revised Code* prescribed under those sections or *sections 2929.11 to 2929.18 of the Revised Code* and does not limit or affect a forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code.

(6) If the sum total of a mandatory fine amount imposed for a first, second, or third degree felony violation of *section 2925.03 of the Revised Code* under division (B)(1) of this section plus the amount of any fine imposed under division (B)(4) of this section does not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or *section 2929.31 of the Revised Code*, the court may impose a fine for the offense in addition to the mandatory fine and the fine imposed under division (B)(4) of this section. The sum total of the amounts of the mandatory fine, the fine imposed under division (B)(4) of this section, and the additional fine imposed under division (B)(6) of this section shall not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or *section 2929.31 of the Revised Code*. The clerk of the court shall pay any fine that is imposed under division (B)(6) of this section 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 pursuant to division (F) of *section 2925.03 of the Revised Code*.

(7) If the sum total of the amount of a mandatory fine imposed for a first, second, or third degree felony violation of *section 2925.03 of the Revised Code* plus the amount of any fine imposed under division (B)(4) of this section exceeds the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or *section 2929.31 of the Revised Code*, the court shall not impose a fine under division (B)(6) of this section.

(8) (a) If an offender who is convicted of or pleads guilty to a 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* 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 sentencing court shall sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and the greater of the following:

(i) The gross income or value to the offender of the victim's labor or services;

(ii) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the "Federal Fair Labor Standards Act of 1938," *52 Stat. 1060, 20 U.S.C. 207*, and state labor laws.

(b) If a court imposing sentence upon an offender for a felony is required to impose upon the offender a financial sanction of restitution under division (B)(8)(a) of this section, in addition to that financial sanction of restitution, the court may sentence the offender to any other financial sanction or combination of financial sanctions authorized under this section, including a restitution sanction under division (A)(1) of this section.

(9) In addition to any other fine that is or may be imposed under this section, the court imposing sentence upon an offender for a felony that is a sexually oriented offense or a child-victim oriented offense, as those terms are defined in *section 2950.01 of the Revised Code*, may impose a fine of not less than fifty nor more than five hundred dollars.

(C) (1) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by the department of rehabilitation and correction in operating a prison or other facility used to confine offenders pursuant to sanctions imposed under *section 2929.14, 2929.142, or 2929.16 of the Revised Code* to the treasurer of state. The treasurer of state shall deposit the reimbursements in the confinement cost reimbursement fund that is hereby created in the state treasury. The department of rehabilitation and correction shall use the amounts deposited in the fund to fund the operation of facilities used to confine offenders pursuant to *sections 2929.14, 2929.142, and 2929.16 of the Revised Code*.

(2) Except as provided in *section 2951.021 of the Revised Code*, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a county pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code* to the county treasurer. The county treasurer shall deposit the reimbursements in the sanction cost reimbursement fund that each board of county commissioners shall create in its county treasury. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code*.

(3) Except as provided in *section 2951.021 of the Revised Code*, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code* to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in a special fund that shall be established in the treasury of each municipal corporation. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code*.

(4) Except as provided in *section 2951.021 of the Revised Code*, the offender shall pay reimbursements imposed pursuant to division (A)(5)(a) of this section for the costs incurred by a private provider pursuant to a sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* to the provider.

(D) Except as otherwise provided in this division, a financial sanction imposed pursuant to division (A) or (B) of this section is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(5)(a)(ii) of this section upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed upon an offender pursuant to this section for costs incurred by a private provider of sanctions is a judgment in favor of the private provider, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to division (A)(1) or (B)(8) of this section is an order in favor of the victim of the offender's criminal act that can be collected through a certificate of judgment as described in division (D)(1) of this section, through execution as described in division (D)(2) of this section, or through an order as described in division (D)(3) of this section, and the offender shall be considered for purposes of the collection as the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may do any of the following:

(1) Obtain from the clerk of the court in which the judgment was entered a certificate of judgment that shall be in the same manner and form as a certificate of judgment issued in a civil action;

