Supreme Court of Ohio Clerk of Court - Filed May 02, 2016 - Case No. 2015-0924

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	CASE NO. 2015-0924
	:	
PLAINTIFF-APPELLEE	:	
	:	ON APPEAL FROM THE FRANKLIN
V.	:	COUNTY COURT OF APPEALS
	:	TENTH APPELLATE DISTRICT
RAYMOND MORGAN,	:	
	:	
DEFENDANT-APPELLANT.	:	C.A. CASE NO. 13AP-620

MERIT BRIEF OF APPELLANT RAYMOND MORGAN

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Statement of the Case and Facts

Like most children, 16-year-old Raymond Morgan's legal guardians were his father and his mother. (3/5/2012 T.p.5; 3/15/2012 T.p.3). Raymond's father passed away in January 2012 after battling cancer for three years. (Sept. 23, 2012 Forensic Evaluation, p.7). Raymond and his mother, Mrs. Morgan, who was ill with renal failure, cared for Raymond's father "at the end, when he died at home." (Sept. 23, 2012 Forensic Evaluation, p.7).

Raymond, whose only previous interactions with the juvenile justice system had been for petty theft and jaywalking, was charged with very serious offenses just weeks after his father's death. (Sept. 23, 2013 Forensic Evaluation, p.8). The complaints alleged that Raymond was involved in shooting three people. (Mar. 2, 2012 Complaint Case No. 12JU-2947, pp.1-2; Mar. 13, 2012 Complaint Case No. 12JU-3513, pp.1-2; Mar. 23, 2012 Complaint Case No. 12JU-4138, p.1). As the investigation continued, the evidence, including Raymond's admissions, demonstrated that he was not the principal actor in these offenses.

In juvenile court case number 12JU-2947, Raymond admitted to police officers that "he was with the shooter of both [victims] at the time of both of these shootings." (8/9/2012 T.p.9). The State conceded that its theory for probable cause was that Raymond "was complicit and/or the shooter" because it was unknown who shot the victims. (8/9/2012 T.p.9). In juvenile court case number 12JU-3513, the State admitted that Raymond was complicit because "he did not have a firearm in his hand at the time,

but he participated in the aggravated robbery of [the victim]." (8/9/2012 T.p.11). And, in juvenile court case number 12JU-4138, Raymond admitted to police officers that he received a stolen camera. (8/9/2012 T.pp.7-8; Mar. 23, 2012 Complaint Case No. 12JU-4138, p.1). The State agreed that all of the charges against Raymond were "discretionary in nature, not mandatory." (8/9/2012 T.p.3).

Early in his case, Raymond did not believe that his attorney was providing effective assistance and requested that the juvenile court appoint another attorney to help him. (6/14/2012 T.p.5). Raymond's attorney admitted that there was a breakdown in the attorney-client relationship. (6/14/2012 T.p.5). But, the juvenile court did not grant Raymond's request because it determined that defense counsel was "one of the pretty good lawyers." (6/14/2012 T.pp.5-7).

After a stipulation to a finding of probable cause, the juvenile court ordered that Raymond be evaluated to determine his amenability for rehabilitation in the juvenile system. (8/9/2012 T.pp.12-13). Dr. Bergman, a clinical and forensic psychologist, determined that Raymond was in the high range for treatment amenability. (Sept. 23, 2012 Forensic Evaluation, pp.1, 4, 13-14). Dr. Bergman based her conclusion on Raymond's lack of prior criminality, his values and behaviors, the rapid disintegration of his immediate family, and his high likelihood of success in treatment. (Sept. 23, 2012 Forensic Evaluation, p.12).

Dr. Bergman's assessment also revealed that Raymond's "[a]menability to [t]reatment is [high]." (Sept. 23, 2013 Forensic Evaluation, p.5). Dr. Bergman noted that "[t]he current adjustment disorder, which likely reflects a high degree of anxiety in

regard to his mother's ill health and unresolved grief over the recent death of his father (who is described as a very positive influence in his life) are issues that would not be particularly difficult to address in a therapeutic intervention." (Sept. 23, 2013 Forensic Evaluation, p.5). Additionally, Raymond "did not blame anyone else for his involvement in the criminal behavior, stating [that] 'it was [his] own decision'"; and, he did not attempt to justify his behavior. (Sept. 23, 2013 Forensic Evaluation, p.10). Because of the unique circumstances in Raymond's life that likely caused his delinquent behavior, Dr. Bergman recommended "structured intervention with supervised community control and therapy," which could be conducted in the home environment so that Raymond could take care of his mother, just as he had taken care of his father. (Sept. 23, 2012 Forensic Evaluation, pp.12-13).

Although very ill and receiving dialysis treatments three times per week, Mrs. Morgan appeared at every juvenile court hearing and supported Raymond. (3/5/2012 T.p.5; 3/15/2012 T.p.3; 6/14/2012 T.p.1; 8/9/2012 T.p.2; Sept. 23, 2012 Forensic Evaluation, p.6). But, Mrs. Morgan passed away just before Raymond's amenability hearing. (10/24/2012 T.pp.1-19; Sept. 23, 2012 Forensic Evaluation, p.7).

Raymond, an orphaned child, sat in the courtroom facing transfer to the adult system without his family. He had no parent to provide guidance, support him, or to represent his best interests to the juvenile court. (10/24/2012 T.pp.1-19). And, the juvenile court did not appoint a guardian ad litem (GAL) to fill that role. (10/24/2012 T.pp.1-19). Despite Dr. Bergman's conclusions that Raymond was amenable to treatment in the juvenile court system, the juvenile court transferred Raymond's case to

common pleas court for prosecution as an adult. (Oct. 24, 2012 Entry Sustaining State of Ohio's Motion to Relinquish Jurisdiction Filed March 5, 2012 Case No. 12JU-2947, p.2; Oct. 24, 2012 Entry Sustaining State of Ohio's Motion to Relinquish Jurisdiction Filed March 15, 2012 Case No. 12JU-3513, p.2; Oct. 24, 2012 Entry Sustaining State of Ohio's Motion to Relinquish Jurisdiction Filed March 27, 2012 Case No. 12JU-4138, p.2).

After grand jury indictment, Raymond pleaded guilty to an amended complaint of burglary; two counts of felonious assault, enhanced with firearm specifications; and, aggravated robbery, enhanced with a firearm specification. (May 23, 2013 Judgment Entry, p.1). The court sentenced Raymond to 18 years in prison. (May 23, 2013 Judgment Entry, p.2).

Raymond appealed to the Tenth District Court of Appeals. In his merit brief, Raymond assigned error to the juvenile court's failure to appoint a GAL to represent his best interests; the juvenile court's abuse of discretion because Dr. Bergman's conclusions were resoundingly in favor of retention in the juvenile system and the juvenile court's reasoning in favor of transfer did not overcome the statute's presumption in favor of retention; the juvenile court's failure to investigate Raymond's allegation of ineffective assistance of counsel; the trial court's failure to make the necessary findings in order to impose consecutive sentences; and, defense counsel's ineffective assistance. The Tenth District overruled all of Raymond's assignments of error, except regarding consecutive sentencing. *State v. Morgan*, 10th Dist. Franklin No. 13AP-620, 2014-Ohio-5661, ¶ 1.

With respect to the lack of a GAL, the Tenth District acknowledged that "because the statute and rule both use mandatory language for the appointment of a guardian ad litem in this situation, we agree with appellant that it was error for the trial court to fail to appoint a guardian ad litem." *Id.* at ¶ 23. But, the Tenth District determined that the failure did not rise to the level of plain error because the child did not request a GAL and did not show prejudice from the lack of a GAL. *Id.* at ¶ 25-26. Specifically, the Tenth District noted "we have no way of knowing what a guardian ad litem would have argued because one was not appointed." *Id.* at ¶ 25.

Argument

Because the propositions of law in this case are intertwined, they are argued and presented together. This case presents two pathways to reversal. If this Court agrees with the Tenth District's application of a plain error analysis, the outcome must be different. Specifically, this Court must presume prejudice in the juvenile court's failure to appoint a guardian ad litem at the amenability stage of the proceedings. However, if this Court determines that plain error is not appropriate, this Court should adopt a structural error analysis because the violation of due process permeates the proceedings and affects the transfer of jurisdiction to the adult court.

Proposition of Law I

A child does not need to request a GAL in the absence of his parents, guardian, or legal custodian at a juvenile court hearing.

Proposition of Law II

A child does not need to show prejudice to support a reversal on appeal when the juvenile court fails to appoint a GAL when required by law.

In October 2012, 16-year-old Raymond, shackled and wearing a detention jumpsuit, appeared in juvenile court for his amenability hearing without his mother or his father. Raymond lost both of his parents that year: his father died of cancer in January 2012 and his mother died of renal failure just a few weeks before the hearing. Raymond had an attorney to defend him against the charges, but the juvenile court did not appoint a GAL for Raymond as it was mandated by law to do. R.C. 2151.281(A)(1); Juv.R. 4(B). Instead, Raymond, still reeling from grief over the loss of his parents, sat in the courtroom facing transfer to the adult system without a parent or guardian to protect his best interest, or provide him with advice, comfort, or reassurance. Expecting a child to request that a protective figure be appointed to represent his best interest falls woefully short of the U.S. Supreme Court's promise of fair treatment and due process. *In re Gault*, 387 U.S. 1, 33, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) (finding that children are entitled to due process and fair treatment).

I. Because the amenability determination is a critical stage of the proceedings, children must be afforded due process and fair treatment.

Juvenile courts are different because children are different. The juvenile court system is "rooted in social welfare philosophy rather than in corpus juris." *State v. D.W.*,

133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, ¶ 7. Children's "'lack of maturity'" and "'underdeveloped sense of responsibility,'" make them more "'susceptible to negative influences and outside pressures, including peer pressure.'" *Id.* at ¶ 8, quoting *Roper v. Simmons*, 543 U.S. 551, 569-570, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). Additionally, "their characters are 'not as well formed'" and their actions "are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults." *D.W.* at ¶ 8, quoting *Roper* at 569-570. "The objectives of the juvenile court 'are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.'" *D.W.* at ¶ 7.

But, guidance and rehabilitation for the child "is not the juvenile court's sole focus during an amenability hearing." *Id.* at ¶ 13. Rather, the juvenile court must weigh rehabilitative efforts and community safety with punishment and criminal responsibility. R.C. 2152.12(B)(3).

This Court recognized that the amenability hearing is a critical stage of the juvenile court proceeding and is rooted in federal due process protections. *D.W.* at ¶ 12, 20-21, citing *Kent v. United States*, 383 U.S. 541, 554, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966). The amenability determination "affects whether the juvenile faces a delinquency adjudication, or adult criminal sanction and the label 'felon.'" *D.W.* at ¶ 12, citing *Kent* at 560. The amenability "hearing 'must measure up to the essentials of due process and fair treatment.'" *D.W.* at ¶ 14, citing *Kent* at 562.

The decision in *Kent* focused on fair treatment and the procedure in juvenile court transfer proceedings. *Kent* at 553-554 ("The statute gives the Juvenile Court a

substantial degree of discretion as to the factual considerations to be evaluated, the weight to be given them and the conclusion to be reached. It does not confer upon the Juvenile Court a license for arbitrary procedure."). In that spirit, this Court held that "[p]rocedural protections are vital" during transfer proceedings. *D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, at ¶ 13. Specifically, this Court recognized two vital safeguards: 1) the right to counsel and 2) "the right to an amenability hearing." *Id.* at ¶ 16-17; *see also* R.C. 2152.12(B); Juv.R. 30. And, in *D.M.*, this Court recognized that discovery is also vital in preparing for a probable cause hearing in transfer proceedings. *In re D.M.*, 140 Ohio St.3d 309, 2014-Ohio-3628, 18 N.E.3d 404, ¶ 2 (applying Juv.R. 24's requirements to bindover hearings).

The right to counsel is indispensable. But, in examining due process and fair treatment, the Supreme Court has also acknowledged the importance of the parental role in determining a child's disposition. In *Kent*, the Supreme Court found that due process was violated when the juvenile court judge did not hold a hearing and did not confer with the child, *the child's parents*, or the child's counsel before transferring the child's case. (Emphasis added.) *Kent* at 546. And, in *In re Gault*, the Court condemned the idea that a child could be taken into custody without his parents receiving notice of court proceedings. *Gault*, 387 U.S. at 33, 87 S.Ct. 1428, 18 L.Ed.2d 527.

In Ohio, the foundation of due process and fair treatment is found in the procedure of our juvenile courts. The juvenile rules provide that parents are a party in all juvenile court proceedings. Juv.R. 2(Y) ("Party means a child who is subject of a juvenile court proceeding * * * [and] the child's parent or parents * * *.); *see also* Juv.R.

4(B)(1) (providing that if a child does not have parents, the juvenile court must appoint a GAL). As a party, parents must receive notice of all juvenile court proceedings. *See, e.g.,* Juv.R. 7; Juv.R. 13; Juv.R. 29; Juv.R. 30; *see also* Juv.R. 4(E) ("The guardian ad litem shall be given notice of all proceedings in the same manner as notice is given to other parties to the action."). And, this Court has recognized and emphasized the importance of the parental role in juvenile proceedings. *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 94 ("The General Assembly was also aware of the Supreme Court's recognition of the importance of parental involvement in delinquency cases.").

II. In order to ensure fair proceedings, the General Assembly requires a juvenile court to appoint a GAL to protect a child's best interest when the child's parents are unable to do so.

Parents are the natural guardians of their children's best interest. But, when they are unable to protect and represent those interests, the juvenile court must appoint a GAL to fill that role. R.C. 2151.281(A) (providing that the juvenile court "shall appoint a guardian ad litem, subject to the rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent or unruly child when * * * [t]he child has no parent, guardian, or legal custodian"); *see also* Juv.R. 4(B) ("The court shall appoint a guardian ad litem to protect the interests of a child or incompetent adult in a juvenile court proceeding when * * * [t]he child has no parents, guardian, or legal custodian."). This obligation is true no matter the type of case—delinquency, abuse, neglect, dependency, or custody. And, it is true no matter the child's parental situation—when the child has no parent, guardian, or legal custodian because of death, termination of parental rights, or failure to attend the hearing; or,

when the child functionally has no parent, guardian, or legal custodian, because the parent, although present, is incapable of representing the child's best interest. R.C. 2151.281(A)-(B); Juv.R. 4(B)(1)-(9). Harkening back to *Gault's* promise of fair treatment, the General Assembly also noted that a juvenile court must appoint a GAL when it is "necessary to meet the requirements of a fair hearing." *Gault* at 33.

A. Defense counsel has a duty to represent a child's stated interest.

In delinquency proceedings, defense counsel must "provide competent, diligent, and zealous advocacy to protect the [child's] procedural and substantive rights." Nat'l Juvenile Defender Ctr., *National Juvenile Defender Standards* (2012), 18, available at http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf (accessed Apr. 25, 2016). "Counsel's primary and fundamental responsibility is to advocate for the [child's] expressed interests." *Id.* at 19.

When a client has expressed an interest, defense counsel is bound to represent that interest, even if it is against the child's best interest. *See* Prof.Cond.R. 1.2(a). When a child finds himself in the juvenile delinquency system, defense counsel assists the child through the court process and legally defends the child against the allegations; but, the parent supports the child, helps the child make decisions, and guards the child's best interest. *See* Prof.Cond.R. 1.1. A child needs guidance of a parental figure in making important decisions and advocating his interest to defense counsel.

B. A GAL's role is different from that of defense counsel, because a guardian acts as a parental substitute, and protects and represents a child's best interest.

"The guardian ad litem has the significant role of bringing a viewpoint to the trial court * * * that is neutral and detached from the parties to the case[; and] * * * is not simply a legal mechanic but has the responsibility to protect the best interest of the child." *In re A.K.*, 9th Dist. Summit No. 26291, 2012-Ohio-4430, ¶ 28 (holding that the juvenile court committed reversible error when it failed to appoint a GAL). And, this Court recognized the vital role that GALs play in the juvenile justice courtroom when it enacted rules and procedures to ensure that GALs are properly trained and provide effective service to the courts. *See* Sup.R. 48.

Once appointed, the GAL must be provided with "notice of all hearings and proceedings" and copies of "all pleadings, motions, notices, and other documents filed in the case." Sup.R. 48(C). And, after investigation, the GAL must provide the juvenile court with a recommendation for the child's best interest. Sup.R. 48(D)-(F) (providing that a GAL must interview the child, parents, school personnel, and other providers working with the child; investigate and observe the child's home environment; review all records pertaining to the child; and, submit written reports to the juvenile court about the child's best interest). This investigation is especially relevant in an amenability hearing. *Compare* Sup.R. 48(D)-(F) *with* R.C. 2152.12(C)-(E).

For example, a child charged with a low-level felony may prefer to be transferred to common pleas court and chance being sentenced to community control sanctions, rather than staying in the juvenile system and being committed to a residential

treatment facility or the Department of Youth Services until his 21st birthday. In this scenario, defense counsel is bound to advocate for the child's expressed interests, even if it may be detrimental to the child's future. *See* Prof.Cond.R. 1.2(a). However, the child's parent or GAL substitute is not bound to that position. The adult can think about long-term consequences and future possibilities; and, the adult has the perspective of time. A GAL offers the best interest perspective—that a residential treatment facility is better suited for the child because it offers lengthy treatment, and a juvenile court sanction does not carry lifelong collateral consequences and a permanent felony record. Sup.R. 48(D)-(F); *see, e.g.,* Justice Policy Institute, *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense* (May 2009), 9, 12, http://www.justicepolicy.org/images/upload/09_05_rep_costsofconfinement_jj_ps.pdf (accessed May 2, 2016) ("Researchers examining the effects of institutional versus community-based interventions have found positive outcomes for youth treated outside secure facilities. In one study, researchers's meta-analysis found that while 'appropriate treatment' works in both institutional and community settings, the rate of success was higher in the community-based treatment models."). Both of those perspectives are necessary to the rehabilitative goals of the juvenile system. The child is adequately represented by defense counsel and his voice is clearly heard, but the long-term, best interest perspective is not lost.

III. This Court should not require a child to request the juvenile court to fulfill its mandatory duty to appoint a GAL.

In many instances where the law places a requirement on a court, a child or adult defendant is not expected to request that the court fulfill its mandatory duty. "In statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage." *Dorrian v. Scioto Conservancy District*, 27 Ohio St.2d 102, 271 N.E.2d 834, paragraph one of the syllabus (1971).

For instance, Juv.R. 29 requires the juvenile court to ensure that a child's admission to an offense is knowing, intelligent, and voluntary. *See also C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, at ¶ 112-113. Accordingly, a child is not required to request that the juvenile court follow its mandatory duty to find that the admission is knowing, intelligently, and voluntarily made. *See id.* at ¶ 112. And, in *D.W.*, this Court noted that the "plain language" of the statute and juvenile rule "require the juvenile court to perform an amenability hearing" prior to transfer. *D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, at ¶ 21 (holding that any waiver of amenability must be knowing, intelligent, and voluntary).

Similarly, as required by statute, a sentencing court must make certain findings prior to imposing consecutive sentences. R.C. 2929.01(C)(4). In stark contrast to its decision regarding the appointment of a GAL, the Tenth District determined that it was "plain error as a matter of law for the trial court's failure to make the findings required

by R.C. 2929.14(C)(4)" before imposing consecutive sentences. *Morgan*, 2014-Ohio-5661, at ¶ 50-54. Additionally, this Court has held that a trial court is mandated by statute and the criminal rules to order a presentence investigation report before ordering community control sanctions, even if the report is not requested by the defendant. *State v. Amos*, 140 Ohio St.3d 238, 2014-Ohio-3160, 17 N.E.3d 528, ¶ 2, 14.

Revised Code Section 2151.281(A)(1) and Juv.R. 4(B)(1) are plainly written: the mandatory duty lies with the juvenile court. And, a number of appellate districts agree. *See In re Sappington*, 123 Ohio App.3d 448, 453, 704 N.E.2d 339 (2d Dist.1997) (finding that the failure "to appoint a [GAL], when such an appointment is required under the rule or the statute, constitutes reversible error"); *In re A.G.B.*, 173 Ohio App.3d 263, 2007-Ohio-4753, ¶ 15 (4th Dist.) (recognizing that a failure to request a GAL "could not waive the court's mandatory duty to appoint a GAL to represent [the child's] interests"); *In re B.G.*, 5th Dist. Ashland No. 2011-COA-012, 2011-Ohio-5898, ¶ 15-21 (finding that the court "erred in not appointing a [GAL] for appellant" when it was mandated, even when the child was represented by counsel), *overruled in part on other grounds, In re I.A.*, 140 Ohio St.3d 203, 2014-Ohio-3155, 16 N.E.2d 653; *In re J.C.*, 5th Dist. Knox Nos. 14CA23, 14CA24, 2015-Ohio-4664, ¶ 26 (noting that because the "statutes are mandatory, the failure of a court to appoint a guardian ad litem when these provisions require such an appointment constitutes reversible error[; and, f]urther, the absence of an objection does not preclude a reversal due to the Juvenile Court's failure to appoint a guardian when required"); *In re William B.*, 163 Ohio App.3d 201, 2005-Ohio-4428, ¶ 43 (6th Dist.) ("[W]e find that the trial court committed reversible error by failing to

appoint a [GAL], as mandated by R.C. 2151.281."); *In re K.B.*, 170 Ohio App.3d 121, 124, 2007-Ohio-396, 866 N.E.2d 66 (8th Dist.) (finding that "the absence of an objection does not preclude reversal" and "failure to appoint a [GAL] when these mandatory provisions require such an appointment constitutes reversible error"); *In re D.R.B.*, 8th Dist. Cuyahoga No. 102252, 2015-Ohio-3346, ¶ 26 (noting that the use of the word "shall" in the statute and rule is significant); *In re Cook*, 11th Dist. No. 2003-A-0132, 2005-Ohio-5288, ¶ 30 (finding that "the absence of an objection does not preclude a reversal due to the juvenile court's failure to appoint a [GAL]"); *In re Dennis*, 11th Dist. Ashtabula No. 2006-A-0040, 2007-Ohio-2432, ¶ 30 (noting that "the juvenile does not need to specifically request the appointment of a [GAL]").

Unlike other subsections of R.C. 2151.281 and Juv.R. 4(B), this case does not present a situation wherein a juvenile court might need additional facts to determine potential conflict between the child and his parent, or evidence of a parent's incompetence. *Compare* Juv.R. 4(B)(2)-(3) *with* Juv.R. 4(B)(1). When a child is without parents, there is no calculus that must be undertaken and no facts to be analyzed; rather, the juvenile court must appoint a GAL to represent the child's best interest. R.C. 2151.281; Juv.R. 4(B)(1); *see e.g., In re Faubus*, 498 S.W.2d 21, 23 (Tex.Civ.App.1973) ("It is now well established [by rule of civil procedure] that failure of a juvenile court to appoint a guardian ad litem in juvenile delinquency proceedings is reversible error even though no request for such appointment was made * * * .").

Once the juvenile court was aware that Raymond was an orphan, the appointment of a GAL was required by law. (10/24/2012 T.p.1-19). A child should not

be required to request that the juvenile court fulfill its mandatory duty to ensure fair treatment in the procedures established by the General Assembly. And, a child should not be required to request that the juvenile court ensure that his or her best interests are represented.

IV. Requiring a child to demonstrate prejudice when the juvenile court fails to appoint a GAL creates an impossible standard, and does nothing to ensure due process and further fair treatment in juvenile court proceedings.

A child is "an easy victim of the law." *Haley v. Ohio*, 332 U.S. 596, 599, 68 S.Ct. 302, 92 L.Ed. 224 (1948). This notion is highlighted in this case where Raymond was in court for his amenability hearing just a few weeks after his mother died and just nine months after his father died. Recognizing that children are not aware that they have the right to a GAL when their parents are absent from juvenile court proceedings, the General Assembly placed the burden on the juvenile court to ensure that an interested adult represents the child's best interest. R.C. 2151.281(A)(2). And, this Court further recognized the importance in protecting children's best interests when this Court enacted Juv.R. 4(B) and Sup.R. 48.

But, the Tenth District's application of a plain error analysis in this case—requiring a request for a GAL and a demonstration of prejudice to support a reversal on appeal—violates long-held standards in Ohio regarding the important role of a parent or GAL, fails to fulfill *Gault's* promise of due process and fair treatment, and makes a child even more vulnerable to the system. *See Gault*, 387 U.S. at 33, 87 S.Ct. 1428, 18 L.Ed.2d 527.

A. Because the error here affects the fairness of the transfer proceeding, the prejudice must be presumed.

In this case, the Tenth District agreed that the juvenile court did not fulfill its mandatory duty to ensure that a child's best interests are protected when it failed to appoint a GAL. *Morgan,* 2014-Ohio-5661, at ¶ 25-26. But, because the child did not request that a GAL be appointed, the Tenth District utilized the plain error standard in Crim.R. 52(B) to require that prejudice must be demonstrated. *Morgan,* 2014-Ohio-5661, at ¶ 25-26.

Criminal Rule 52(B) provides that "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." There are competing versions of the plain error standard. One analysis examines the error's impact on the fairness of the proceedings; while another analysis focuses on the whether the error impacted the outcome of the proceedings. *Compare State v. Lily,* 87 Ohio St.3d 97, 104, 717 N.E.2d 322 (1999) *with State v. Rogers,* 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 22. This Court recently held it has "never recognized the hybrid type of plain error * * * that is presumptively prejudicial and is reversible per se." *Rogers* at ¶ 24. And, this Court cautioned against an "unwarranted expansion of Crim.R. 52." *Id.* But, it is important to note that there is no Crim.R. 52 corollary in the juvenile rules. *See also* Crim.R. 1(C) ("These rules, to the extent that specific procedure is provided the by other rules is provided by other rules of the Supreme Court or the extent that they would be their nature be clearly inapplicable, shall not apply to

procedure * * * in juvenile proceedings against a child as defined in Rule 2(D) of the Rules of Juvenile Procedure.").

An interpretation of the plain error doctrine with a focus towards fairness of the proceedings could be appropriate, because in circumstances like Raymond's, a juvenile court must act in the public interest to protect the fairness, integrity, and public reputation of judicial proceedings, especially in the context of a child's transfer to adult court. *See Lily* at 104; *D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, at ¶ 13 ("Procedural protections are vital."); *Kent*, 383 U.S. at 553-554, 86 S.Ct. 1045, 16 L.Ed.2d 84 ("The statute gives the Juvenile Court a substantial degree of discretion as to the factual considerations to be evaluated, the weight to be given them and the conclusion to be reached. It does not confer upon the Juvenile Court a license for arbitrary procedure."). But, the Tenth District focused its analysis on whether the outcome of the proceedings would have been different instead of the fairness of the proceedings.

Reliance on a plain error standard of review is troubling wherein children are required to request that their best interests be protected and that prejudice be demonstrated to support a reversal. Raymond's case is not an isolated incident. Recently, the Tenth District again held that the child "does not articulate specifically how the juvenile court's failure to appoint a guardian ad litem prejudiced him." *State v. Simmonds*, 10th Dist. Franklin No. 14AP-1065, 2015-Ohio-4460, ¶ 12, citing *Morgan*, 2014-Ohio-5661, at ¶ 25. Additionally, the Fourth District Court of Appeals has questioned its precedent on the appointment of a GAL. In a footnote, relying on this Court's decision in *Rogers*, the Fourth District remarked that it "question[ed] the validity of * * * prior

cases recognizing a court's failure to appoint a guardian ad litem when required to do so as reversible error in the absence of a proper objection." *State v. Legg,* 4th Dist. Pickaway No. 14CA23, 2016-Ohio-801, ¶ 14, fn.1.

The Tenth District noted, "we have no way of knowing what a guardian ad litem would have argued because one was not appointed." *Morgan* at ¶ 25. This circular approach creates an impossible standard. Yet, the Tenth District's decision that prejudice be demonstrated when a juvenile court fails to appoint a GAL when it is required by law, disregards the importance that this Court has placed on the amenability proceedings. *See D.W.* at ¶ 12, citing *Kent* at 554.

B. Failure to appoint a GAL when required by law is a fatal flaw in the amenability proceedings and affects the transfer of jurisdiction.

In *Kent*, the Supreme Court noted that while the juvenile court has wide latitude to determine if a child should be transferred "this latitude is not complete" and "at the outset, it assumes procedural regularity." *Kent*, 383 U.S. at 553, 86 S.Ct. 1045, 16 L.Ed.2d 84 (listing a number of procedural infirmities in the case and cautioning against "procedural arbitrariness). The adherence to the transfer procedure is missing in this case.

A number of appellate courts in Ohio have emphasized the juvenile court's responsibility to ensure that the juvenile court procedures are followed. In August 2015, the Eighth District Court of Appeals disagreed with the Tenth District's determination, reasoning, "We do not agree that an objection to the failure to appoint a GAL is required to constitute reversible error." *D.R.B.*, 2015-Ohio-3346, at ¶ 26. The Eighth

District noted that the use of the word "shall" in the statute and rule is significant. *Id.* at ¶ 31, 34 ("It is a cardinal rule of statutory construction that a statute should not be interpreted to yield an absurd result.").

In considering whether a juvenile court failed to comply with competency procedures, the Second District Court of Appeals explained that it would not "speculate as to the evidence that might have been presented at a competency hearing if one had been held" because the evaluator "would have been subject to cross-examination," and the child "might have challenged whether [the evaluator] had used the proper diagnostic techniques and the correct legal standards." *In re B.M.R.*, 2d Dist. Miami Nos. 2005 CA 1, 2005 CA 18, 2005-Ohio-5911, ¶ 18 (finding that even though the juvenile court could have concluded the child was competent upon consideration of the written evaluation "does not excuse the trial court's failure to afford B.M.R. his statutory and constitutional rights"). In that case, the Second District focused on the fairness of the proceedings and the right to due process, rather than a speculative guess at prejudice or whether the proceedings would have been different. *Id.* In such a fact-specific inquiry, such as a child's competency, any additional facts presented at a competency hearing are outcome determinative in the most fundamental sense.

And, this Court held that a resentencing hearing to correctly impose post-release control is a critical stage and the defendant is entitled to counsel. *State v. Schleiger*, 141 Ohio St.3d 67, 2014-Ohio-3970, 21 N.E.2d 1033, ¶ 10, 15. This Court noted that even though the hearing is largely ministerial, counsel's role is important in ensuring a fair proceeding. *Id.* at 16.

Each of these examples highlights the need for adherence to procedure to ensure fairness in juvenile proceedings. The same is true in this case. And, the "reversible error" approach adopted by a number of Ohio's appellate districts embodies that notion and presumes prejudice to a child when the juvenile court fails to follow its mandatory duties. It is akin to this Court's structural error analysis because it impacts the child's constitutional right to fair treatment and due process in the amenability proceedings. *See State v. Perry*, 101 Ohio St.3d 118, 2004-Ohio-297, 802 N.E.2d 643, ¶ 21 ("Interpreting the phrase 'per se prejudicial' to mean that an error was 'structural,' we considered the threshold issue of whether such a practice 'involves the deprivation of a constitutional right.'").

A structural error is one that affects "the framework within which the trial proceeds, rather than simply being an error in the trial process itself." *Id.* at ¶ 17-18 (listing examples of structural error as including a denial of counsel, a biased trial court judge, racial discrimination in jury selection, denial of a public trial, and a defective reasonable doubt standard"). Structural error is not widely used because a constitutional issue must be implicated in the analysis. *Id.* at ¶19-20. But, it is appropriate for situations wherein the error permeates the framework of the proceedings and calls into the question the accuracy, fairness, and constitutionality of the foundation.

The juvenile court has exclusive, original jurisdiction over children's cases, and the jurisdiction may only be transferred after following strict procedures set forth by the General Assembly to validly effect the transfer of jurisdiction. *State v. Wilson*, 73 Ohio

St.3d 40, 44-45, 652 N.E.2d 196 (1995). Failure to adhere to those procedures is a structural error because it violates a child's right to due process and fair treatment under the law, and it affects the validity of the transfer of jurisdiction—the framework of the remainder of the proceedings.

Due process and fair treatment is required in the juvenile court system. *Kent*, 383 U.S. at 553, 86 S.Ct. 1045, 16 L.Ed.2d 84; *Gault*, 387 U.S. at 33, 87 S.Ct. 1428, 18 L.Ed.2d 527. In Ohio, the protective foundation of due process and fair treatment is found in the procedure set forth in the juvenile rules and code. As part of our due process framework, this Court has acknowledged that the General Assembly has codified the rights to counsel, and an amenability hearing, and discovery as part of the system to ensure fair treatment. *D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894, at ¶ 16-17; *D.M.*, 140 Ohio St.3d 309, 2014-Ohio-3628, 18 N.E.3d 404, at ¶ 2.

The "plain language" of R.C. 2152.12, which required the "juvenile court to perform an amenability hearing" prior to transfer guided this Court's decision in *D.W.* *D.W.* at ¶ 21. This Court determined that the amenability hearing is a critical stage of the juvenile court proceedings and is rooted in federal due process protections. *D.W.* at ¶ 12, 20-21, citing *Kent*, 383 U.S. at 554, 86 S.Ct. 1045, 16 L.Ed.2d 84. Therefore, the amenability "hearing 'must measure up to the essentials of due process and fair treatment.'" *D.W.* at ¶ 14, citing *Kent* at 562.

In Ohio, a GAL is a necessary replacement in the transfer proceeding when a child has no parents or when a parent is unable to protect the child's best interest. When a juvenile court fails to ensure that a child's best interests are protected, due process is

violated and the proceedings are not fundamentally fair. The General Assembly also requires a parent receive notice of amenability proceedings. Juv.R. 30; *see also* Juv.R. 4(E) ("The guardian ad litem shall be given notice of all proceedings in the same manner as notice is given to other parties to the action."). Additionally, it follows that if the juvenile court fails to strictly follow the procedures in the juvenile court, the transfer of jurisdiction from juvenile to common pleas court is impacted. *See Johnson v. Timmerman-Cooper*, 93 Ohio St.3d 614, 617, 757 N.E.2d 1153 (2001) (holding that the conviction and sentence is void because the "sentencing court patently and unambiguously lacked jurisdiction to convict and sentence her on the charged offenses when she had not been lawfully transferred to that court"); *State v. Taylor*, 26 Ohio App.3d 69, 71, 498 N.E.2d 211 (3d Dist.1985) ("Therefore, for failure to follow the due process requirements of the statute to effect a proper bind-over to the common pleas court, the minor could not become an 'adult' for the purpose of being subject to the jurisdiction of the latter court.").

The General Assembly has required that a GAL be appointed and notified of all hearings when a child is without parents "in order to meet the requirements of a fair hearing" and measure up to the essentials of due process. And, this Court has never balked at the opportunity to acknowledge the protections that Ohio affords to children during critical transfer proceedings. Therefore, this Court should reverse the Tenth District's application of a plain error analysis in this case and hold that a child does not need to request a GAL in the absence of his parents, guardian, or legal custodian at a juvenile court hearing and a child does not need to show prejudice to support a reversal

on appeal when the juvenile court fails to appoint a GAL when required by law. Rather, the juvenile court must fulfill its mandatory duty to appoint a GAL when required in order to ensure fair treatment in the transfer proceeding.

Conclusion

This Court has yet to issue a decision regarding the appointment of GALs in delinquency cases. As we approach the 50th anniversary of *Gault*, this case provides this Court with an opportunity to reinforce the promise of due process and fair treatment in juvenile court. Accordingly, Raymond Morgan asks this Court to hold that a child does not need to request a GAL in the absence of his parents, guardian, or legal custodian at a juvenile court hearing and a child does not need to show prejudice to support a reversal on appeal when the juvenile court fails to appoint a GAL when required by law.

Respectfully submitted,

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Certificate of Service

The undersigned counsel certifies that a copy of the foregoing **Merit Brief of Appellant Raymond Morgan** was served by ordinary U.S. Mail this 2nd day of May, 2016 to Seth L. Gilbert, Franklin County Prosecuting Attorney, Franklin County Prosecutor's Office, 373 South High Street, Columbus, Ohio 43215.

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Counsel for Raymond Morgan

#464415

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	CASE NO. 2015-0924
	:	
PLAINTIFF-APPELLEE	:	
	:	ON APPEAL FROM THE FRANKLIN
V.	:	COUNTY COURT OF APPEALS
	:	TENTH APPELLATE DISTRICT
RAYMOND MORGAN,	:	
	:	
DEFENDANT-APPELLANT.	:	C.A. CASE NO. 13AP-620

APPENDIX TO MERIT BRIEF OF APPELLANT RAYMOND MORGAN

Supreme Court of Ohio Clerk of Court - Filed June 04, 2015 - Case No. 2015-0924

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	CASE NO. _____
PLAINTIFF-APPELLEE	:	
	:	ON APPEAL FROM THE FRANKLIN
V.	:	COUNTY COURT OF APPEALS
	:	TENTH APPELLATE DISTRICT
RAYMOND MORGAN,	:	
	:	
DEFENDANT-APPELLANT.	:	C.A. CASE NO. 13AP-620

NOTICE OF APPEAL OF APPELLANT RAYMOND MORGAN

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Notice of Appeal of Appellant Raymond Morgan

Raymond Morgan hereby gives notice of appeal to the Supreme Court of Ohio from the Decision and Judgment Entry of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals Case No. 13AP-620, on April 21, 2015. This case involves felony-level offenses, a substantial constitutional question, and is of public or great general interest.

Respectfully submitted,

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Certificate of Service

A copy of the foregoing **Notice of Appeal of Raymond Morgan** was served by ordinary U.S. Mail this 4th day of June, 2015 to Seth Gilbert, Assistant Prosecuting Attorney, 373 South High Street, Columbus, Ohio 43215.

/s/: Charlyn Bohland
Charlyn Bohland #0088080
Assistant State Public Defender

Counsel for Raymond Morgan

#442103

Franklin County Ohio Court of Appeals Clerk of Courts- 2015 Apr 21 12:52 PM-13AP000620

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 13AP-620 (C.P.C. No. 12CR-5458)
v.	:	(REGULAR CALENDAR)
Raymond Morgan,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY

For the reasons stated in the memorandum decision of this court rendered on April 16, 2015, it is the order of this court that the motion to certify the judgment of this court as being in conflict with the judgments of the Second, Third, Fourth, Fifth, Sixth, Eighth, and Eleventh Districts is denied. It is also the order of this court that the application for reconsideration, filed on January 8, 2015, is denied.

LUPER SCHUSTER, J., BROWN, P.J., & SADLER, J.

By /S/ JUDGE
Judge Betsy Luper Schuster

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Tenth District Court of Appeals

Date: 04-21-2015

Case Title: STATE OF OHIO -VS- RAYMOND MORGAN

Case Number: 13AP000620

Type: JOURNAL ENTRY

So Ordered

/s/ Judge Betsy L. Schuster

Electronically signed on 2015-Apr-21 page 2 of 2

Court Disposition

Case Number: 13AP000620

Case Style: STATE OF OHIO -VS- RAYMOND MORGAN

Motion Tie Off Information:

1. Motion CMS Document Id: 13AP0006202015-01-0899970000
   Document Title: 01-08-2015-MOTION TO CERTIFY A CONFLICT
   Disposition: 3200

2. Motion CMS Document Id: 13AP0006202015-01-0899980000
   Document Title: 01-08-2015-MOTION TO RECONSIDER
   Disposition: 3200

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0A353 - E46 Franklin County Ohio Clerk of Courts of the Common Pleas- 2015 Apr 20 4:49 PM-12CR005458

Franklin County Ohio Court of Appeals Clerk of Courts- 2015 Apr 16 12:18 PM-13AP000620

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 13AP-620 (C.P.C. No. 12CR-5458)
v.	:	(REGULAR CALENDAR)
Raymond Morgan,	:	
Defendant-Appellant.	:	

MEMORANDUM DECISION

Rendered on April 16, 2015

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Timothy Young, Ohio Public Defender, and *Charlyn Bohland*, for appellant.