(2) Obtain execution of the judgment or order through any available procedure, including:

(a) An execution against the property of the judgment debtor under Chapter 2329. of the Revised Code;

(b) An execution against the person of the judgment debtor under Chapter 2331. of the Revised Code;

(c) A proceeding in aid of execution under Chapter 2333. of the Revised Code, including:

(i) A proceeding for the examination of the judgment debtor under *sections 2333.09 to 2333.12 and sections 2333.15 to 2333.27 of the Revised Code*;

(ii) A proceeding for attachment of the person of the judgment debtor under *section 2333.28 of the Revised Code*;

(iii) A creditor's suit under *section 2333.01 of the Revised Code*.

(d) The attachment of the property of the judgment debtor under Chapter 2715. of the Revised Code;

(e) The garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code.

(3) Obtain an order for the assignment of wages of the judgment debtor under *section 1321.33 of the Revised Code*.

(E) A court that imposes a financial sanction upon an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it.

(F) Each court imposing a financial sanction upon an offender under this section or under *section 2929.32 of the Revised Code* may designate the clerk of the court or another person to collect the financial sanction. The clerk or other person authorized by law or the court to collect the financial sanction may enter into contracts with one or more public agencies or private vendors for the collection of, amounts due under the financial sanction imposed pursuant to this section or *section 2929.32 of the Revised Code*. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this section or *section 2929.32 of the Revised Code*, a court shall comply with *sections 307.86 to 307.92 of the Revised Code*.

(G) If a court that imposes a financial sanction under division (A) or (B) of this section finds that an offender satisfactorily has completed all other sanctions imposed upon the offender and that all restitution that has been ordered has been paid as ordered, the court may suspend any financial sanctions imposed pursuant to this section or *section 2929.32 of the Revised Code* that have not been paid.

(H) No financial sanction imposed under this section or *section 2929.32 of the Revised Code* shall preclude a victim from bringing a civil action against the offender.

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: Crime Victim Services	PAGE <u>1</u> OF <u>6</u> NUMBER: 03-OVS-01
RULE/CODE REFERENCE: ORC 5120.60; 5149.01; 2930.16; 2967.12; 2949.25; 2950.17	SUPERSEDES: 03-OVS-01 dated 04/24/13
RELATED ACA STANDARDS:	EFFECTIVE DATE: April 16, 2014
	APPROVED:

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish the services and assistance that will be provided to crime victims of offenders under the jurisdiction of the Ohio Department of Rehabilitation and Correction by the Office of Victim Services, and to establish the services and assistance that will be available to interested parties and the public regarding victim related concerns.

III. APPLICABILITY

This policy applies to all employees, volunteers, contractors, and inmates of the Department of Rehabilitation and Correction (DRC); most specifically the staff of the Office of Victim Services (OVS) and victim coordinators.

IV. DEFINITIONS

Courtesy Registration – A designation marked in the victim registration database reserved for a person who is not the victim pursuant to ORC2930.01 but who is registered to receive notifications regarding a DRC offender.

Immediate Family – The victim’s immediate family per ORC 2967.02 that includes mother, father, spouse, sibling, or child of the victim, who is entitled to receive notice under Ohio law. In no case does “victim immediate family” include the offender.

Victim – A victim of an offense for which the offender is serving a sentence who has registered with the Office of Victim Services to receive notice of those events occurring during an inmate’s incarceration with respect to which the victim is entitled to receive notice under Ohio law.

Victim Representative - A person who is a member of the victim's family or other person who under Ohio law may exercise the rights of a victim with respect to which the victim is entitled under Ohio law.

Victim Advocate - A staff member of the Office of Victim Services who specializes in providing to services to victims of offenders under the jurisdiction of DRC.