ON MOTIONS

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Raymond Morgan, filed motions requesting (1) reconsideration, pursuant to App.R. 26(A), of our December 23, 2014 decision in *State v. Morgan*, 10th Dist. No. 13AP-620, 2014-Ohio-5661, and (2) certification, pursuant to App.R. 25(A) and Ohio Constitution, Article IV, Section 3(B)(4), of an alleged conflict between our decision and those of seven other appellate districts. Plaintiff-appellee, State of Ohio, filed a memorandum opposing Morgan's motions. For the following reasons, we deny Morgan's motions.

I. Factual and Procedural Background

{¶ 2} The background of this case is fully set forth in this court's prior decision, and we will not repeat it here. In ruling on Morgan's first assignment of error, this court

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held the juvenile court did not commit plain error in failing to appoint a guardian ad litem for Morgan before the amenability hearing where there was no indication that Morgan suffered any prejudice from the juvenile court's failure to appoint a guardian ad litem. Separately, in disposing of Morgan's fourth assignment of error, we held the trial court committed plain error when it sentenced Morgan to consecutive sentences without making the necessary findings under R.C. 2929.14(C)(4).

II. Application for Reconsideration

{¶ 3} "The test generally applied to an application for reconsideration is whether the application calls to the court's attention 'an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been.' " *State v. Lawson*, 10th Dist. No. 12AP-53, 2013-Ohio-803, ¶ 7, quoting *Matthews v. Matthews*, 5 Ohio App.3d 140, 143 (10th Dist.1981). However, an application for reconsideration " 'is not designed for use in instances where a party simply disagrees with the logic or conclusions of the court.' " *Id.*, quoting *State v. Burke*, 10th Dist. No. 04AP-1234, 2006-Ohio-1026, ¶ 2, citing *State v. Owens*, 112 Ohio App.3d 334, 336 (11th Dist.1996).

{¶ 4} Morgan contends reconsideration is warranted because our opinion is internally inconsistent. More specifically, Morgan argues that it was an obvious error for this court to analyze his first assignment of error under a plain error standard requiring a showing of prejudice but to consider his fourth assignment of error using a "plain error as a matter of law" analysis that did not require a showing of prejudice. *Morgan* at ¶ 51.

{¶ 5} We recognize the tension between our application of the plain error analysis to the juvenile court's failure to comply with R.C. 2151.281(A)(1) and Juv.R. 4(B)(1) and our application of the plain error analysis to a trial court's failure to comply with R.C. 2929.14(C)(4). In both instances, however, this court followed its applicable precedent.

{¶ 6} In our resolution of Morgan's first assignment of error, we stated that "[t]his court has consistently declined to find plain error in matters involving a guardian ad litem where the record does not demonstrate prejudice to the appellant." *Morgan* at ¶ 20, citing *State v. Kendrick*, 10th Dist. No. 98AP-1305 (Sept. 30, 1999) (stating "the failure to appoint a guardian ad litem does not constitute reversible error where no request for a

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guardian ad litem is made or defendant cannot show prejudice"); and *In re K.J.D.*, 10th Dist. No. 12AP-652, 2013-Ohio-610, ¶ 50 (stating the appellant "has not pointed to anything in the record suggesting the [guardian ad litem's] not participating in proceedings prejudiced her, much less demonstrated the level of prejudice necessary for plain error"). We were clear that we were adhering to the applicable precedent when we stated that "given this court's precedent on matters more generally involving a guardian ad litem, we will review only for plain error and will not reverse unless appellant can demonstrate he suffered prejudice from the juvenile court's error." *Morgan* at ¶ 21.

{¶ 7} Similarly, in our resolution of Morgan's fourth assignment of error, we noted this court "has consistently determined a trial court's failure to make the findings required by R.C. 2929.14(C)(4) renders the ' " 'appellant's sentence * * * contrary to law and constitutes plain error.' " ' " *Morgan* at ¶ 51, quoting *State v. Jones*, 10th Dist. No. 14AP-80, 2014-Ohio-3740, ¶ 16, quoting *State v. Ayers*, 10th Dist. No. 13AP-371, 2014-Ohio-276, ¶ 15, quoting *State v. Wilson*, 10th Dist. No. 12AP-551, 2013-Ohio-1520, ¶ 18. Again, we were clear we were adhering to the applicable precedent, and we stated "consistent with this court's precedent, we agree with appellant that the trial court committed plain error when it imposed consecutive sentences without first making the necessary findings in R.C. 2929.14(C)(4)." *Morgan* at ¶ 54.

{¶ 8} Admittedly, in applying the plain error standard to the juvenile court's error in failing to comply with R.C. 2151.281(A)(1) and Juv.R. 4(B)(1), we required a demonstration that Morgan suffered prejudice from the error, whereas in our application of the plain error standard to the trial court's error in failing to comply with R.C. 2929.14(C)(4), we did not require a demonstration of prejudice. However, two distinct lines of precedent apply to each of these issues, and "[w]e are bound by the doctrine of stare decisis" to "follow this court's precedent." *Watson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 11AP-606, 2012-Ohio-1017, ¶ 16.

{¶ 9} Because we followed the applicable precedent relevant to each of these issues, we do not agree with Morgan that the differing application of the plain error standard in his first and fourth assignments of error presents an obvious error in our decision. Accordingly, we deny Morgan's application for reconsideration.

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III. Motion to Certify a Conflict

{¶ 10} In the alternative, Morgan filed a motion to certify a conflict. Ohio Constitution, Article IV, Section 3(B)(4) gives the courts of appeals of Ohio the power to certify the record in a case to the Supreme Court of Ohio "whenever * * * a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals." We may grant certification only where the judgments conflict upon the same question. *Johnson v. Indus. Comm.*, 61 Ohio App. 535, 536 (2d Dist.1939).

{¶ 11} Morgan argues our decision creates a conflict with seven other courts of appeals, and he proposes three questions for certification. First, Morgan argues our application of a plain error standard for a juvenile court's failure to appoint a guardian ad litem conflicts with the decisions of the Fourth District in *In re A.G.B.*, 173 Ohio App.3d 263, 2007-Ohio-4753 (4th Dist.); the Eighth District in *In re K.B.*, 170 Ohio App.3d 121, 2007-Ohio-396 (8th Dist.); and the Eleventh District in both *In re Cook*, 11th Dist. No. 2003-A-0132, 2005-Ohio-5288, and *In re Dennis*, 11th Dist. No. 2006-A-0040, 2007-Ohio-2432. With respect to these cases, Morgan proposes the following question for certification:

> Must a child object to the absence of the child's parents, guardian, or legal custodian, or request a guardian ad litem?

{¶ 12} Secondly, Morgan argues our requirement that an appellant be able to demonstrate prejudice before warranting plain error reversal for a court's failure to appoint a guardian ad litem conflicts with the Second District in *In re Sappington*, 123 Ohio App.3d 448 (2d Dist.1997); the Fifth District in *In re B.G.*, 4th Dist. No. 2011-Ohio-COA-012, 2011-Ohio-5898; the Sixth District in *In re William B.*, 163 Ohio App.3d 201, 2005-Ohio-4428 (6th Dist.); the Eighth District in *K.B.*; and the Eleventh District in *Dennis*. With respect to these cases, Morgan proposes the following question for certification:

> Must a child show prejudice to support a reversal on appeal when the juvenile court fails to appoint a guardian ad litem?

{¶ 13} Lastly, Morgan argues our requirement that an appellant must show prejudice in order to reverse when a juvenile court fails to comply with the notice

requirements of R.C. 2152.12(G) and Juv.R. 30(D) conflicts with the Third District in *State v. Taylor*, 26 Ohio App.3d 69 (3d Dist.1985). On this last issue, Morgan proposes the following question for certification:

> Does the failure to notify a parent, guardian, or legal custodian of the amenability hearing render the transfer of jurisdiction void?

{¶ 14} Turning first to Morgan's first two proposed questions for certification, each of the cases Morgan relies upon involves a juvenile court's failure to appoint a guardian ad litem under R.C. 2151.281(A)(2) and Juv.R. 4(B)(2), the provisions requiring appointment of a guardian ad litem when there is a conflict between the juvenile and his or her parent, guardian, or legal custodian, or, in the case of *A.G.B.*, the juvenile court's failure to appoint a guardian ad litem under R.C. 2151.281(B)(1) and Juv.R. 4(B)(5), the provisions governing appointment of a guardian ad litem for an alleged abused or neglected child. Morgan's case, on the other hand, involved the juvenile court's failure to appoint a guardian ad litem under R.C. 2151.281(A)(1) and Juv.R. 4(B)(1). We recognized in our original decision that the cases Morgan relied on did not involve the same legal question because they concerned different provisions of the statute and rule. *Morgan* at ¶ 21 (noting that although there is a lack of consistency among the various appellate districts throughout Ohio on the more general issue of errors related to a juvenile court's failure to appoint a guardian ad litem, none of the cases Morgan cites "squarely address the issue of a juvenile court's failure to appoint a guardian ad litem specifically under R.C. 2151.281(A)(1) or Juv.R. 4(B)(1)"). Therefore, because the judgments of the proposed cases under Morgan's first two proposed questions are not judgments " 'upon the same question' " as our decision in *Morgan*, they do not serve as an appropriate basis for a motion to certify a conflict. *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 596 (1993), quoting Ohio Constitution, Article IV, Section 3(B)(4).

{¶ 15} In his third proposed question for certification, Morgan asks us to certify a conflict with the Third District's opinion in *Taylor*. In *Taylor*, the Third District held that "[u]nder the bind-over procedure set out in R.C. Chapter 2151, the notice of hearing requirement of R.C. 2151.26(C) is mandatory and cannot be waived by the juvenile by his failure to object to non-compliance." *Id.* at syllabus. The Third District noted that the

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statute governing relinquishment of jurisdiction in effect at the time of *Taylor*, R.C. 2151.26(C), required notice be given to the juvenile's "parents, guardian, or other custodian and his counsel at least three days prior to the hearing." The record in *Taylor* demonstrated "no such notice was given to anyone, let alone parents, guardian or custodian." *Id.* at 71. Given the juvenile court's failure to comply with the notice hearing provisions contained in the statute, the Third District concluded the juvenile court "was without jurisdiction to bind the defendant over to the criminal, or general, division of the common pleas court and the latter was without jurisdiction to proceed on an indictment against him." *Id.* at 72.

{¶ 16} In our decision in *Morgan*, we examined Morgan's argument that the trial court's failure to comply with the applicable notice requirements of R.C. 2152.12(G) and Juv.R. 30(D) was reversible error. After noting that the juvenile court did send notice addressed to Morgan's mother but that the record indicated Morgan's mother had passed away before the notice was sent and his father was also deceased, we nonetheless concluded that "even if we were to agree with appellant that the juvenile court erred in not complying with the notice provisions of R.C. 2152.12(G) and Juv.R. 30(D), appellant once again does not demonstrate prejudice from this error." *Morgan* at ¶ 28.

{¶ 17} Morgan construes the two decisions as follows: the Third District in *Taylor* concluded a juvenile court's failure to comply with the notice requirements for a juvenile court hearing was reversible error as a matter of law, while this court concluded that the juvenile court's failure to comply with the notice requirements was subject to the plain error analysis requiring a demonstration of prejudice if the appellant did not object to the juvenile court's failure to comply with the notice provisions. According to Morgan, this presents an appropriate conflict for certification.

{¶ 18} We are mindful that an "alleged conflict must be on a rule of law—not facts." *Whitelock* at 569. "Factual distinctions between cases do not serve as a basis for conflict certification." (Emphasis deleted.) *Id.* at 599. There are important factual distinctions between *Taylor* and our decision in *Morgan* that render these cases inappropriate for certification. In *Taylor*, the juvenile court did not send any notice to the juvenile's parents, guardian, or custodian. In our case, Morgan did not have any living parents at the time of his amenability hearing, nor did he have a guardian or legal custodian.

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Nothing in *Taylor* contemplates the sending of written notice to deceased parents. Additionally, our language in *Morgan* indicates we did not hold that the juvenile court's failure to send written notice to Morgan's deceased parents was error; instead, we reasoned that *even if* the juvenile court had not complied with the notice provisions of R.C. 2152.12(G) and Juv.R. 30(D), under the specific facts of the case in *Morgan*, Morgan was still required to demonstrate prejudice since he did not have any living parents able to receive notice.

{¶ 19} Given these factual distinctions, we do not agree with Morgan that the judgment in *Taylor* presents a conflict upon the same question as the judgment in our decision. Because certification is not appropriate for any of Morgan's three proposed questions, we deny Morgan's motion to certify a conflict.

IV. Disposition

{¶ 20} Based on the foregoing reasons, we deny both Morgan's application for reconsideration and his motion to certify a conflict.

Application for reconsideration denied;
motion to certify a conflict denied.

BROWN, P.J., and SADLER, J., concur.

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 13AP-620 (C.P.C. No. 12CR-5458)
v.	:	(REGULAR CALENDAR)
Raymond Morgan,	:	
Defendant-Appellant.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on December 23, 2014, appellant's first, second, third, and fifth assignments of error are overruled, and appellant's fourth assignment of error is sustained. It is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is reversed, and this cause is remanded to that court for further proceedings in accordance with law and consistent with said decision. Costs assessed equally between the parties.

LUPER SCHUSTER, J., SADLER, P.J., & BROWN, J.

By /S/ JUDGE
Judge Betsy Luper Schuster

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Tenth District Court of Appeals

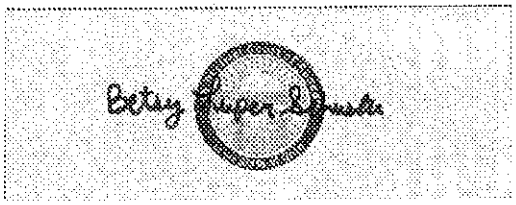
Date: 12-29-2014

Case Title: STATE OF OHIO -VS- RAYMOND MORGAN

Case Number: 13AP000620

Type: JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge Betsy L. Schuster

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 13AP-620 (C.P.C. No. 12CR-5458)
v.	:	(REGULAR CALENDAR)
Raymond Morgan,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 23, 2014

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Timothy Young, Ohio Public Defender, and *Charlyn Bohland*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Raymond Morgan, appeals from a judgment entry of the Franklin County Court of Common Pleas finding him guilty, pursuant to a guilty plea, of one count of burglary, two counts of felonious assault with accompanying firearm specifications, and one count of aggravated robbery with accompanying firearm specification. For the following reasons, we affirm in part and reverse in part.

I. Facts and Procedural History

{¶ 2} This case originated as three separate complaints in the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch ("juvenile court") alleging appellant was a delinquent child. The first complaint charged appellant with two counts of felonious assault, second-degree felonies, in violation of R.C.

2903.11(A)(2) if committed by an adult, with accompanying firearm specifications attached to each count. The second complaint charged appellant with one count of aggravated robbery, a first-degree felony, in violation of R.C. 2911.01(A)(1) if committed by an adult, one count of robbery, a second-degree felony, in violation of R.C. 2911.02(A)(1) if committed by an adult, one count of felonious assault, a second-degree felony, in violation of R.C. 2903.11(A)(1) if committed by an adult, and one count of kidnapping, a first-degree felony, in violation of R.C. 2905.01(A)(2) if committed by an adult, with accompanying firearm specifications attached to each count. The third complaint charged appellant with one count of receiving stolen property, a fifth-degree felony, in violation of R.C. 2913.51(A) if committed by an adult. Appellant was 16 years old at the time of the commission of the offenses and at the time the state filed the three complaints.

{¶ 3} By motions filed March 5, 15, and 27, 2012, the state moved the juvenile court, pursuant to Juv.R. 30 and R.C. 2152.12(B), to relinquish its jurisdiction and transfer the three cases to the general division of the common pleas court for criminal prosecution of appellant as an adult.

{¶ 4} At a hearing on June 14, 2012, appellant expressed a desire to the juvenile court to have his attorney removed from the case "[b]ecause he's not trying to help me go home." (June 14, 2012 Tr. 5.) The juvenile court determined appellant's counsel was providing adequate and appropriate representation for appellant and directed that appellant's counsel continue on in the case.

{¶ 5} The juvenile court conducted probable cause hearings for each of the three complaints and found there was probable cause to believe that appellant committed all of the charged offenses.

{¶ 6} On October 24, 2012, the juvenile court conducted an amenability hearing for each of three complaints. Appellant was represented by counsel at the hearing but did not have a parent or guardian present; his father died in January of that year and his mother died shortly before the amenability hearing. The juvenile court noted it had considered the psychological evaluation of Dr. Barbara Bergman recommending appellant is amenable to care and/or rehabilitation in the juvenile system. The court nonetheless noted "the particularly egregious nature of this gun violence crime spree," and concluded

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appellant is not amenable to care or rehabilitation in the juvenile system. (Oct. 24, 2012 Tr. 17.) The juvenile court sustained the state's motion to relinquish jurisdiction to the general division of the common pleas court in an October 24, 2012 entry.

{¶ 7} Upon transfer, the general division of the common pleas court consolidated all three juvenile cases into a single case number. Following transfer of jurisdiction, the Franklin County Grand Jury returned a 13-count indictment reflecting the same charges listed in the juvenile court complaints.

{¶ 8} Appellant initially entered a plea of not guilty. On April 30, 2013, appellant entered a guilty plea to an amended complaint of one count of burglary, two counts of felonious assault enhanced with firearm specifications, and one count of aggravated robbery enhanced with a firearm specification. At the plea hearing, the prosecutor recited the pertinent facts.

{¶ 9} According to the stipulated facts, the offenses contained in appellant's indictment occurred in four separate incidents over the course of two days. On February 8, 2012, police received a report from Craig Youngman that someone had broken into his residence and stolen two semiautomatic handguns, a camera, and a camera lens. Later that same day, Bruce Sedlock was walking into his home through his front door when he heard a gunshot and realized he had been shot in the leg. He located a spent bullet on the kitchen floor, called police, and was transported to Grant Medical Center by ambulance.

{¶ 10} Approximately 30 minutes later, Eric Hayes exited his vehicle on Steward Avenue when he saw two males walk by him. He heard two gunshots and realized he had been shot. Hayes was also transported to Grant Medical Center where he underwent surgery to remove his spleen as a result of the gunshot wounds. Hayes did not get a clear look at the person who shot him.

{¶ 11} The next day, February 9, 2012, Jimmy White was walking alone on East Whittier Street when he passed appellant, R.D., and Joshua Morgan, appellant's brother. When White looked over his shoulder, he saw Joshua approaching him with a handgun which he pointed at White and demanded White's property. White pulled a utility knife from his pocket and stabbed Joshua in the neck while at the same time trying to wrestle the gun away from him. During the struggle for the gun, White was shot in the left leg.

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White eventually succeeded in grabbing Joshua's gun only to realize appellant and R.D. were approaching him and R.D. was also holding a gun. White shot R.D. as he approached, and appellant and Joshua fled the scene.

{¶ 12} Through the course of their investigation, police were able to determine that appellant and R.D. were responsible for all four incidents while Joshua was only involved in the February 9, 2012 incident. The firearm used to shoot Sedlock, Hayes, and White was one of the weapons reported stolen from Youngman's residence. Additionally, police recovered Youngman's camera at the shared residence of appellant and Joshua.

{¶ 13} The trial court accepted appellant's guilty plea and sentenced him at a May 22, 2013 sentencing hearing to 3 years for the burglary conviction, 3 years each for the two felonious assault convictions with additional 3-year firearm specifications attached to each, and 3 years for the aggravated robbery conviction with an additional 3-year firearm specification. The trial court further ordered the 3-year burglary sentence to run concurrent with the two felonious assault and one aggravated robbery sentences, which are to be served consecutive to each other for a total sentence of 18 years imprisonment. The trial court journalized appellant's convictions and sentence in a May 23, 2013 judgment entry. Appellant did not timely appeal but requested leave to file a delayed appeal pursuant to App.R. 5(A). We granted appellant's motion for leave to file delayed appeal. *State v. Morgan*, 10th Dist. No. 13AP-620 (Jan. 16, 2014) (memorandum decision).

II. Assignments of Error

{¶ 14} Appellant assigns the following five assignments of error for our review:

> I. The juvenile court committed plain error when it failed to appoint a guardian ad litem for [appellant's] amenability hearing, in violation of Juv.R. 4(B)(1) and R.C. 2151.281(A)(1).
>
> II. The trial court abused its discretion when it transferred [appellant's] case for criminal prosecution, in violation of R.C. 2152.12(B); Fifth and Fourteenth Amendments to the U.S. Constitution, and Article I, Section 10, Ohio Constitution.
>
> III. The juvenile court erred when it failed to investigate [appellant's] claim of ineffective assistance of defense counsel, in violation of the Sixth and Fourteenth Amendments to the

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> U.S. Constitution; and, Article I, Section 10, Ohio Constitution.
>
> IV. The trial court erred when it sentenced [appellant] to consecutive sentences without complying with R.C. 2929.14(C)(4), in violation of his right to due process as guaranteed by the Fourteenth Amendment to the U.S. Constitution; and, Article I, Section 16, Ohio Constitution.
>
> V. [Appellant] was denied the effective assistance of counsel, in violation of the Sixth and Fourteenth Amendments to the U.S. Constitution; Section 10, Article I, Ohio Constitution.

III. First Assignment of Error – Guardian Ad Litem

{¶ 15} In his first assignment of error, appellant argues it was reversible error for the juvenile court to fail to appoint a guardian ad litem for him at his amenability hearing.

{¶ 16} The parties disagree over the standard we should apply in reviewing the juvenile court's failure to appoint a guardian ad litem for appellant prior to the amenability hearing. Appellant asserts that because both R.C. 2151.281(A)(1) and Juv.R. 4(B)(1) use mandatory language for the appointment of a guardian ad litem when a juvenile has no parents, the juvenile court's failure to appoint a guardian ad litem is reversible error as a matter of law. The state responds that appellant did not request the appointment of a guardian ad litem, so we may review only for plain error.

{¶ 17} R.C. 2151.281 governs the appointment of a guardian ad litem in juvenile court proceedings. In relevant part, the statute provides that "[t]he court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interests of a child in any proceeding concerning an alleged or adjudicated delinquent child or unruly child when * * * [t]he child has no parent, guardian, or legal custodian." R.C. 2151.281(A)(1). Similarly, Juv.R. 4(B)(1) states that "[t]he court shall appoint a guardian *ad litem* to protect the interests of a child or incompetent adult in a juvenile court proceeding when * * * [t]he child has no parents, guardian, or legal custodian."

{¶ 18} This court has never addressed the issue of whether the juvenile court's failure to comply with the mandates in R.C. 2151.281(A)(1) and Juv.R. 4(B)(1) is reversible error as a matter of law or whether an appellate court can review only for plain error where there is no objection to the trial court's failure to comply with the statute and rule.

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However, we have previously considered a trial court's failure to appoint a guardian ad litem in other circumstances. In *State v. Kendrick*, 10th Dist. No. 98AP-1305 (Sept. 30, 1999), we analogized the failure to appoint a guardian under Civ.R. 17(B) to the failure to appoint a guardian in the juvenile system under Juv.R. 4 and reviewed only for plain error where no request for a guardian ad litem was made. *Id.* Similarly, we applied a plain error analysis to an incompetent adult's failure to object to the level of participation of the guardian ad litem at trial. *In re K.J.D.*, 10th Dist. No. 12AP-652, 2013-Ohio-610, ¶ 50.

{¶ 19} We have found plain error in matters involving a guardian ad litem in juvenile court proceedings " 'only in the extremely rare case involving exceptional circumstances where error seriously affects the basic fairness, integrity, or public reputation of the judicial process itself.' " *In re A.L.*, 10th Dist. No. 07AP-638, 2008-Ohio-800, ¶ 24, quoting *In re McLemore*, 10th Dist. No. 03AP-714, 2004-Ohio-680, ¶ 11. Stated another way, we will conclude the juvenile court committed plain error by failing to appoint a guardian ad litem for appellant "only if we conclude that the alleged error seriously affected the 'basic fairness, integrity, or public reputation' of the proceedings below." *Id.*, citing *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus.

{¶ 20} This court has consistently declined to find plain error in matters involving a guardian ad litem where the record does not demonstrate prejudice to the appellant. In *Kendrick* this court stated: "the failure to appoint a guardian *ad litem* does not constitute reversible error where no request for a guardian *ad litem* is made or defendant cannot show prejudice" and noted "the record fails to even hint at that which a guardian *ad litem* could contribute, or how defendant was prejudiced by the lack of one." Similarly, in *K.J.D.* this court concluded that even if the limited level of the guardian ad litem's participation at trial amounted to error, the appellant "has not pointed to anything in the record suggesting the [guardian ad litem's] not participating in proceedings prejudiced her, much less demonstrated the level of prejudice necessary for plain error." *Id.* at ¶ 50, citing *In re Amber G. & Josie G.*, 6th Dist. No. L-04-1091, 2004-Ohio-5665, ¶ 17 (declining to presume prejudice and determining that even where a guardian ad litem was not appointed but clearly should have been, whether the error constitutes reversible error depends on "whether there was any prejudice by the failure to appoint a guardian ad litem").

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{¶ 21} We are cognizant that some other appellate districts have concluded that an appellant need not object to the trial court's failure to appoint a guardian ad litem in order to warrant reversal. *In re K.B.*, 170 Ohio App.3d 121, 2007-Ohio-396, ¶ 12 (8th Dist.) (concluding that "the absence of an objection does not preclude a reversal due to the juvenile court's failure to appoint a [guardian ad litem] when required under R.C. 2151.281(A)(2) or Juv.R. 4(B)(2)"), citing *In re Etter*, 134 Ohio App.3d 484, 492 (1st Dist.1998); *In re Cook*, 11th Dist. No. 2003-A-0132, 2005-Ohio-5288, ¶ 30 (stating "the absence of an objection does not preclude a reversal due to the juvenile court's failure to appoint a guardian ad litem when required under R.C. 2151.281(A)(2) or Juv.R. 4(B)(2)," and determining the juvenile court abused its discretion when it did not appoint a guardian ad litem where "[a]n examination of the record clearly demonstrates at least the strong possibility of a conflict between appellant and his father"). *Id.* at ¶ 32. However, neither these cases nor the cases from this court squarely address the issue of a juvenile court's failure to appoint a guardian ad litem specifically under R.C. 2151.281(A)(1) or Juv.R. 4(B)(1). As the Fourth District recently explained, "[s]ome courts have held that a juvenile need not request a trial court to appoint a guardian *ad litem* or object to a court's failure to appoint one when a mandatory duty to do so exists." *In re D.A.G.*, 4th Dist. No. 13CA3366, 2013-Ohio-3414, ¶ 45, citing *In re Dennis*, 11th Dist. No. 2006-A-0040, 2007-Ohio-2432, ¶ 29. "Other courts have reviewed an appellant's failure to request the trial court to appoint a guardian *ad litem* or to object using a plain error analysis." *Id.*, citing *In re M.T.*, 6th Dist. No. L-09-1197, 2009-Ohio-6674, ¶ 14-15; *In re A.K.*, 9th Dist. No. 09CA0025-M, 2009-Ohio-4941, ¶ 8, *rev'd on other grounds*, *In re Cases Held for the Decision in D.J.S.*, 130 Ohio St.3d 253, 2011-Ohio-5349; *In re Smith*, 3d Dist. No. 14-05-33, 2006-Ohio-2788, ¶ 35; *In re McHugh Children*, 5th Dist. No. 2004CA00091, 2005-Ohio-2345, ¶ 37. The Fourth District has taken an approach less strict than plain error. *In re Slider*, 160 Ohio App.3d 159, 2005-Ohio-1457, ¶ 11 (4th Dist.). Thus, we recognize there is a lack of consistency among the various appellate districts throughout Ohio on this issue. However, given this court's precedent on matters more generally involving a guardian ad litem, we will review only for plain error and will not reverse unless appellant can demonstrate he suffered prejudice from the juvenile court's error.

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{¶ 22} The record indicates appellant's father died in January 2012. Appellant's mother had attended each of appellant's hearings before the amenability hearing on October 24, 2012. However, at the October 24, 2012 hearing, appellant's counsel informed the juvenile court that appellant's mother had recently died. A woman who identified herself as appellant's "godsister" was present at his amenability hearing and appellant's counsel described her as "[a] very close friend of the family who's taken over the role of mom since her * * * recent death," but there is no indication in the record that this woman was appellant's legal guardian or custodian following the death of appellant's mother. (Oct. 24, 2012 Tr. 12.)

{¶ 23} Because appellant had no parent, guardian or legal custodian at the time of his amenability hearing, he falls within the provisions of R.C. 2151.281(A)(1) and Juv.R. 4(B)(1). Additionally, because the statute and rule both use mandatory language for the appointment of a guardian ad litem in this situation, we agree with appellant that it was error for the trial court to fail to appoint a guardian ad litem. *See, e.g., Smith* at ¶ 34-35 (concluding that "because R.C. 2151.281(A) and Juv.R. 4(B) are mandatory, the juvenile court[']s failure to appoint a guardian ad litem when these provisions are applicable would constitute reversible error," but where the appellant failed to object to the absence of an appointed guardian ad litem, an appellate court will review only for plain error). We must next determine whether that error caused appellant to suffer prejudice sufficient to reverse on the basis of plain error.

{¶ 24} The state first argues there was no prejudice to appellant because appellant was represented by counsel. As the state acknowledges, however, "[t]he duty of a lawyer to his client and the duty of a guardian ad litem to his ward are not always identical and, in fact, may conflict." *In re Baby Girl Baxter*, 17 Ohio St.3d 229, 232 (1985). "The role of guardian ad litem is to investigate the ward's situation and then to ask the court to do what the guardian feels is in the ward's best interest," while "[t]he role of the attorney is to zealously represent his client within the bounds of the law." *Id.* Nonetheless, the state argues the roles of attorney and guardian ad litem can often coincide and that they do so here. The state relies on the Sixth District's decision in *M.T.* for the proposition that there is no prejudice from the juvenile court's failure to appoint a guardian ad litem where counsel safeguard's the client's rights and advocates in accordance with the client's

wishes. *Id.* at ¶ 17. The state argues that "[i]t is difficult to imagine that a [guardian ad litem] would have recommended anything other than that [appellant] should not be bound over—which is exactly what [appellant's] counsel argued at the amenability hearing," so there was no indication that appellant's "best interests" conflicted with counsel's role in protecting appellant's substantive and procedural rights. (Appellee's Brief, 15.) Thus, the state would have us conclude that because appellant "failed to demonstrate how a guardian ad litem would have acted differently or produced a different result," appellant is unable to establish prejudice sufficient to warrant reversal under a plain error standard. *M.T.* at ¶ 18.

{¶ 25} We agree generally that a guardian ad litem for appellant probably would have advocated for appellant's retention in the juvenile system rather than transfer to the general division of the common pleas court. Additionally, we have no way of knowing what a guardian would have argued because one was not appointed. *See, e.g., State v. Roush*, 10th Dist. No. 12AP-201, 2013-Ohio-3162, ¶ 42 (concluding that in considering an ineffective assistance of counsel claim, "[b]ecause we do not know what [an uncalled witness] would have said if he testified at trial, we cannot find that the absence of the [witness'] testimony prejudicially affected the outcome of defendant's trial"). While appellant articulates in a general sense the important function that a guardian ad litem provides in juvenile court, outlining the general requirements set forth in Sup.R. 48(D), appellant does not articulate how, specifically, the juvenile court's failure to appoint a guardian ad litem here prejudiced him. In addition to being represented by counsel who advocated that appellant not be bound over for criminal prosecution, appellant also had the comprehensive and favorable psychologist's report from Dr. Bergman. Taking these considerations together, we agree with the state that appellant is unable to demonstrate prejudice from the juvenile court's failure to appoint him a guardian ad litem.

{¶ 26} Second, the state argues that the presence of appellant's self-identified "godsister" at the amenability hearing alleviated the necessity to appoint a guardian ad litem. While the extent of the godsister's role in appellant's life is unclear, we agree with the state that appellant cannot demonstrate "that the basic fairness of [his] trial was undermined or that its result was affected by the fact that" a family friend appeared to support appellant instead of a parent, guardian or legal custodian. *In re J.J.*, 10th Dist.

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No. 06AP-495, 2006-Ohio-6151, ¶ 26. While we are sympathetic to the fact that appellant faced the amenability hearing without a parent, guardian or legal custodian, we are reluctant to find plain error where appellant does not articulate how the juvenile court's error resulted in any prejudice to appellant.

{¶ 27} Appellant argues that even if we do not find reversible error from the trial court's failure to appoint a guardian ad litem, we must nonetheless reverse for the trial court's failure to comply with the notice requirements of R.C. 2152.12(G). Under R.C. 2152.12(G), for transfer of cases from juvenile court, the juvenile court "shall give notice in writing of the time, place, and purpose of any hearing * * * to the child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing." Similarly, Juv.R. 30(D) requires that "[n]otice in writing of the time, place, and purpose of any hearing held pursuant to this rule shall be given to the state, the child's parents, guardian, or other custodian and the child's counsel at least three days prior to the hearing, unless written notice has been waived on the record."

{¶ 28} The record shows the juvenile court sent notice of the amenability hearing to appellant's mother on October 19, 2012. While the exact date of appellant's mother's death is unclear from the record, appellant's counsel filed a motion for a continuance on October 18, 2012, one day prior to the notice of amenability hearing, for the stated reason of "[f]uneral service for [j]uvenile's mother." However, even if we were to agree with appellant that the juvenile court erred in not complying with the notice provisions of R.C. 2152.12(G) and Juv.R. 30(D), appellant once again does not demonstrate prejudice from this error. As this court has noted, the purpose of R.C. 2152.12(G) is "to protect juveniles by informing their caregivers of any pending actions involving the juveniles so that the caregivers can offer assistance, guidance, and support to the juveniles." *State v. Reynolds*, 10th Dist. No. 06AP-915, 2007-Ohio-4178, ¶ 12. Appellant does not suggest he was unaware of the hearing or unprepared, nor does he articulate how the outcome of the proceeding would have been different had his mother received proper notice before her death.

{¶ 29} The statutory requirement to appoint a guardian ad litem in R.C. 2151.281(A)(1) is mandatory. However, given that this court has required some indication of prejudice in cases involving the failure to appoint a guardian ad litem, and there is no

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indication that appellant suffered any prejudice from the juvenile court's failure to appoint a guardian ad litem here, we cannot conclude this is one of those rare, exceptional cases in which the public's confidence in the judicial system has been undermined. Accordingly, because appellant cannot demonstrate plain error from the juvenile court's failure to appoint a guardian ad litem, we overrule appellant's first assignment of error.

IV. Second Assignment of Error – Transfer of Jurisdiction

{¶ 30} In his second assignment of error, appellant argues the juvenile court abused its discretion when it transferred appellant's case to the general division of the common pleas court for criminal prosecution. R.C. 2152.12 governs the transfer of cases from juvenile court. Under R.C. 2152.12(A), certain cases are subject to mandatory bindover to the common pleas court. As applicable here, appellant was subject to the discretionary bindover provisions under R.C. 2152.12(B). An appellate court reviews a juvenile court's transfer of a case to the common pleas court for an abuse of discretion. *State v. Erwin*, 10th Dist. No. 09AP-918, 2012-Ohio-776, ¶ 7, citing *State v. Steele*, 10th Dist. No. 00AP-499 (June 28, 2001), and *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, ¶ 39. An abuse of discretion connotes a decision that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 31} Pursuant to R.C. 2152.12(B), the juvenile court may transfer a juvenile to common pleas court if the juvenile court finds all of the following:

> (1) The child was fourteen years of age or older at the time of the act charged.
>
> (2) There is probable cause to believe that the child committed the act charged.
>
> (3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions.

The statute further requires the juvenile court, in making the amenability determination, to consider whether the factors indicating the case should be transferred outweigh the factors indicating the case should remain in juvenile court. R.C. 2152.12(B)(3). Here, appellant argues the trial court abused its discretion in making its amenability finding under R.C. 2152.12(B)(3).

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{¶ 32} R.C. 2152.12(D) lists the following factors that a juvenile court must consider in favor of transferring a juvenile to the general division of the common pleas court:

> (1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.
>
> (2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.
>
> (3) The child's relationship with the victim facilitated the act charged.
>
> (4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.
>
> (5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.
>
> (6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.
>
> (7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.
>
> (8) The child is emotionally, physically, or psychologically mature enough for the transfer.
>
> (9) There is not sufficient time to rehabilitate the child within the juvenile system.

{¶ 33} The juvenile court must then weigh the factors in R.C. 2152.12(D) against the factors listed in R.C. 2152.12(E) that weigh against transfer of jurisdiction, including:

> (1) The victim induced or facilitated the act charged.

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> (2) The child acted under provocation in allegedly committing the act charged.
>
> (3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.
>
> (4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.
>
> (5) The child previously has not been adjudicated a delinquent child.
>
> (6) The child is not emotionally, physically, or psychologically mature enough for the transfer.
>
> (7) The child has a mental illness or is a mentally retarded person.
>
> (8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

{¶ 34} In addition to considering the factors listed in R.C. 2152.12(D) and (E), the juvenile court "shall order an investigation into the child's social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child by a public or private agency or a person qualified to make the examination." R.C. 2152.12(C).

{¶ 35} Appellant argues the juvenile court abused its discretion because it discounted Dr. Bergman's psychological report finding appellant was amenable to treatment and, instead, placed too great of weight on the nature of the offenses committed. "Although the seriousness of the crime is not a factor specified under R.C. 2152.12(D), the juvenile court is permitted to consider it in making a discretionary bindover decision." *Erwin* at ¶ 11, citing *State v. Watson*, 47 Ohio St.3d 93 (1989), syllabus.

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{¶ 36} We are mindful that "the juvenile court enjoys wide latitude to retain or relinquish jurisdiction." *Watson* at 95. Further, courts can look to whether "the totality of the evidence supports a finding that the juvenile is not amenable to treatment." *Id.* The hearing transcript indicates the juvenile court expressly considered and weighed the factors both in favor of and against transfer. The court found four factors in favor of transfer: those listed in R.C. 2152.12(D)(1), (4), (5), and (8). By contrast, the juvenile court found no factors that weighed against transfer. Although appellant argues the juvenile court did not place enough emphasis on Dr. Bergman's report, the transcript indicates the juvenile court acknowledged Dr. Bergman's report but specifically found other factors outweighed her report, including "the nature of the acts," the fact that the "guns were acquired as a result of an [a]ggravated [b]urglary," and that the subsequent acts were "almost immediate and were totally random in nature resulting in * * * three gunshot[] victims." (Oct. 24, 2012 Tr. 16.) Ultimately, the juvenile court determined these acts showed a "blatant disregard for life, health and the safety of others in the community," and found "the need to secure and protect the safety of the community." (Oct. 24, 2012 Tr. 16-17.) In light of those other factors, the juvenile court "significantly discount[ed] the conclusions" of Dr. Bergman. (Oct. 24, 2012 Tr. 17.)