Victim Information and Notification Everyday (VINE) - An automated victim notification system providing offender status information on offenders confined in local jails or state correctional facilities.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to ensure that victims are treated with respect and sensitivity and that they receive assistance that includes, but is not limited to, providing information about the policies and procedures of the Ohio Department of Rehabilitation and Correction and the status of offenders under its jurisdiction. The Office of Victim Services shall also make available publications that will assist victims in contacting staff of DRC about problems with offenders under the supervision of the Adult Parole Authority or confined in state correctional institutions under DRC's jurisdiction. OVS shall provide crisis intervention, support, and advocacy for victims of crime and their families throughout the correctional process.

VI. PROCEDURES

The Office of Victim Services shall coordinate efforts to afford victims the opportunity to participate in or be notified of events occurring during an offender's incarceration through the following:

A. Direct Services to Victims

1. Victim Notification and Registration

- a. The OVS shall provide victim notification for registered crime victims in accordance with requirements of the Ohio Revised Code and Department Policy 105-PBD-13, Statutory Notice.
- b. OVS shall process and respond to requests for registration and shall acknowledge registration requests by providing written notice to the registrant that the request for registration was received and processed.
- c. Victims and others who wish to receive notifications may request registration by submitting a Victim Notification Form (DRC3193), a letter or email requesting registration or by calling OVS. OVS may complete the registration for anyone requesting to receive notification through the Victim Information and Notification Everyday system (VINE).
- d. A file containing the registrants' name, current address, and telephone number shall be created within the computerized database for each person registered. Each registration shall be designated as a "victim" or "courtesy" registration. The victim, victim's immediate family and victim representative shall be designated as a victim registration. All others shall be designated as a "courtesy" registration. It is the

registrant's responsibility to provide any changes in this information so that the OVS can maintain current contact information.

- e. When a victim requests not to receive notifications, OVS shall request the victim to complete a form documenting the victim's desire to "opt-out" by completing the Victim Notification Opt-Out (DRC 3209). Upon receiving the opt-out form, OVS shall document the victim's desire to opt-out in DOTS Portal and scan the opt-out form to OnBase. OVS shall not provide any notifications in relation to that particular inmate and offense or offenses for which the opt-out applies unless and until the victim subsequently contacts OVS for registration and notification.

2. Crisis Intervention

Various points throughout the corrections process may create a crisis for victims. OVS may intervene by providing emotional support and contact information for community resources.

- a. Victims who are experiencing harassment, intimidation, have received a threat from an offender, or are otherwise fearful of an offender about to be released may call OVS for assistance. OVS staff shall work with community victim advocates or other resources to help the victim develop safety planning as necessary.

3. Workplace Violence

Workplace violence/workplace domestic violence incidents shall be reported to the Workplace Violence Liaison/designee in the Office of Human Resources EEO Section per Department Policy 31-SEM-08, Response to Workplace Violence and Workplace Domestic Violence. When necessary, OVS may provide support either in person or via telephone to victims of workplace violence/workplace domestic violence. This additional support may include such services as critical incident stress management, safety planning, and referrals to appropriate resources as needed.

4. Services to Stop Unwanted Offender Contact/Activities

- a. Cease and Desist Orders: When an inmate is making unwanted or inappropriate contact with a person the individual may request in writing that this contact be stopped. OVS shall contact the Victim Coordinator at the institution in which the inmate is housed and request assistance in determining if a Cease and Desist Order (DRC2575) is necessary. If the person who is requesting the cease order is registered for notification with OVS, a copy of that order will be sent to OVS.
- b. No Contact Orders: A person may request in writing that an offender discontinue any contact with them once the offender is released onto parole, post release control, or transitional control. OVS shall contact the Parole Board or the parole officer that supervises the offender to request the condition or sanction. OVS may contact the Victim Coordinator in that APA office to ensure that the request is being handled in a timely and sensitive manner.

c. Victim Photos or Belongings: An inmate may only have photos or other personal belongings of the victim(s) with the permission of the victim(s), or if those items are part of the inmate's legal information and necessary for future proceedings on his/her case. When a victim or guardian of any victim requests or it is otherwise discovered, institution staff shall confiscate photos of victims or other personal belongings of the victim(s) that the inmate may have in his/her possession. Such items may also be confiscated if possession of the items by the inmate causes disruption in the operation of the institution. In circumstances regarding legal proceedings, photos of the victim(s) or other personal belongings must be maintained in a manner to be determined by the Managing Officer/designee, but may not in any case be displayed in the living quarters in any manner. Procedures for the confiscation of victim photos and/or belongings are further addressed in Department Policy 03-OVS-03, Victim Coordinators.