{¶ 37} While appellant disagrees with the juvenile court's decision to largely discount the findings of Dr. Bergman, the juvenile court "is not bound by expert opinion, and may assign any weight to expert opinion that it deems appropriate." *State v. West*, 167 Ohio App.3d 598, 2006-Ohio-3518, ¶ 30 (4th Dist.) The statutory scheme does not dictate how much weight must be afforded to any specific factor and, instead, rests the ultimate decision in the discretion of the juvenile court. Appellant's disagreement with the weight afforded the various statutory factors does not amount to an abuse of discretion.

{¶ 38} Appellant further argues the trial court abused its discretion in determining appellant acted as part of organized criminal activity under R.C. 2152.12(D)(4). Appellant argues that just because the complaints alleged appellant admitted to participating with co-defendants, that admission does not automatically suggest organized criminal activity. However, this court has previously concluded that a defendant's participation in an aggravated robbery along with one or more co-defendants is sufficient to find the incident

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occurred as part of organized criminal activity. *See State v. Allen*, 10th Dist. No. 10AP-487, 2011-Ohio-1757, ¶ 30 (concluding defendant's participation in propping open the door at a restaurant where he worked to allow his armed co-defendants to enter the restaurant, take money from the cash registers and safe, and hold restaurant employees against their will was sufficient to conclude the incident occurred as part of organized criminal activity under R.C. 2929.12(B)(6) and (7)); *State v. Lucas*, 10th Dist. No. 10AP-923, 2011-Ohio-3450, ¶ 25 (concluding defendant's participation in an aggravated robbery of waiting in the car with another juvenile while two adults entered a home to rob the occupants was sufficient to determine the robbery occurred as part of organized criminal activity under R.C. 2152.12(D)(4)). Thus, we are not persuaded by appellant's argument that the juvenile court abused its discretion in determining R.C. 2152.12(D)(4) weighed in favor of appellant's transfer to the general division of the common pleas court.

{¶ 39} Additionally, appellant argues the juvenile court should not have found R.C. 2152.12(D)(5) weighed in favor of transfer because there was not sufficient evidence before the juvenile court that it was appellant who actually possessed a firearm. We note that it is unclear from the record whether appellant was the principal offender or whether he was complicit in the offenses, but the transcript indicates the state did not foreclose either possibility. It is undisputed, however, that three victims suffered gunshot wounds as a result of these crimes. Even if appellant was not the one to brandish or discharge the weapon, he was nonetheless complicit in the commission of the crimes. R.C. 2923.03(F) (Ohio's complicity statute, stating that "[w]hoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he were a principal offender"). Thus, we do not agree with appellant that the trial court acted unreasonably in finding R.C. 2152.12(D)(5) weighed in favor of transfer.

{¶ 40} Lastly under this assignment of error, appellant argues the trial court acted unreasonably in failing to conclude that R.C. 2152.12(E)(3) applied to weigh against transfer because appellant was not the principal actor. However, the state explicitly stated its theory for probable cause was that the state did not know which of the co-defendants was the shooter, but that the state was proceeding against appellant as though "he was complicit and/or the shooter." (Aug. 9, 2012 Tr. 9.) Thus, the record did not preclude the possibility that appellant was the principal offender, and we do not conclude the juvenile

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court abused its discretion in failing to conclude R.C. 2152.12(E)(3) applied to weigh against transfer.

{¶ 41} Based on the foregoing reasons, we conclude the juvenile court did not abuse its discretion in determining appellant was not amenable to treatment within the juvenile system and in transferring appellant to the general division of the common pleas court for criminal prosecution. Accordingly, appellant's second assignment of error is overruled.

V. Third Assignment of Error – Failure to Investigate Alleged Ineffective Assistance of Counsel

{¶ 42} In his third assignment of error, appellant argues the juvenile court erred when it failed to investigate appellant's claim of ineffective assistance of counsel.

{¶ 43} " 'Where, during the course of his trial for a serious crime, an indigent accused questions the effectiveness and adequacy of assigned counsel * * *, it is the duty of the trial judge to inquire into the complaint and make such inquiry a part of the record.' " *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, ¶ 68, quoting *State v. Deal*, 17 Ohio St.2d 17 (1969), syllabus. This " 'limited judicial duty arises only if the allegations are sufficiently specific; vague or general objections do not trigger the duty to investigate further.' " *Id.*, quoting *State v. Carter*, 128 Ohio App.3d 419, 423 (4th Dist.1998). The inquiry may be brief and minimal. *State v. Erwin*, 10th Dist. No. 09AP-918, 2010-Ohio-3022, ¶ 8.

{¶ 44} "To discharge a court-appointed attorney, the defendant must show a breakdown in the attorney-client relationship of such magnitude as to jeopardize the defendant's right to effective assistance of counsel." *State v. Coleman*, 37 Ohio St.3d 286, 292 (1988), paragraph four of the syllabus. " '[M]ere hostility, tension and personal conflicts between attorney and client do not constitute a total breakdown in communication if those problems do not interfere with the preparation and presentation of a defense.' " *Erwin*, 2010-Ohio-3022, at ¶ 7, quoting *State v. Furlow*, 2d Dist. No. 03CA0058, 2004-Ohio-5279, ¶ 12.

{¶ 45} At a hearing on June 14, 2012, appellant's appointed counsel informed the juvenile court that during his meeting with appellant, appellant told the attorney that he intended to ask the court to have his counsel removed and for new counsel to be

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appointed. Appellant's counsel asked the juvenile court to address appellant's concerns on the record. When the juvenile court gave appellant the opportunity to explain his concerns with his attorney, appellant stated his counsel was "not trying to help me go home" and that "it's everybody['s] story against mine[ ]." (June 14, 2012 Tr. 6.) The juvenile court then asked appellant if he had anything else he wished to add, and appellant gave a non-verbal response. After giving appellant the opportunity to explain his concerns with his counsel, the juvenile court indicated its own favorable impression of appellant's counsel, and stated:

> [Y]ou may be frustrated that you think this case is taking as long as it's taking but this is a prosecution not a persecution. You have the right to be represented by counsel. I think you're being adequately and appropriately represented. We're going through a lot of process here that is inures to your benefit. If we short circuit the process that could be very detrimental to you. I don't want that for you. You shouldn't want that for yourself. And I'm sure [appellant's counsel] doesn't want that to you.
>
> So on the basis of [appellant's counsel's] not trying to let me go home, I'm going to ignore your request and I'm going to direct that [appellant's counsel] continue to be your appointed counsel.

(Sic passim.) (June 14, 2012 Tr. 7.)

{¶ 46} First, we agree with the state that appellant's statement that his counsel was not trying to help him go home did not articulate sufficiently specific facts to trigger the juvenile court's duty to inquire. *Erwin*, 2010-Ohio-3022, at ¶ 11 (finding defendant's complaint that he "did not think [appointed counsel] was looking out for his best interest" was too general to require the inquiry contemplated in *Deal*, and noting the defendant did not "allege any specific instances where his court-appointed attorney inadequately represented him"). Additionally, even though appellant's remarks were not specific enough to require an inquiry, the juvenile court nonetheless gave appellant the opportunity to specifically explain his dissatisfaction with his counsel, which appellant declined to do. *Erwin*, 2010-Ohio-3022, at ¶ 10, citing *State v. Hibbler*, 2d Dist. No. 2001-CA-43, 2002-Ohio-4464, ¶ 15, citing *State v. Harris*, 6th Dist. No. L-92-039 (Nov. 27, 1992) (stating "[t]he accused bears the duty of announcing the grounds of the

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motion" to have his counsel removed). Therefore, we conclude the juvenile court did not err in not conducting a more specific inquiry into appellant's dissatisfaction with his appointed attorney. Accordingly, we overrule appellant's third assignment of error.

VI. Fourth Assignment of Error – Consecutive Sentences

{¶ 47} In his fourth assignment of error, appellant argues the trial court erred when it sentenced him to consecutive sentences without making the necessary findings required by R.C. 2929.14(C)(4).

{¶ 48} Initially, we note that appellant did not object to the imposition of consecutive sentences at the sentencing hearing, so our review is limited to plain error. Crim.R. 52(B); *State v. Wilson*, 10th Dist. No. 12AP-551, 2013-Ohio-1520, ¶ 8.

{¶ 49} Under R.C. 2929.14(C)(4), when a trial court sentences a defendant to consecutive sentences for multiple offenses, it must make specific findings of fact. In relevant part, the statute reads:

> 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 * * *, 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.

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{¶ 50} Before imposing consecutive sentences, the trial court is required, under R.C. 2929.14(C)(4), to make three findings: " '(1) that consecutive sentences are necessary to protect the public from the future crime or to punish the offender; (2) 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 (3) that one of the subsections (a), (b), or (c) apply.' " *State v. Ayers*, 10th Dist. No. 13AP-371, 2014-Ohio-276, ¶ 12, quoting *State v. Roush* at ¶ 76. While the trial court "need not use talismanic words to comply with R.C. 2929.14(C)(4) before imposing consecutive sentences, the trial court must make clear on the record that it made the required findings." *State v. Jones*, 10th Dist. No. 14AP-80, 2014-Ohio-3740, ¶ 13, citing *State v. Revels*, 10th Dist. No. 12AP-831, 2014-Ohio-795, ¶ 10, citing *State v. Boynton*, 10th Dist. No. 12AP-975, 2013-Ohio-3794, ¶ 9.

{¶ 51} Here, the state concedes the trial court did not make the necessary findings under R.C. 2929.14(C)(4). The state argues there is no plain error here because appellant cannot show his sentence would have been different but for the trial court's failure to make the statutory findings. This court, however, has consistently determined a trial court's failure to make the findings required by R.C. 2929.14(C)(4) renders the " 'appellant's sentence * * * contrary to law and constitutes plain error.' " *Jones* at ¶ 16, quoting *Ayers* at ¶ 15, quoting *Wilson* at ¶ 18. *See also State v. Smith*, 10th Dist. No. 14AP-123, 2014-Ohio-3700, ¶ 7; *State v. Bailey*, 10th Dist. No. 12AP-699, 2013-Ohio-3596, ¶ 46; *State v. Fair*, 10th Dist. No. 13AP-901, 2014-Ohio-2788, ¶ 22; *State v. Adams*, 10th Dist. No. 13AP-783, 2014-Ohio-1809, ¶ 7; *State v. F.R.*, 10th Dist. No. 13AP-525, 2014-Ohio-799, ¶ 25. The record here demonstrates the trial court did not make the requisite statutory findings before imposing consecutive sentences.

{¶ 52} The state acknowledges this court's precedent but disagrees with this court's approach of finding plain error as a matter of law for a trial court's failure to make the findings required by R.C. 2929.14(C)(4). Additionally, the state argues R.C. 2953.08(C)(1) precludes appellate review of appellant's sentence because the trial court could have imposed the same 18-year sentence solely for the aggravated robbery conviction plus the 9 years imposed for the firearm specifications. The state relies on *State v. Chavez*, 8th Dist. No. 99436, 2013-Ohio-4700, ¶ 47, which held that "R.C. 2953.08(C)(1) limits review of consecutive sentences to situations where the combined consecutive sentence is greater

than the maximum sentence for any one conviction." In pertinent part, R.C. 2953.08(C)(1) states:

> In addition to the right to appeal a sentence granted under division (A) or (B) of this section, a defendant who is convicted of or pleads guilty to a felony may seek leave to appeal a sentence imposed upon the defendant on the basis that the sentencing judge has imposed consecutive sentences under division (C)(3) of section 2929.14 of the Revised Code and that the consecutive sentences exceed the maximum prison term allowed by division (A) of that section for the most serious offense of which the defendant was convicted. Upon the filing of a motion under this division, the court of appeals may grant leave to appeal the sentence if the court determines that the allegation included as the basis of the motion is true.

{¶ 53} The state asserts, based on the Eighth District's decision in *Chavez*, that the reference to subsection (C)(3) in the above-quoted language is a clerical error and the General Assembly must have intended to refer to R.C. 2929.14(C)(4). *Id.* Even assuming we agree with the state that the reference to subsection (C)(3) is a clerical error, we do not agree with the state's position that R.C. 2953.08(C)(1) precludes appellate review in this case. Based on the plain language of the statute, the right to appeal a sentence conferred by R.C. 2953.08(C)(1) is a right "[*i*]*n addition to* the right to appeal a sentence under division (A) or (B) of this section." (Emphasis added.) Thus, R.C. 2953.08(C)(3) does not limit the right to appeal under R.C. 2953.08(A) and (B), but, rather, provides additional grounds for relief.

{¶ 54} As relevant here, R.C. 2953.08(A)(4) specifically allows a defendant to appeal a sentence as a matter of right when "[t]he sentence is contrary to law." This court's precedent, outlined above, has made it clear that when a trial court imposes consecutive sentences without making the requisite findings in R.C. 2929.14(C)(4), that sentence is contrary to law. Accordingly, consistent with this court's precedent, we agree with appellant that the trial court committed plain error when it imposed consecutive sentences without first making the necessary findings in R.C. 2929.14(C)(4). Accordingly, we sustain appellant's fourth assignment of error.

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VII. Fifth Assignment of Error – Ineffective Assistance of Counsel

{¶ 55} In his fifth and final assignment of error, appellant argues he was denied the effective assistance of counsel. Specifically, appellant argues his counsel was ineffective at the amenability hearing in the juvenile court proceedings. Appellant does not argue he received ineffective assistance of counsel during the bindover proceedings in the general division of the common pleas court.

{¶ 56} In order to prevail on a claim of ineffective assistance of counsel, appellant must satisfy a two-prong test. First, he must demonstrate that his counsel's performance was deficient. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). This first prong requires appellant to show that his counsel committed errors which were "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* If appellant can so demonstrate, he must then establish that he was prejudiced by the deficient performance. *Id.* To show prejudice, appellant must establish there is a reasonable probability that, but for his counsel's errors, the result of the trial would have been different. A "reasonable probability" is one sufficient to undermine confidence in the outcome of the trial. *Id.* at 694.

{¶ 57} In considering claims of ineffective assistance of counsel, courts indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, ¶ 101. Appellant contends his trial counsel was ineffective in failing to call any witnesses to testify on his behalf at the amenability hearing. More specifically, appellant asserts his counsel should have (1) requested an expert witness to testify about the effects of the traumatic events in appellant's life, and (2) called character witnesses to demonstrate appellant's good character and explain why he should be retained in the juvenile system.

{¶ 58} First, we do not agree that appellant's counsel's failure to call an expert witness at the amenability hearing amounts to ineffective assistance of counsel. The juvenile court had before it Dr. Bergman's very thorough report that included the very information that appellant argues an expert witness would have provided. Additionally, the juvenile court had the presentence investigation report that contained additional information regarding appellant's background and the traumatic events of his life. Appellant does not articulate what additional information a supplementary expert would

have provided. *In re H.D.D.*, 10th Dist. No. 12AP-134, 2012-Ohio-6160, ¶ 59 (finding no ineffective assistance of counsel from trial counsel's failure to call an expert toxicologist where the appellant provided no information either in the trial court or on appeal as to what the expert's testimony might have been), citing *In re Graves*, 11th Dist. No. 99-G-2219 (June 23, 2000) (stating "[a]ppellant fails to demonstrate either by suggestion or through the record what favorable evidence existed which was not presented by counsel").

{¶ 59} To the extent appellant argues his counsel was ineffective in failing to call Dr. Bergman to testify in person, this decision may have been a strategic one on the part of counsel to introduce only the favorable information in the report and avoid any unfavorable information or surprises at the hearing. "Tactical or strategic trial decisions, even if ultimately unsuccessful, will not substantiate a claim of ineffective assistance of counsel." *State v. Ryan*, 10th Dist. No. 08AP-481, 2009-Ohio-3235, ¶ 77, citing *In re M.E.V.*, 10th Dist. No. 08AP-1097, 2009-Ohio-2408, ¶ 34.

{¶ 60} Second, appellant's argument that his counsel was ineffective in failing to call a character witness at the amenability hearing similarly fails. Again, "counsel's decision whether to call a witness falls within the rubric of trial strategy and will not be second-guessed by a reviewing court." *State v. Rippy*, 10th Dist. No. 08AP-248, 2008-Ohio-6680, ¶ 14, citing *State v. Treesh*, 90 Ohio St.3d 460, 490 (2001). Further, appellant merely speculates as to what a hypothetical character witness may have said during his or her testimony, but mere speculation as to what a witness might have testified to and how such testimony would have affected the hearing's outcome is insufficient to establish a claim of ineffective assistance of counsel. *Id.*, citing *State v. Wiley*, 10th Dist. No. 03AP-340, 2004-Ohio-1008, ¶ 30, citing *State v. Bradley*, 42 Ohio St.3d 136 (1989).

{¶ 61} Accordingly, appellant is unable to demonstrate his counsel was ineffective, nor does appellant demonstrate any prejudice from his counsel's alleged inadequacies. Because appellant has failed to satisfy the *Strickland* test, we overrule appellant's fifth and final assignment of error.

VIII. Disposition

{¶ 62} Based on the foregoing reasons, we conclude the juvenile court did not commit plain error in not appointing a guardian ad litem, the juvenile court did not abuse

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its discretion in transferring appellant to the general division of the common pleas court for criminal prosecution, the juvenile court did not err in failing to investigate appellant's claim of alleged ineffective assistance of counsel, and appellant did not receive ineffective assistance of counsel during his amenability hearing. However, we also conclude the trial court committed plain error when it imposed consecutive sentences without first making the statutory findings required by R.C. 2929.14(C)(4). Having overruled appellant's first, second, third, and fifth assignments of error, and having sustained appellant's fourth assignment of error, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas and remand the matter to that court for resentencing.

Judgment affirmed in part, reversed in part, and cause remanded with instructions.

SADLER, P.J., and BROWN, J., concur.

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ORC Ann. 2151.281

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 54 (SB 181).

§ 2151.281 Guardian ad litem.

(A) The court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent child or unruly child when either of the following applies:

(1) The child has no parent, guardian, or legal custodian.

(2) The court finds that there is a conflict of interest between the child and the child's parent, guardian, or legal custodian.

(B)

(1) Except as provided in division (K) of this section, the court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged abused or neglected child and in any proceeding held pursuant to *section 2151.414 of the Revised Code*. The guardian ad litem so appointed shall not be the attorney responsible for presenting the evidence alleging that the child is an abused or neglected child and shall not be an employee of any party in the proceeding.

(2) Except in any proceeding concerning a dependent child involving the permanent custody of an infant under the age of six months for the sole purpose of placement for adoption by a private child placing agency, the court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged dependent child if any of the following applies:

(a) The parent of the child appears to be mentally incompetent or is under eighteen years of age.

(b) There is a conflict of interest between the child and the child's parents, guardian, or custodian.

(c) The court believes that the parent of the child is not capable of representing the best interest of the child.

(3) Except in any proceeding concerning a dependent child involving the permanent custody of an infant under the age of six months for the sole purpose of placement for adoption by a private child placing agency, the court may appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of the child in any other proceeding concerning an alleged dependent child.

(4) The guardian ad litem appointed for an alleged or adjudicated abused or neglected child may bring a civil action against any person who is required by division (A)(1) or (4) of *section 2151.421 of the Revised Code* to file a report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred if that person knows, or has reasonable cause to suspect or believe based on facts that would cause a reasonable person in a similar position to suspect or believe, as applicable, that the child for whom the guardian ad litem is appointed is the subject of child abuse or child neglect and does not file the required report and if the child suffers any injury or harm as a result of the child abuse or child neglect that is known or reasonably suspected or believed to have occurred or suffers additional injury or harm after the failure to file the report.

(C) In any proceeding concerning an alleged or adjudicated delinquent, unruly, abused, neglected, or dependent child in which the parent appears to be mentally incompetent or is under eighteen years of age, the court shall appoint a guardian ad litem to protect the interest of that parent.

(D) The court shall require the guardian ad litem to faithfully discharge the guardian ad litem's duties and, upon the guardian ad litem's failure to faithfully discharge the guardian ad litem's duties, shall discharge the guardian ad litem

and appoint another guardian ad litem. The court may fix the compensation for the service of the guardian ad litem, which compensation shall be paid from the treasury of the county, subject to rules adopted by the supreme court.

(E) A parent who is eighteen years of age or older and not mentally incompetent shall be deemed sui juris for the purpose of any proceeding relative to a child of the parent who is alleged or adjudicated to be an abused, neglected, or dependent child.

(F) In any case in which a parent of a child alleged or adjudicated to be an abused, neglected, or dependent child is under eighteen years of age, the parents of that parent shall be summoned to appear at any hearing respecting the child, who is alleged or adjudicated to be an abused, neglected, or dependent child.

(G) Except as provided in division (K) of this section, in any case in which a guardian ad litem is to be appointed for an alleged or adjudicated abused, neglected, or dependent child or in any case involving an agreement for the voluntary surrender of temporary or permanent custody of a child that is made in accordance with *section 5103.15 of the Revised Code*, the court shall appoint the guardian ad litem in each case as soon as possible after the complaint is filed, the request for an extension of the temporary custody agreement is filed with the court, or the request for court approval of the permanent custody agreement is filed. The guardian ad litem or the guardian ad litem's replacement shall continue to serve until any of the following occur:

(1) The complaint is dismissed or the request for an extension of a temporary custody agreement or for court approval of the permanent custody agreement is withdrawn or denied;

(2) All dispositional orders relative to the child have terminated;

(3) The legal custody of the child is granted to a relative of the child, or to another person;

(4) The child is placed in an adoptive home or, at the court's discretion, a final decree of adoption is issued with respect to the child;

(5) The child reaches the age of eighteen if the child is not mentally retarded, developmentally disabled, or physically impaired or the child reaches the age of twenty-one if the child is mentally retarded, developmentally disabled, or physically impaired;

(6) The guardian ad litem resigns or is removed by the court and a replacement is appointed by the court.

If a guardian ad litem ceases to serve a child pursuant to division (G)(4) of this section and the petition for adoption with respect to the child is denied or withdrawn prior to the issuance of a final decree of adoption or prior to the date an interlocutory order of adoption becomes final, the juvenile court shall reappoint a guardian ad litem for that child. The public children services agency or private child placing agency with permanent custody of the child shall notify the juvenile court if the petition for adoption is denied or withdrawn.

(H) If the guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child is an attorney admitted to the practice of law in this state, the guardian ad litem also may serve as counsel to the ward. Until the supreme court adopts rules regarding service as a guardian ad litem that regulate conflicts between a person's role as guardian ad litem and as counsel, if a person is serving as guardian ad litem and counsel for a child and either that person or the court finds that a conflict may exist between the person's roles as guardian ad litem and as counsel, the court shall relieve the person of duties as guardian ad litem and appoint someone else as guardian ad litem for the child. If the court appoints a person who is not an attorney admitted to the practice of law in this state to be a guardian ad litem, the court also may appoint an attorney admitted to the practice of law in this state to serve as counsel for the guardian ad litem.

(I) The guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child shall perform whatever functions are necessary to protect the best interest of the child, including, but not limited to, investigation, mediation, monitoring court proceedings, and monitoring the services provided the child by the public children services agency or private child placing agency that has temporary or permanent custody of the child, and shall file any motions and other court papers that are in the best interest of the child in accordance with rules adopted by the supreme court.

The guardian ad litem shall be given notice of all hearings, administrative reviews, and other proceedings in the same manner as notice is given to parties to the action.

(J)

(1) When the court appoints a guardian ad litem pursuant to this section, it shall appoint a qualified volunteer or court appointed special advocate whenever one is available and the appointment is appropriate.

(2) Upon request, the department of job and family services shall provide for the training of volunteer guardians ad litem.

(K) A guardian ad litem shall not be appointed for a child who is under six months of age in any proceeding in which a private child placing agency is seeking permanent custody of the child or seeking approval of a voluntary permanent custody surrender agreement for the sole purpose of the adoption of the child.

History

133 v H 320 (Eff 11-19-69); 136 v H 85 (Eff 11-28-75); 138 v H 695 (Eff 10-24-80); 140 v S 321 (Eff 4-9-85); 141 v H 529 (Eff 3-11-87); 142 v S 89 (Eff 1-1-89); *146 v H 274* (Eff 8-8-96); *146 v H 419* (Eff 9-18-96); *148 v H 471*. Eff 7-1-2000; *151 v S 17*, § 1, eff. 8-3-06; *151 v S 238*, § 1, eff. 9-21-06; *2014 HB 213*, § 1, eff. Sept. 17, 2014.

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ORC Ann. 2152.12

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 54 (SB 181).

§ 2152.12 Transfer of case; prosecution of child nullity in absence of transfer; juvenile court loses jurisdiction if child is not taken into custody or apprehended prior to attaining age twenty-one.

(A)

(1)

(a) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the juvenile court at a hearing shall transfer the case if either of the following applies:

(i) The child was sixteen or seventeen years of age at the time of the act charged and there is probable cause to believe that the child committed the act charged.

(ii) The child was fourteen or fifteen years of age at the time of the act charged, *section 2152.10 of the Revised Code* provides that the child is eligible for mandatory transfer, and there is probable cause to believe that the child committed the act charged.

(b) After a complaint has been filed alleging that a child is a delinquent child by reason of committing a category two offense, the juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen years of age at the time of the act charged and either of the following applies:

(i) Division (A)(2)(a) of *section 2152.10 of the Revised Code* requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(ii) Division (A)(2)(b) of *section 2152.10 of the Revised Code* requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(2) The juvenile court also shall transfer a case in the circumstances described in division (C)(5) of *section 2152.02 of the Revised Code* or if either of the following applies:

(a) A complaint is filed against a child who is eligible for a discretionary transfer under *section 2152.10 of the Revised Code* and who previously was convicted of or pleaded guilty to a felony in a case that was transferred to a criminal court.

(b) A complaint is filed against a child who is domiciled in another state alleging that the child is a delinquent child for committing an act that would be a felony if committed by an adult, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.

(3) If a complaint is filed against a child alleging that the child is a delinquent child and the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of this section and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined in accordance with *section 2152.121 of the Revised Code*.

(B) Except as provided in division (A) of this section, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case if the court finds all of the following:

(1) The child was fourteen years of age or older at the time of the act charged.

(2) There is probable cause to believe that the child committed the act charged.

(3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its decision under this division, the court shall consider whether the applicable factors under division (D) of this section indicating that the case should be transferred outweigh the applicable factors under division (E) of this section indicating that the case should not be transferred. The record shall indicate the specific factors that were applicable and that the court weighed.

(C) Before considering a transfer under division (B) of this section, the juvenile court shall order an investigation into the child's social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The investigation shall be completed and a report on the investigation shall be submitted to the court as soon as possible but not more than forty-five calendar days after the court orders the investigation. The court may grant one or more extensions for a reasonable length of time. The child may waive the examination required by this division if the court finds that the waiver is competently and intelligently made. Refusal to submit to a mental examination by the child constitutes a waiver of the examination.

(D) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, in favor of a transfer under that division:

(1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.

(2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.

(3) The child's relationship with the victim facilitated the act charged.

(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.

(5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of *section 2923.12 of the Revised Code*, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

(6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.

(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.

(8) The child is emotionally, physically, or psychologically mature enough for the transfer.

(9) There is not sufficient time to rehabilitate the child within the juvenile system.

(E) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, against a transfer under that division:

(1) The victim induced or facilitated the act charged.

(2) The child acted under provocation in allegedly committing the act charged.

(3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.

(4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.

(5) The child previously has not been adjudicated a delinquent child.

(6) The child is not emotionally, physically, or psychologically mature enough for the transfer.

(7) The child has a mental illness or is a mentally retarded person.

(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

(F) If one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult, if a motion is made alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred for, and if a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to division (B) of this section, the juvenile court, in deciding the motions, shall proceed in the following manner:

(1) Initially, the court shall decide the motion alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred.

(2) If the court determines that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred, the court shall transfer the case or cases in accordance with that division. After the transfer pursuant to division (A) of this section, the court shall decide, in accordance with division (B) of this section, whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division. Notwithstanding division (B) of this section, prior to transferring a case pursuant to division (A) of this section, the court is not required to consider any factor specified in division (D) or (E) of this section or to conduct an investigation under division (C) of this section.

(3) If the court determines that division (A) of this section does not require that the case or cases involving one or more of the acts charged be transferred, the court shall decide in accordance with division (B) of this section whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division.

(4) No report on an investigation conducted pursuant to division (C) of this section shall include details of the alleged offense as reported by the child.

(G) The court shall give notice in writing of the time, place, and purpose of any hearing held pursuant to division (A) or (B) of this section to the child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing.

(H) No person, either before or after reaching eighteen years of age, shall be prosecuted as an adult for an offense committed prior to becoming eighteen years of age, unless the person has been transferred as provided in division (A) or (B) of this section or unless division (J) of this section applies. Any prosecution that is had in a criminal court on the mistaken belief that the person who is the subject of the case was eighteen years of age or older at the time of the commission of the offense shall be deemed a nullity, and the person shall not be considered to have been in jeopardy on the offense.

(I) Upon the transfer of a case under division (A) or (B) of this section, the juvenile court shall state the reasons for the transfer on the record, and shall order the child to enter into a recognizance with good and sufficient surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of *section 2151.23 of the Revised Code*.

(J) If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of this section do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case as it has in other criminal cases in that court.

History

RC § *2151.26*, 133 v H 320 (Eff 11-19-69); 134 v S 325 (Eff 1-14-72); 137 v S 119 (Eff 8-30-78); 139 v H 440 (Eff 11-23-81); 140 v S 210 (Eff 7-1-83); 141 v H 499 (Eff 3-11-87); *144 v H 27* (Eff 10-10-91); 146 v H 1 (Eff 1-1-96); *146 v S 2* (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v H 124* (Eff 3-31-97); RC § *2152.12*, *148 v S 179*, § 3. Eff 1-1-2002; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2012 SB 337*, § 1, eff. Sept. 28, 2012.

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ORC Ann. 2929.01

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 54 (SB 181).

Page's Ohio Revised Code Annotated > ***Title 29: Crimes — Procedure*** > ***Chapter 2929: Penalties and Sentencing*** > ***In General***

§ 2929.01 Definitions.

As used in this chapter:

(A)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(T) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of *section 1547.99 of the Revised Code*, division (E) of section 2903.06 or division (D) of *section 2903.08 of the Revised Code*, division (E) or (G) of *section 2929.24 of the Revised Code*, division (B) of *section 4510.14 of the Revised Code*, or division (G) of *section 4511.19 of the Revised Code* or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

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

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

professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

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

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

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

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

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

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

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

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

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

(1) A stated prison term;

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

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

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

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

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

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

(DD) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of *sections 2929.14* to *2929.18* or *2929.24* to *2929.28 of the Revised Code*.

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

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

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

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

(II) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of *section 2929.13 of the Revised Code* and division (G)(1)(d) or (e) of *section 4511.19 of the Revised Code*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

(ZZ) An offense is "committed in proximity to a school" if the offender commits the offense in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

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

(1) Its object is one or more of the following:

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

(b) To facilitate, encourage, or recruit a victim who is less than sixteen years of age or is a developmentally disabled person, or victims who are less than sixteen years of age or are developmentally disabled persons, for any purpose listed in divisions (A)(2)(a) to (c) of *section 2905.32 of the Revised Code*;

(c) To facilitate, encourage, or recruit a victim who is sixteen or seventeen years of age, or victims who are sixteen or seventeen years of age, for any purpose listed in divisions (A)(2)(a) to (c) of *section 2905.32 of the Revised Code*, if the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of *section 2907.03 of the Revised Code* apply with respect to the person engaging in the conduct and the victim or victims.

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

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

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

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

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

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

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

History

146 v S 2 (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v H 445* (Eff 9-3-96); *146 v H 480* (Eff 10-16-96); *146 v S 166* (Eff 10-17-96); *146 v H 180* (Eff 1-1-97); *147 v H 378* (Eff 3-10-98); *147 v S 111* (Eff 3-17-98); *148 v S 9* (Eff 3-8-2000); *148 v S 107* (Eff 3-23-2000); *148 v S 22* (Eff 5-17-2000); *148 v H 349* (Eff 9-22-2000); *148 v S 222* (Eff 3-22-2001); *148 v S 179*, § 3 (Eff 1-1-2002); *149 v H 327*. Eff 7-8-2002; *149 v H 490*, § 1, eff. 1-1-04; *149 v S 123*, § 1, eff. 1-1-04; *150 v S 5*, § 1, Eff 7-31-03; *150 v S 5*, § 3, eff. 1-1-04; *150 v S 57*, § 1, eff. 1-1-04; *150 v H 52*, § 1, eff. 6-1-04; *150 v H 163*, § 1, eff. 9-23-04; *150 v H 473*, § 1, eff. 4-29-05; *151 v H 95*, § 1, eff. 8-3-06; *151 v H 162*, § 1, eff. 10-12-06; *151 v S 260*, § 1, eff. 1-2-07; *151 v H 461*, § 1, eff. 4-4-07; *152 v S 10*, § 1, eff. 1-1-08; *152 v S 220*, § 1, eff. 9-30-08; *152 v H 280*, § 1, eff. 4-7-09; *152 v H 130*, §

1, eff. 4-7-09; 153 v S 162, § 1, eff. 9-13-10; 153 v S 235, § 1, eff. 3-24-11; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2012 HB 487*, § *101.01*, eff. Sept. 10, 2012; *2012 HB 334*, § 1, eff. Dec. 20, 2012; *2014 HB 130*, § 1, eff. June 20, 2014.

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End of Document

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 54 (SB 181).

§ 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 suppressor 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*.

History

146 v S 2 (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v H 88* (Eff 9-3-96); *146 v H 445* (Eff 9-3-96); *146 v H 154* (Eff 10-4-96); *146 v S 166* (Eff 10-17-96); *146 v H 180* (Eff 1-1-97); *147 v H 151* (Eff 9-16-97); *147 v H 32* (Eff 3-10-98); *147 v S 111* (Eff 3-17-98); *147 v H 2* (Eff 1-1-99); *148 v S 1* (Eff 8-6-99); *148 v H 29* (Eff 10-29-99); *148 v S 107* (Eff 3-23-2000); *148 v S 22* (Eff 5-17-2000); *148 v S 222* (Eff 3-22-2001); *149 v H 485* (Eff 6-13-2002); *149 v H 327* (Eff 7-8-2002); *149 v H 130*. Eff 4-7-2003; *149 v S 123*, § 1, eff. 1-1-04; *150 v H 12*, §§ 1, 3, eff. 4-8-04†; *150 v H 52*, § 1, eff. 6-1-04; *150 v H 163*, § 1, eff. 9-23-04; *150 v H 473*, § 1, eff. 4-29-05; *151 v H 95*, § 1, eff. 8-3-06; *151 v H 137*, § 1, eff. 7-11-06; *151 v H 137*, § 3, eff. 8-3-06;

151 v S 260, § 1, eff. 1-2-07; *151 v S 281*, § 1, eff. 1-4-07; *151 v H 461*, § 1, eff. 4-4-07; *152 v S 10*, § 1, eff. 1-1-08; *152 v S 184*, § 1, eff. 9-9-08; *152 v S 220*, § 1, eff. 9-30-08; *152 v H 280*, § 1, eff. 4-7-09; *152 v H 130*, § 1, eff. 4-7-09; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2012 SB 337*, § 1, eff. Sept. 28, 2012; *2014 HB 234*, § 1, effective March 23, 2015.

Page's Ohio Revised Code Annotated
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End of Document

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 54 (SB 181).

§ 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 suppressor 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*.

History

146 v S 2 (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v H 88* (Eff 9-3-96); *146 v H 445* (Eff 9-3-96); *146 v H 154* (Eff 10-4-96); *146 v S 166* (Eff 10-17-96); *146 v H 180* (Eff 1-1-97); *147 v H 151* (Eff 9-16-97); *147 v H 32* (Eff 3-10-98); *147 v S 111* (Eff 3-17-98); *147 v H 2* (Eff 1-1-99); *148 v S 1* (Eff 8-6-99); *148 v H 29* (Eff 10-29-99); *148 v S 107* (Eff 3-23-2000); *148 v S 22* (Eff 5-17-2000); *148 v S 222* (Eff 3-22-2001); *149 v H 485* (Eff 6-13-2002); *149 v H 327* (Eff 7-8-2002); *149 v H 130*. Eff 4-7-2003; *149 v S 123*, § 1, eff. 1-1-04; *150 v H 12*, §§ 1, 3, eff. 4-8-04†; *150 v H 52*, § 1, eff. 6-1-04; *150 v H 163*, § 1, eff. 9-23-04; *150 v H 473*, § 1, eff. 4-29-05; *151 v H 95*, § 1, eff. 8-3-06; *151 v H 137*, § 1, eff. 7-11-06; *151 v H 137*, § 3, eff. 8-3-06;

151 v S 260, § 1, eff. 1-2-07; *151 v S 281*, § 1, eff. 1-4-07; *151 v H 461*, § 1, eff. 4-4-07; *152 v S 10*, § 1, eff. 1-1-08; *152 v S 184*, § 1, eff. 9-9-08; *152 v S 220*, § 1, eff. 9-30-08; *152 v H 280*, § 1, eff. 4-7-09; *152 v H 130*, § 1, eff. 4-7-09; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2012 SB 337*, § 1, eff. Sept. 28, 2012; *2014 HB 234*, § 1, effective March 23, 2015.

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Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 54 (SB 181).

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§ 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 suppressor 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*.

History

146 v S 2 (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v H 88* (Eff 9-3-96); *146 v H 445* (Eff 9-3-96); *146 v H 154* (Eff 10-4-96); *146 v S 166* (Eff 10-17-96); *146 v H 180* (Eff 1-1-97); *147 v H 151* (Eff 9-16-97); *147 v H 32* (Eff 3-10-98); *147 v S 111* (Eff 3-17-98); *147 v H 2* (Eff 1-1-99); *148 v S 1* (Eff 8-6-99); *148 v H 29* (Eff 10-29-99); *148 v S 107* (Eff 3-23-2000); *148 v S 22* (Eff 5-17-2000); *148 v S 222* (Eff 3-22-2001); *149 v H 485* (Eff 6-13-2002); *149 v H 327* (Eff 7-8-2002); *149 v H 130*. Eff 4-7-2003; *149 v S 123*, § 1, eff. 1-1-04; *150 v H 12*, §§ 1, 3, eff. 4-8-04†; *150 v H 52*, § 1, eff. 6-1-04; *150 v H 163*, § 1, eff. 9-23-04; *150 v H 473*, § 1, eff. 4-29-05; *151 v H 95*, § 1, eff. 8-3-06; *151 v H 137*, § 1, eff. 7-11-06; *151 v H 137*, § 3, eff. 8-3-06;

151 v S 260, § 1, eff. 1-2-07; *151 v S 281*, § 1, eff. 1-4-07; *151 v H 461*, § 1, eff. 4-4-07; *152 v S 10*, § 1, eff. 1-1-08; *152 v S 184*, § 1, eff. 9-9-08; *152 v S 220*, § 1, eff. 9-30-08; *152 v H 280*, § 1, eff. 4-7-09; *152 v H 130*, § 1, eff. 4-7-09; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2012 SB 337*, § 1, eff. Sept. 28, 2012; *2014 HB 234*, § 1, effective March 23, 2015.

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Ohio Crim. R. 1

Rules current through rule amendments received through March 11, 2016

Ohio Court Rules > *Ohio Rules Of Criminal Procedure*

Rule 1. Scope of rules: Applicability; Construction; Exceptions

(A) Applicability. These rules prescribe the procedure to be followed in all courts of this state in the exercise of criminal jurisdiction, with the exceptions stated in division (C) of this rule.