5. Victim Offender Dialogue

Victims may request to meet with the offender(s) involved in their cases. The OVS shall handle each request in accordance with Department Policy 03-OVS-02, Victim Offender Dialogue, and in coordination with the appropriate Managing Officer (if the offender is incarcerated) or Regional Administrator (if the offender is under community supervision).

6. Full Board Hearings

OVS shall prepare and present full board hearing petitions on behalf of victims, victim representative and/or the prosecuting attorney. The Ohio Parole Board chair may also petition for a full board hearing. OVS shall support the victim throughout the full board hearing process by educating the victim on the hearing process, providing directions and information regarding the hearing and by being present to support the victim through the full board hearing.

7. Victim Conference Day

Victims may contact OVS to schedule appointments with a Parole Board representative to provide input to the Parole Board in relation to the offender's release consideration hearing. OVS shall work closely with the Parole Board in scheduling and facilitating victim conference day appointments which shall include providing information and support to the victim(s).

8. Executions

- a. The OVS shall provide victims with notification and support throughout the execution process in accordance with Department Policy 03-OVS-06, Victim Involvement in the Execution Process.
- b. When a surviving family member of a homicide victim wishes to witness the execution of the offender, staff of the OVS shall support the family member throughout the process. Surviving families may designate up to three witnesses to the execution, per the Ohio Revised Code, Department Policy 03-OVS-06, Victim

Involvement in the Execution Process, and Department Policy 01-COM-11, Execution.

9. Violation Hearings

Victims may be required to provide testimony when an offender violates the conditions of supervision. An OVS victim advocate may be present at this hearing to provide support to that victim during this process as defined in Department Policy 100-APA-14, Sanctions for Violations for Conditions of Supervision.

10. Other Victim Related Services

The Office of Victim Services shall respond to questions, concerns and requests from community victim advocates, media, justice officials, legislators and other stakeholders.

B. Public Education and Other Services

1. Community Awareness

The OVS staff and/or victim coordinators shall provide outreach to include education and information to various groups including community-based victim advocates, crime victims, and other community members about services available through the OVS, policies, and procedures of the Department. The OVS staff shall conduct a minimum of 20 community awareness meetings annually. The community outreach efforts shall be captured using Advocate Outreach Form-County (DRC2508) or Advocate Outreach Form (DRC2521).

2. Department Training

The OVS shall conduct training for DRC staff to ensure staff members are aware of victims' issues that impact the Department, staff, victims, and the community.

3. National Partnerships

The OVS may work in partnership with correctional agencies in other states, to coordinate direct services for victims and improve services nationally in this field.

C. Inmate Programming

OVS shall monitor the Victim Awareness and PROVE program offered at institutions and APA regions. The Victim Awareness program monitoring shall be documented using either the Advocate Outreach form-APA (DRC2503), the Advocate Outreach Form-Institution (DRC2509), or the Victim Awareness Site Visit Form (DRC2523). The PROVE program monitoring shall be documented by using either the Advocate Outreach Form-APA (DRC2503), Advocate Outreach Form-Institution (DRC2509) or the PROVE Site Visit Form (DRC2522).

Related Department Forms:

Advocate Outreach Form-APA	DRC2503
Advocate Outreach Form-County	DRC2508
Advocate Outreach Form-Institution	DRC2509
Advocate Outreach Form	DRC2521
Victim Notification Opt-Out Form	DRC3209
PROVE Site Visit Form	DRC2522
Victim Awareness Site Visit Form	DRC2523
Victim Notification Form	DRC3193