(B) Purpose and construction. These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed and applied to secure the fair, impartial, speedy, and sure administration of justice, simplicity in procedure, and the elimination of unjustifiable expense and delay.

(C) Exceptions. These rules, to the extent that specific procedure is provided by other rules of the Supreme Court or to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure (1) upon appeal to review any judgment, order or ruling, (2) upon extradition and rendition of fugitives, (3) in cases covered by the Uniform Traffic Rules, (4) upon the application and enforcement of peace bonds, (5) in juvenile proceedings against a child as defined in *Rule 2(D) of the Rules of Juvenile Procedure*, (6) upon forfeiture of property for violation of a statute of this state, or (7) upon the collection of fines and penalties. Where any statute or rule provides for procedure by a general or specific reference to the statutes governing procedure in criminal actions, the procedure shall be in accordance with these rules.

History

Amended, eff 7-1-75; 7-1-96.

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Ohio Crim. R. 52

Rules current through rule amendments received through March 11, 2016

Ohio Court Rules > ***Ohio Rules Of Criminal Procedure***

Rule 52. Harmless error and plain error

(A) Harmless error. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.

(B) Plain error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

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Ohio Juv. R. 2

Rules current through rule amendments received through March 11, 2016

Ohio Court Rules > ***Ohio Rules Of Juvenile Procedure***

Rule 2. Definitions

As used in these rules:

(A) "Abused child" has the same meaning as in *section 2151.031 of the Revised Code*.

(B) "Adjudicatory hearing" means a hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court.

(C) "Agreement for temporary custody" means a voluntary agreement that is authorized by *section 5103.15 of the Revised Code* and transfers the temporary custody of a child to a public children services agency or a private child placing agency.

(D) "Child" has the same meaning as in *sections 2151.011* and *2152.02 of the Revised Code*.

(E) "Chronic truant" has the same meaning as in *section 2151.011 of the Revised Code*.

(F) "Complaint" means the legal document that sets forth the allegations that form the basis for juvenile court jurisdiction.

(G) "Court proceeding" means all action taken by a court from the earlier of (1) the time a complaint is filed and (2) the time a person first appears before an officer of a juvenile court until the court relinquishes jurisdiction over such child.

(H) "Custodian" means a person who has legal custody of a child or a public children's services agency or private child-placing agency that has permanent, temporary, or legal custody of a child.

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

(J) "Dependent child" has the same meaning as in *section 2151.04 of the Revised Code*.

(K) "Detention" means the temporary care of chi'ldren in restricted facilities pending court adjudication or disposition.

(L) "Detention hearing" means a hearing to determine whether a child shall be held in detention or shelter care prior to or pending execution of a final dispositional order.

(M) "Dispositional hearing" means a hearing to determine what action shall be taken concerning a child who is within the jurisdiction of the court.

(N) "Guardian" means a person, association, or corporation that is granted authority by a probate court pursuant to Chapter 2111 of the Revised Code to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents.

(O) "Guardian ad litem" means a person appointed to protect the interests of a party in a juvenile court proceeding.

(P) "Habitual truant" has the same meaning as in *section 2151.011 of the Revised Code*.

(Q) "Hearing" means any portion of a juvenile court proceeding before the court, whether summary in nature or by examination of witnesses.

(R) "Indigent person" means a person who, at the time need is determined, is unable by reason of lack of property or income to provide for full payment of legal counsel and all other necessary expenses of representation.

(S) "Juvenile court" means a division of the court of common pleas, or a juvenile court separately and independently created, that has jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(T) "Juvenile judge" means a judge of a court having jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(U) "Juvenile traffic offender" has the same meaning as in *section 2151.021 of the Revised Code*.

(V) "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

(W) "Mental examination" means an examination by a psychiatrist or psychologist.

(X) "Neglected child" has the same meaning as in *section 2151.03 of the Revised Code*.

(Y) "Party" means a child who is the subject of a juvenile court proceeding, the child's spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.

(Z) "Permanent custody" means a legal status that vests in a public children's services agency or a private child-placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations.

(AA) "Permanent surrender" means the act of the parents or, if a child has only one parent, of the parent of a child, by a voluntary agreement authorized by *section 5103.15 of the Revised Code*, to transfer the permanent custody of the child to a public children's services agency or a private child-placing agency.

(BB) "Person" includes an individual, association, corporation, or partnership and the state or any of its political subdivisions, departments, or agencies.

(CC) "Physical examination" means an examination by a physician.

(DD) "Planned permanent living arrangement" means an order of a juvenile court pursuant to which both of the following apply:

(1) The court gives legal custody of a child to a public children's services agency or a private child-placing agency without the termination of parental rights;

(2) The order permits the agency to make an appropriate placement of the child and to enter into a written planned permanent living arrangement agreement with a foster care provider or with another person or agency with whom the child is placed.

(EE) "Private child-placing agency" means any association, as defined in *section 5103.02 of the Revised Code* that is certified pursuant to *sections 5103.03* to *5103.05 of the Revised Code* to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

(FF) "Public children's services agency" means a children's services board or a county department of human services that has assumed the administration of the children's services function prescribed by Chapter 5153 of the Revised Code.

(GG) "Removal action" means a statutory action filed by the superintendent of a school district for the removal of a child in an out-of-county foster home placement.

(HH) "Residence or legal settlement" means a location as defined by *section 2151.06 of the Revised Code*.

(II) "Residual parental rights, privileges, and responsibilities" means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including but not limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(JJ) "Rule of court" means a rule promulgated by the Supreme Court or a rule concerning local practice adopted by another court that is not inconsistent with the rules promulgated by the Supreme Court and that is filed with the Supreme Court.

(KK) "Serious youthful offender" means a child eligible for sentencing as described in *sections 2152.11* and *2152.13 of the Revised Code*.

(LL) "Serious youthful offender proceedings" means proceedings after a probable cause determination that a child is eligible for sentencing as described in *sections 2152.11* and *2152.13 of the Revised Code*. Serious youthful offender proceedings cease to be serious youthful offender proceedings once a child has been determined by the trier of fact not to be a serious youthful offender or the juvenile judge has determined not to impose a serious youthful offender disposition on a child eligible for discretionary serious youthful offender sentencing.

(MM) "Shelter care" means the temporary care of children in physically unrestricted facilities, pending court adjudication or disposition.

(NN) "Social history" means the personal and family history of a child or any other party to a juvenile proceeding and may include the prior record of the person with the juvenile court or any other court.

(OO) "Temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person or persons who executed the agreement.

(PP) "Unruly child" has the same meaning as in *section 2151.022 of the Revised Code*.

(QQ) "Ward of court" means a child over whom the court assumes continuing jurisdiction.

History

Amended, eff 7-1-94; 7-1-98; 7-1-01; 7-1-02.

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Ohio Juv. R. 4

Rules current through rule amendments received through March 11, 2016

Ohio Court Rules > *Ohio Rules Of Juvenile Procedure*

Rule 4. Assistance of counsel; Guardian ad litem

(A) Assistance of counsel. Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. When the complaint alleges that a child is an abused child, the court must appoint an attorney to represent the interests of the child. This rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.

(B) Guardian ad litem; when appointed. The court shall appoint a guardian ad litem to protect the interests of a child or incompetent adult in a juvenile court proceeding when:

(1) The child has no parents, guardian, or legal custodian;

(2) The interests of the child and the interests of the parent may conflict;

(3) The parent is under eighteen years of age or appears to be mentally incompetent;

(4) The court believes that the parent of the child is not capable of representing the best interest of the child.

(5) Any proceeding involves allegations of abuse or neglect, voluntary surrender of permanent custody, or termination of parental rights as soon as possible after the commencement of such proceeding.

(6) There is an agreement for the voluntary surrender of temporary custody that is made in accordance with *section 5103.15 of the Revised Code*, and thereafter there is a request for extension of the voluntary agreement.

(7) The proceeding is a removal action.

(8) Appointment is otherwise necessary to meet the requirements of a fair hearing.

(C) Guardian ad litem as counsel.

(1) When the guardian ad litem is an attorney admitted to practice in this state, the guardian may also serve as counsel to the ward providing no conflict between the roles exist[s].

(2) If a person is serving as guardian ad litem and as attorney for a ward and either that person or the court finds a conflict between the responsibilities of the role of attorney and that of guardian ad litem, the court shall appoint another person as guardian ad litem for the ward.

(3) If a court appoints a person who is not an attorney admitted to practice in this state to be a guardian ad litem, the court may appoint an attorney admitted to practice in this state to serve as attorney for the guardian ad litem.

(D) Appearance of attorneys. An attorney shall enter appearance by filing a written notice with the court or by appearing personally at a court hearing and informing the court of said representation.

(E) Notice to guardian ad litem. The guardian ad litem shall be given notice of all proceedings in the same manner as notice is given to other parties to the action.

(F) Withdrawal of counsel or guardian ad litem. An attorney or guardian ad litem may withdraw only with the consent of the court upon good cause shown.

(G) Costs. The court may fix compensation for the services of appointed counsel and guardians ad litem, tax the same as part of the costs and assess them against the child, the child's parents, custodian, or other person in loco parentis of such child.

History

Amended, eff 7-1-76; 7-1-94; 7-1-95; 7-1-98.

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Ohio Juv. R. 7

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Ohio Court Rules > *Ohio Rules Of Juvenile Procedure*

Rule 7. Detention and shelter care

(A) Detention: standards. A child taken into custody shall not be placed in detention or shelter care prior to final disposition unless any of the following apply:

(1) Detention or shelter care is required:

(a) to protect the child from immediate or threatened physical or emotional harm; or

(b) to protect the person or property of others from immediate or threatened physical or emotional harm.

(2) The child may abscond or be removed from the jurisdiction of the court;

(3) The child has no parent, guardian, custodian or other person able to provide supervision and care for the child and return the child to the court when required;

(4) An order for placement of the child in detention or shelter care has been made by the court;

(5) Confinement is authorized by statute.

(B) Priorities in placement prior to hearing. A person taking a child into custody shall, with all reasonable speed, do either of the following:

(1) Release the child to a parent, guardian, or other custodian;

(2) Where detention or shelter care appears to be required under the standards of division (A) of this rule, bring the child to the court or deliver the child to a place of detention or shelter care designated by the court.

(C) Initial procedure upon detention. Any person who delivers a child to a shelter or detention facility shall give the admissions officer at the facility a signed report stating why the child was taken into custody and why the child was not released to a parent, guardian or custodian, and shall assist the admissions officer, if necessary, in notifying the parent pursuant to division (E)(3) of this rule.

(D) Admission. The admissions officer in a shelter or detention facility, upon receipt of a child, shall review the report submitted pursuant to division (C) of this rule, make such further investigation as is feasible and do either of the following:

(1) Release the child to the care of a parent, guardian or custodian;

(2) Where detention or shelter care is required under the standards of division (A) of this rule, admit the child to the facility or place the child in some appropriate facility.

(E) Procedure after admission. When a child has been admitted to detention or shelter care the admissions officer shall do all of the following:

(1) Prepare a report stating the time the child was brought to the facility and the reasons the child was admitted;

(2) Advise the child of the right to telephone parents and counsel immediately and at reasonable times thereafter and the time, place, and purpose of the detention hearing;

(3) Use reasonable diligence to contact the child's parent, guardian, or custodian and advise that person of all of the following:

(a) The place of and reasons for detention;

(b) The time the child may be visited;

(c) The time, place, and purpose of the detention hearing;

(d) The right to counsel and appointed counsel in the case of indigency.

(F) Detention hearing.

(1) Hearing: time; notice. When a child has been admitted to detention or shelter care, a detention hearing shall be held promptly, not later than seventy-two hours after the child is placed in detention or shelter care or the next court day, whichever is earlier, to determine whether detention or shelter care is required. Reasonable oral or written notice of the time, place, and purpose of the detention hearing shall be given to the child and to the parents, guardian, or other custodian, if that person or those persons can be found.

(2) Hearing: advisement of rights. Prior to the hearing, the court shall inform the parties of the right to counsel and to appointed counsel if indigent and the child's right to remain silent with respect to any allegation of a juvenile traffic offense, delinquency, or unruliness.

(3) Hearing procedure. The court may consider any evidence, including the reports filed by the person who brought the child to the facility and the admissions officer, without regard to formal rules of evidence. Unless it appears from the hearing that the child's detention or shelter care is required under division (A) of this rule, the court shall order the child's release to a parent, guardian, or custodian. Whenever abuse, neglect, or dependency is alleged, the court shall determine whether there are any appropriate relatives of the child who are willing to be temporary custodians and, if so, appoint an appropriate relative as the temporary custodian of the child. The court shall make a reasonable efforts determination in accordance with *Juv.R. 27(B)(1)*.

(G) Rehearing. If a parent, guardian, or custodian did not receive notice of the initial hearing and did not appear or waive appearance at the hearing, the court shall rehear the matter promptly. After a child is placed in shelter care or detention care, any party and the guardian ad litem of the child may file a motion with the court requesting that the child be released from detention or shelter care. Upon the filing of the motion, the court shall hold a hearing within seventy-two hours.

(H) Separation from adults. No child shall be placed in or committed to any prison, jail, lockup, or any other place where the child can come in contact or communication with any adult convicted of crime, under arrest, or charged with crime.

(I) Physical examination. The supervisor of a shelter or detention facility may provide for a physical examination of a child placed in the shelter or facility.

(J) Telephone and visitation rights. A child may telephone the child's parents and attorney immediately after being admitted to a shelter or detention facility and at reasonable times thereafter.

The child may be visited at reasonable visiting hours by the child's parents and adult members of the family, the child's pastor, and the child's teachers. The child may be visited by the child's attorney at any time.

History

Amended, eff 7-1-94; 7-1-01.

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Ohio Juv. R. 13

Rules current through rule amendments received through March 11, 2016

Ohio Court Rules > *Ohio Rules Of Juvenile Procedure*

Rule 13. Temporary disposition; Temporary orders; Emergency medical and surgical treatment

(A) Temporary disposition. Pending hearing on a complaint, the court may make such temporary orders concerning the custody or care of a child who is the subject of the complaint as the child's interest and welfare may require.

(B) Temporary orders.

(1) Pending hearing on a complaint, the judge or magistrate may issue temporary orders with respect to the relations and conduct of other persons toward a child who is the subject of the complaint as the child's interest and welfare may require.

(2) Upon the filing of an abuse, neglect, or dependency complaint, any party may by motion request that the court issue any of the following temporary orders to protect the best interest of the child:

(a) An order granting temporary custody of the child to a particular party;

(b) An order for the taking of the child into custody pending the outcome of the adjudicatory and dispositional hearings;

(c) An order granting, limiting, or eliminating visitation rights with respect to the child;

(d) An order for the payment of child support and continued maintenance of any medical, surgical, or hospital policies of insurance for the child that existed at the time of the filing of the complaint, petition, writ, or other document;

(e) An order requiring a party to vacate a residence that will be lawfully occupied by the child;

(f) An order requiring a party to attend an appropriate counseling program that is reasonably available to that party;

(g) Any other order that restrains or otherwise controls the conduct of any party which conduct would not be in the best interest of the child.

(3) The orders permitted by division (B)(2) of this rule may be granted ex parte if it appears that the best interest and welfare of the child require immediate issuance. If the court issues the requested ex parte order, the court shall hold a hearing to review the order within seventy-two hours after it is issued or before the end of the next court day after the day on which it is issued, whichever occurs first. The court shall appoint a guardian ad litem for the child prior to the hearing. The court shall give written notice of the hearing by means reasonably likely to result in the party's receiving actual notice and include all of the following:

(a) The date, time, and location of the hearing;

(b) The issues to be addressed at the hearing;

(c) A statement that every party to the hearing has a right to counsel and to court appointed counsel, if the party is indigent;

(d) The name, telephone number, and address of the person requesting the order;

(e) A copy of the order, except when it is not possible to obtain it because of the exigent circumstances in the case.

(4) The court may review any order under this rule at any time upon motion of any party for good cause shown or upon the motion of the court.

(5) If the court does not grant an ex parte order, the court shall hold a shelter care hearing on the motion within ten days after the motion is filed.

(C) **Emergency medical and surgical treatment.**Upon the certification of one or more reputable practicing physicians, the court may order such emergency medical and surgical treatment as appears to be immediately necessary for any child concerning whom a complaint has been filed.

(D) **Ex parte proceedings.**In addition to the ex parte proceeding described in division (B) of this rule, the court may proceed summarily and without notice under division (A), (B), or (C) of this rule, where it appears to the court that the interest and welfare of the child require that action be taken immediately.

(E) **Hearing; notice.**In addition to the procedures specified in division (B) of this rule and wherever possible, the court shall provide an opportunity for hearing before proceeding under division (D) of this rule. Where the court has proceeded without notice under division (D) of this rule, it shall give notice of the action it has taken to the parties and any other affected person and provide them an opportunity for a hearing concerning the continuing effects of the action.

(F) **Probable cause finding.**Upon the finding of probable cause at a shelter care hearing that a child is an abused child, the court may do any of the following:

(1) Upon motion by the court or of any party, issue reasonable protective orders with respect to the interviewing or deposition of the child;

(2) Order that the child's testimony be videotaped for preservation of the testimony for possible use in any other proceedings in the case;

(3) Set any additional conditions with respect to the child or the case involving the child that are in the best interest of the child.

(G) **Payment.**The court may order the parent, guardian, or custodian, if able, to pay for any emergency medical or surgical treatment provided pursuant to division (C) of this rule. The order of payment may be enforced by judgment, upon which execution may issue, and a failure to pay as ordered may be punished as contempt of court.

History

Amended, eff 7-1-94; 7-1-96.

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Ohio Juv. R. 24

Rules current through rule amendments received through March 11, 2016

Ohio Court Rules > *Ohio Rules Of Juvenile Procedure*

Rule 24. Discovery

(A) Request for discovery. Upon written request, each party of whom discovery is requested shall, to the extent not privileged, produce promptly for inspection, copying, or photographing the following information, documents, and material in that party's custody, control, or possession:

(1) The names and last known addresses of each witness to the occurrence that forms the basis of the charge or defense;

(2) Copies of any written statements made by any party or witness;

(3) Transcriptions, recordings, and summaries of any oral statements of any party or witness, except the work product of counsel;

(4) Any scientific or other reports that a party intends to introduce at the hearing or that pertain to physical evidence that a party intends to introduce;

(5) Photographs and any physical evidence which a party intends to introduce at the hearing;

(6) Except in delinquency and unruly child proceedings, other evidence favorable to the requesting party and relevant to the subject matter involved in the pending action. In delinquency and unruly child proceedings, the prosecuting attorney shall disclose to respondent's counsel all evidence, known or that may become known to the prosecuting attorney, favorable to the respondent and material either to guilt or punishment.

(B) Order granting discovery:Limitations; Sanctions.

If a request for discovery is refused, application may be made to the court for a written order granting the discovery. Motions for discovery shall certify that a request for discovery has been made and refused. An order granting discovery may make such discovery reciprocal for all parties to the proceeding, including the party requesting discovery. Notwithstanding the provisions of subdivision (A), the court may deny, in whole or part, or otherwise limit or set conditions on the discovery authorized by such subdivision, upon its own motion, or upon a showing by a party upon whom a request for discovery is made that granting discovery may jeopardize the safety of a party or, witness, or confidential informant, result in the production of perjured testimony or evidence, endanger the existence of physical evidence, violate a privileged communication, or impede the criminal prosecution of a minor as an adult or of an adult charged with an offense arising from the same transaction or occurrence.

(C) Failure to comply. If at any time during the course of the proceedings it is brought to the attention of the court that a person has failed to comply with an order issued pursuant to this rule, the court may grant a continuance, prohibit the person from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances.

History

Amended, eff 7-1-94.

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Ohio Juv. R. 29

Rules current through rule amendments received through March 11, 2016

Ohio Court Rules > *Ohio Rules Of Juvenile Procedure*

Rule 29. Adjudicatory hearing

(A) Scheduling the hearing. The date for the adjudicatory hearing shall be set when the complaint is filed or as soon thereafter as is practicable. If the child is the subject of a complaint alleging a violation of a section of the Revised Code that may be violated by an adult and that does not request a serious youthful offender sentence, and if the child is in detention or shelter care, the hearing shall be held not later than fifteen days after the filing of the complaint. Upon a showing of good cause, the adjudicatory hearing may be continued and detention or shelter care extended.

The prosecuting attorney's filing of either a notice of intent to pursue or a statement of an interest in pursuing a serious youthful offender sentence shall constitute good cause for continuing the adjudicatory hearing date and extending detention or shelter care.

The hearing of a removal action shall be scheduled in accordance with *Juv.R. 39(B)*.

If the complaint alleges abuse, neglect, or dependency, the hearing shall be held no later than thirty days after the complaint is filed. For good cause shown, the adjudicatory hearing may extend beyond thirty days either for an additional ten days to allow any party to obtain counsel or for a reasonable time beyond thirty days to obtain service on all parties or complete any necessary evaluations. However, the adjudicatory hearing shall be held no later than sixty days after the complaint is filed.

The failure of the court to hold an adjudicatory hearing within any time period set forth in this rule does not affect the ability of the court to issue any order otherwise provided for in statute or rule and does not provide any basis for contesting the jurisdiction of the court or the validity of any order of the court.

(B) Advisement and findings at the commencement of the hearing. At the beginning of the hearing, the court shall do all of the following:

(1) Ascertain whether notice requirements have been complied with and, if not, whether the affected parties waive compliance;

(2) Inform the parties of the substance of the complaint, the purpose of the hearing, and possible consequences of the hearing, including the possibility that the cause may be transferred to the appropriate adult court under *Juv.R. 30* where the complaint alleges that a child fourteen years of age or over is delinquent by conduct that would constitute a felony if committed by an adult;

(3) Inform unrepresented parties of their right to counsel and determine if those parties are waiving their right to counsel;

(4) Appoint counsel for any unrepresented party under *Juv.R. 4(A)* who does not waive the right to counsel;

(5) Inform any unrepresented party who waives the right to counsel of the right: to obtain counsel at any stage of the proceedings, to remain silent, to offer evidence, to cross-examine witnesses, and, upon request, to have a record of all proceedings made, at public expense if indigent.

(C) Entry of admission or denial. The court shall request each party against whom allegations are being made in the complaint to admit or deny the allegations. A failure or refusal to admit the allegations shall be deemed a denial, except in cases where the court consents to entry of a plea of no contest.

(D) Initial procedure upon entry of an admission. The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.

The court may hear testimony, review documents, or make further inquiry, as it considers appropriate, or it may proceed directly to the action required by division (F) of this rule.

(E) Initial procedure upon entry of a denial. If a party denies the allegations, the court shall:

(1) Direct the prosecuting attorney or another attorney-at-law to assist the court by presenting evidence in support of the allegations of a complaint;

(2) Order the separation of witnesses, upon request of any party;

(3) Take all testimony under oath or affirmation in either question-answer or narrative form; and

(4) Determine the issues by proof beyond a reasonable doubt in juvenile traffic offense, delinquency, and unruly proceedings; by clear and convincing evidence in dependency, neglect, and abuse cases, and in a removal action; and by a preponderance of the evidence in all other cases.

(F) Procedure upon determination of the issues. Upon the determination of the issues, the court shall do one of the following:

(1) If the allegations of the complaint, indictment, or information were not proven, dismiss the complaint;

(2) If the allegations of the complaint, indictment, or information are admitted or proven, do any one of the following, unless precluded by statute:

(a) Enter an adjudication and proceed forthwith to disposition;

(b) Enter an adjudication and continue the matter for disposition for not more than six months and may make appropriate temporary orders;

(c) Postpone entry of adjudication for not more than six months;

(d) Dismiss the complaint if dismissal is in the best interest of the child and the community.

(3) Upon request make written findings of fact and conclusions of law pursuant to *Civ.R. 52*.

(4) Ascertain whether the child should remain or be placed in shelter care until the dispositional hearing in an abuse, neglect, or dependency proceeding. In making a shelter care determination, the court shall make written finding of facts with respect to reasonable efforts in accordance with the provisions in *Juv.R. 27(B)(1)* and to relative placement in accordance with *Juv.R. 7(F)(3)*.

History

Amended, eff 7-1-76; 7-1-94; 7-1-98; 7-1-01; 7-1-04.

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Ohio Juv. R. 30

Rules current through rule amendments received through March 11, 2016

Ohio Court Rules > *Ohio Rules Of Juvenile Procedure*

Rule 30. Relinquishment of jurisdiction for purposes of criminal prosecution

(A) **Preliminary hearing.**In any proceeding where the court considers the transfer of a case for criminal prosecution, the court shall hold a preliminary hearing to determine if there is probable cause to believe that the child committed the act alleged and that the act would be an offense if committed by an adult. The hearing may be upon motion of the court, the prosecuting attorney, or the child.

(B) **Mandatory transfer.**In any proceeding in which transfer of a case for criminal prosecution is required by statute upon a finding of probable cause, the order of transfer shall be entered upon a finding of probable cause.

(C) **Discretionary transfer.**In any proceeding in which transfer of a case for criminal prosecution is permitted, but not required, by statute, and in which probable cause is found at the preliminary hearing, the court shall continue the proceeding for full investigation. The investigation shall include a mental examination of the child by a public or private agency or by a person qualified to make the examination. When the investigation is completed, an amenability hearing shall be held to determine whether to transfer jurisdiction. The criteria for transfer shall be as provided by statute.

(D) **Notice.**Notice in writing of the time, place, and purpose of any hearing held pursuant to this rule shall be given to the state, the child's parents, guardian, or other custodian and the child's counsel at least three days prior to the hearing, unless written notice has been waived on the record.

(E) **Retention of jurisdiction.**If the court retains jurisdiction, it shall set the proceedings for hearing on the merits.

(F) **Waiver of mental examination.**The child may waive the mental examination required under division (C) of this rule. Refusal by the child to submit to a mental and physical examination or any part of the examination shall constitute a waiver of the examination.

(G) **Order of transfer.**The order of transfer shall state the reasons for transfer.

(H) **Release of child.**With respect to the transferred case, the juvenile court shall set the terms and conditions for release of the child in accordance with *Crim.R. 46*.

History

Amended, eff 7-1-76; 7-1-94; 7-1-97.

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Ohio Sup. R. 48

Rules current through rule amendments received through March 11, 2016

Ohio Court Rules > *Rules Of Superintendence For The Courts Of Ohio*

Rule 48. Guardians ad litem

(A) Applicability. This rule shall apply in all domestic relations and juvenile cases in the courts of common pleas where a court appoints a guardian ad litem to protect and act in the best interest of a child.

(B) Definitions. For purposes of this rule:

(1) "Guardian ad litem" means an individual appointed to assist a court in its determination of a child's best interest.

(2) "Child" means:

(a) A person under eighteen years of age, or

(b) A person who is older than eighteen years of age who is deemed a child until the person attains twenty-one years of age under *section 2151.011(B)(5)* or *section 2152.02(C) of the Revised Code*.

(c) A child under *R.C. 3109.04* or a disabled child under *R.C.3119.86* who falls under the jurisdiction of a domestic relations court or of a juvenile court with a paternity docket.

(C) Appointment of guardian ad litem.

(1) Each court appointing a guardian ad litem under this rule shall enter an Order of Appointment which shall include:

(a) A statement regarding whether a person is being appointed as a guardian ad litem only or as a guardian ad litem and attorney for the child.

(b) A statement that the appointment shall remain in effect until discharged by order of the court, by the court filing a final order in the case or by court rule.

(c) A statement that the guardian ad litem shall be given notice of all hearings and proceedings and shall be provided a copy of all pleadings, motions, notices and other documents filed in the case.

(2) Whenever feasible, the same guardian ad litem shall be reappointed for a specific child in any subsequent case in any court relating to the best interest of the child.

(3) The court shall make provisions for fees and expenses in the Order.

(D) Responsibilities of a guardian ad litem. In order to provide the court with relevant information and an informed recommendation regarding the child's best interest, a guardian ad litem shall perform, at a minimum, the responsibilities stated in this division, unless impracticable or inadvisable to do so.

(1) A guardian ad litem shall represent the best interest of the child for whom the guardian is appointed. Representation of best interest may be inconsistent with the wishes of the child whose interest the guardian ad litem represents.

(2) A guardian ad litem shall maintain independence, objectivity and fairness as well as the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom and shall have no ex parte communications with the court regarding the merits of the case.

(3) A guardian ad litem is an officer of the court and shall act with respect and courtesy to the parties at all times.

(4) A guardian ad litem shall appear and participate in any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed.

(5) A non-attorney guardian ad litem must avoid engaging in conduct that constitutes the unauthorized practice of law, be vigilant in performing the guardian ad litem's duties and request that the court appoint legal counsel, or otherwise employ the services of an attorney, to undertake appropriate legal actions on behalf of the guardian ad litem in the case.

(6) A guardian ad litem who is an attorney may file pleadings, motions and other documents as appropriate under the applicable rules of procedure.

(7) When a court appoints an attorney to serve as both the guardian ad litem and attorney for a child, the attorney shall advocate for the child's best interest and the child's wishes in accord with the Rules of Professional Conduct. Attorneys who are to serve as both guardian ad litem and attorney should be aware of *Rule 3.7 of the Rules of Professional Conduct* and act accordingly.

(8) When a guardian ad litem determines that a conflict exists between the child's best interest and the child's wishes, the guardian ad litem shall, at the earliest practical time, request in writing that the court promptly resolve the conflict by entering appropriate orders.

(9) A guardian ad litem shall avoid any actual or apparent conflict of interest arising from any relationship or activity including, but not limited to, those of employment or business or from professional or personal contacts with parties or others involved in the case. A guardian ad litem shall avoid self-dealing or associations from which the guardian ad litem might benefit, directly or indirectly, except from compensation for services as a guardian ad litem.

(10) Upon becoming aware of any actual or apparent conflict of interest, a guardian ad litem shall immediately take action to resolve the conflict, shall advise the court and the parties of the action taken and may resign from the matter with leave of court, or seek court direction as necessary. Because a conflict of interest may arise at any time, a guardian ad litem has an ongoing duty to comply with this division.

(11) Unless excepted by statute, by court rule consistent with this rule, or by order of court pursuant to this rule, a guardian ad litem shall meet the qualifications and satisfy all training and continuing education requirements under this rule and under any local court rules governing guardians ad litem. A guardian ad litem shall meet the qualifications for guardians ad litem for each county where the guardian ad litem serves and shall promptly advise each court of any grounds for disqualification or unavailability to serve.

(12) A guardian ad litem shall be responsible for providing the court or its designee with a statement indicating compliance with all initial and continuing educational and training requirements so the court may maintain the files required in division (G) of this rule. The compliance statement shall include information detailing the date, location, contents and credit hours received for any relevant training course.

(13) A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. In order to provide the court with relevant information and an informed recommendation as to the child's best interest, a guardian ad litem shall, at a minimum, do the following, unless impracticable or inadvisable because of the age of the child or the specific circumstances of a particular case:

(a) Meet with and interview the child and observe the child with each parent, foster parent, guardian or physical custodian and conduct at least one interview with the child where none of these individuals is present;

(b) Visit the child at his or her residence in accordance with any standards established by the court in which the guardian ad litem is appointed;

(c) Ascertain the wishes of the child;

(d) Meet with and interview the parties, foster parents and other significant individuals who may have relevant knowledge regarding the issues of the case;

(e) Review pleadings and other relevant court documents in the case in which the guardian ad litem is appointed;

(f) Review criminal, civil, educational and administrative records pertaining to the child and, if appropriate, to the child's family or to other parties in the case;

(g) Interview school personnel, medical and mental health providers, child protective services workers and relevant court personnel and obtain copies of relevant records;

(h) Recommend that the court order psychological evaluations, mental health and/or substance abuse assessments, or other evaluations or tests of the parties as the guardian ad litem deems necessary or helpful to the court; and

(i) Perform any other investigation necessary to make an informed recommendation regarding the best interest of the child.

(14) A guardian ad litem shall immediately identify himself or herself as a guardian ad litem when contacting individuals in the course of a particular case and shall inform these individuals about the guardian ad litem's role and that documents and information obtained may become part of court proceedings.

(15) As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of personal identifiers, as defined in Rule 44 of the Rules of Superintendence, or addresses where there are allegations of domestic violence or risk to a party's or child's safety. A guardian ad litem may recommend that the court restrict access to the report or a portion of the report, after trial, to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed in accordance with Rule 45 of the Rules of Superintendence. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure of or access to the information that addresses the need to challenge the truth of the information received from the confidential source.

(16) A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, an attorney guardian ad litem may request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.

(17) A guardian ad litem who is to be paid by the court or a party, shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the court and provide a copy to each party or other entity responsible for payment.

(E) **Training requirements.** In order to serve as a guardian ad litem, an applicant shall have, at a minimum, the following training:

(1) Successful completion of a pre-service training course to qualify for appointment and thereafter, successful completion of continuing education training in each succeeding calendar year to qualify for continued appointment.

(2) The pre-service training course must be the six hour guardian ad litem pre-service course provided by the Supreme Court of Ohio, the Ohio CASA/GAL Association's pre-service training program, or with prior approval of the appointing court, be a course at least six hours in length that covers the topic areas in division (E) (3).

(3) To meet the requirements of this rule, the pre-service course shall include training on all the following topics:

(a) Human needs and child development including, but not limited to, stages of child development;

(b) Communication and diversity including, but not limited to, communication skills with children and adults, interviewing skills, methods of critical questioning, use of open- ended questions, understanding the perspective of the child, sensitivity, building trust, multicultural awareness, and confidentiality;

(c) Preventing child abuse and neglect including, but not limited to, assessing risk and safety;

(d) Family and child issues including, but not limited to, family dynamics, substance abuse and its effects, basic psychopathology for adults and children, domestic violence and its effects;

(e) Legal framework including, but not limited to, records checks, accessing, assessing and appropriate protocol, a guardian ad litem's role in court, local resources and service practice, report content, mediation and other types of dispute resolution.

(4) The continuing education course must be at least three hours in length and be provided by the Supreme Court of Ohio or by the Ohio CASA/GAL Association, or with prior approval of the appointing court, be a training that complies with division (5) of this rule.

(5) To meet the requirements of this rule, the three hour continuing education course shall:

(a) Be specifically designed for continuing education of guardians ad litem and not pre- service education; and

(b) Consist of advanced education related to topics identified in division (E)(3) (a)-(e) of this rule.

(6) If a guardian ad litem fails to complete a three hour continuing education course within any calendar year, that person shall not be eligible to serve as a guardian ad litem until this continuing education requirement is satisfied. If the person's gap in continuing education is three calendar years or less, the person shall qualify to serve after completing a three hour continuing education course offered under this rule. If the gap in continuing education is more than three calendar years that person must complete a six hour pre-service education course to qualify to serve.

(7) An individual who is currently serving as a guardian ad litem on the effective date of this rule, or who has served during the five years immediately preceding the effective date, shall have one year from the effective date to obtain the required six hour pre-service training in order to avoid removal from the court's list of approved guardians ad litem.

(8) Attendance at an Ohio Guardian ad Litem Training Program approved by the Supreme Court of Ohio or at an Ohio CASA/Guardian Association pre-service training program at any time prior to the effective date of this rule shall be deemed compliance with the pre-service training requirement.

(F) **Reports of guardians ad litem.** A guardian ad litem shall prepare a written final report, including recommendations to the court, within the times set forth in this division. The report shall detail the activities performed, hearings attended, persons interviewed, documents reviewed, experts consulted and all other relevant information considered by the guardian ad litem in reaching the guardian ad litem's recommendations and in accomplishing the duties required by statute, by court rule, and in the court's Order of Appointment. In addition, the following provisions shall apply to guardian ad litem reports in the juvenile and domestic relations divisions of Courts of Common Pleas:

(1) In juvenile abuse, neglect, and dependency cases and actions to terminate parental rights:

(a) All reports, written or oral, shall be used by the court to ensure that the guardian ad litem has performed those responsibilities required by *section 2151.281 of the Revised Code*.

(b) Oral and written reports may address the substantive allegations before the court, but shall not be considered as conclusive on the issues.

(c) Unless waived by all parties or unless the due date is extended by the court, the final report shall be filed with the court and made available to the parties for inspection no less than seven days before the dispositional hearing. Written reports maybe accessed in person or by phone by the parties or their legal representatives. A copy shall be provided to the court at the hearing.

(d) A guardian ad litem shall be available to testify at the dispositional hearing and may orally supplement the final report at the conclusion of the hearing.

(e) A guardian ad litem also may file an interim report, written or oral, any time prior to the dispositional hearing and prior to hearings on actions to terminate parental rights. Written reports may be accessed in person or by phone by the parties or their legal representatives.

(f) Any written interim report shall be filed with the court and made available to the parties for inspection no less than seven days before a hearing, unless the due date is extended by the court. Written reports may be accessed in person or by phone by the parties or their legal representatives. A copy of the interim report shall be provided to the court at the hearing.

(2) In domestic relations proceedings involving the allocation of parental rights and responsibilities, the final report shall be filed with the court and made available to the parties for inspection no less than seven days before the final hearing unless the due date is extended by the court. Written reports may be accessed in person or by phone

by the parties or their legal representatives. A copy of the final report shall be provided to the court at the hearing. The court shall consider the recommendation of the guardian ad litem in determining the best interest of the child only when the report or a portion of the report has been admitted as an exhibit.

(G) **Responsibilities of the court.** In order to ensure that only qualified individuals perform the duties of guardians ad litem and that the requirements of this rule are met, each court appointing guardians ad litem shall do all of the following:

(1) Maintain a public list of approved guardians ad litem while maintaining individual privacy under Rules 44 through 47 of the Rules of Superintendence.

(2) Establish criteria, which include all requirements of this rule, for appointment and removal of guardians ad litem and procedures to ensure an equitable distribution of the work load among the guardians ad litem on the list.

(3) Appoint or contract with a person to coordinate the application and appointment process, keep the files and records required by this rule, maintain information regarding training opportunities, receive written comments and complaints regarding the performance of guardians ad litem practicing before that court and perform other duties as assigned by the court.

(4) Maintain files for all applicants and for individuals approved for appointment as guardians ad litem with the court. The files shall contain all records and information required by this rule, and by local rules, for the selection and service of guardians ad litem including a certificate or other satisfactory proof of compliance with training requirements.

(5) Require all applicants to submit a resume or information sheet stating the applicant's training, experience and expertise demonstrating the person's ability to successfully perform the responsibilities of a guardian ad litem.

(6) Conduct, or cause to be conducted, a criminal and civil background check and investigation of information relevant to the applicant's fitness to serve as a guardian ad litem.

(7) Conduct, at least annually, a review of its list to determine that all individuals are in compliance with the training and education requirements of this rule and local rules, that they have performed satisfactorily on all assigned cases during the preceding calendar year and are otherwise qualified to serve.

(8) Require all individuals on its list to certify annually they are unaware of any circumstances that would disqualify them from serving and to report the training they have attended to comply with division (E) of this rule.

(9) Each court shall develop a process or local rule and appoint a person for accepting and considering written comments and complaints regarding the performance of guardians ad litem practicing before that court. A copy of comments and complaints submitted to the court shall be provided to the guardian ad litem who is the subject of the complaint or comment. The person appointed may forward any comments and complaints to the administrative judge of the court for consideration and appropriate action. Dispositions by the court shall be made promptly. The court shall maintain a written record in the guardian ad litem's file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the subject guardian ad litem of the disposition.

History

Effective March 1, 2009.

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