

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	CASE No. 2016-0317
	:	
PLAINTIFF-APPELLEE,	:	
	:	ON APPEAL FROM THE MONTGOMERY
V.	:	COUNTY COURT OF APPEALS
	:	SECOND APPELLATE DISTRICT
RICKYM ANDERSON,	:	
	:	
DEFENDANT-APPELLANT.	:	C.A. CASE No. 26525

MERIT BRIEF OF APPELLANT RICKYM ANDERSON

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Statement of the Case and Facts

When he was 16 years old, Rickym Anderson was charged with offenses related to two robberies. The first robbery occurred in a garage behind a house on Yale Avenue, where Dylan Boyd shot Brian Williams, locked Tiesha Preston in the trunk of a car, and directed Rickym and another juvenile to search the cars in the garage for valuables. (1/28/2013 T.pp.275, 282, 284, 309). Rickym was present, but he did not hurt or threaten Mr. Williams or Ms. Preston. (1/28/2012 T.pp.284, 314). The second robbery occurred behind a house on West Grand Avenue, where Rickym reportedly held Star McGowan at gunpoint and took her cellular phone while Dylan was present. (1/28/2012 T.pp.351, 356).

After finding probable cause, the juvenile court transferred Rickym's case to criminal court, pursuant to the mandatory transfer provisions in R.C. 2152.10(A)(2)(b). (6/18/2012 Entry and Order Finding Probable Cause and Granting Motion to Relinquish Jurisdiction and Transfer to General Division, pp.1-2). Rickym and Dylan proceeded in criminal court on nearly identical charges. On October 24, 2012, Dylan entered a guilty plea to three felonies, one of them arising from the shooting of Mr. Williams, and was sentenced to nine years in prison. (11/7/2015 Sentencing Memorandum, p.1).

Rickym exercised his right to a jury trial, and on January 30, 2013, the jury found Rickym guilty of three counts of aggravated robbery and one count of kidnapping; but, the jury found him not guilty of felonious assault. (2/22/2013 Judgment Entry of

Sentence). The trial court sentenced Rickym to 28 years of incarceration, approximately three times the sentence imposed on Dylan. (2/22/2013 Judgment Entry of Sentence). A timely appeal followed. On September 26, 2014, the appellate court reversed and remanded the sentence because the trial court did not make the necessary findings before imposing consecutive sentences. *State v. Anderson (Anderson I)*, 2d Dist. Montgomery No. 25689, 2014-Ohio-4245, ¶ 87.

On remand, Rickym argued that his sentence should be the same length as, or shorter than, Dylan's sentence; that the record did not support his consecutive sentences; and that the mandatory minimums associated with the adult felony sentencing scheme were unconstitutional as applied to juveniles. (11/7/2015 Sentencing Memorandum, pp.1-3, 7-9). At the hearing, the court sentenced Rickym to 11 years for each aggravated robbery, to run concurrently with each other, and 5 years for the kidnapping charge, to run consecutively to the 11-year sentence. *State v. Anderson (Anderson II)*, 2d Dist. Montgomery No. 26525, 2016-Ohio-135, ¶ 5. The court also merged all of Rickym's firearm specifications and sentenced him to 3 additional years, for a total of 19 years of incarceration. *Id.* This 19-year sentence is 10 years longer than Rickym's more-culpable codefendant's sentence. *Id.*

In recounting its reasons for Rickym's sentence, the trial court discussed Rickym's culpability as compared to Dylan's. *Id.* The court found that Dylan deserved a shorter sentence than Rickym because "Mr. Boyd admitted what he did and Mr. Boyd agreed to testify against this Defendant if required." (11/19/2014 T.pp.15-16). The trial court indicated that "it's my belief that all three people involved in these were equally

culpable,” despite the record showing that Dylan was the leader during the Yale Avenue incident. (11/19/2014 T.pp.15-16). The trial court also recounted Rickym’s prior involvement with the juvenile system. (11/19/2014 T.p.18). Finally, the trial court overruled Rickym’s objections to Ohio’s mandatory sentencing scheme as applied to juveniles. (11/19/2014 T.p.22). In sentencing Rickym, the trial court specifically noted that Rickym was “not a kid” during the incidents that led to his arrest, even though he was 16 at the time. (11/19/2014 T.p.17). Rickym timely appealed.

On appeal, Rickym challenged, among other things, both the impermissible tax levied against him for exercising his right to a trial and the constitutionality of Ohio’s mandatory-sentencing scheme as applied to juveniles. *Anderson II* at ¶ 6. The Second District held that Rickym’s increased sentence was the result of a “reward” given to Dylan for pleading guilty. *Id.* at ¶ 11. The court reasoned that a plea “reward” was permissible, even though a trial tax was not. *Id.* The court adduced no other reasons for the disparate sentences. The court also determined that the *Miller v. Alabama* line of reasoning was inapplicable to Rickym’s case, because he was not charged with a homicide offense or sentenced to life in prison. *Id.* at ¶ 34-36. It is from these decisions that Rickym now appeals.

Argument

Proposition of Law I

When one codefendant who proceeds to trial receives a sentence twice as long as a codefendant who enters a plea, an appellate court cannot dispel the possibility of an impermissible trial tax merely by referring to the disparity as a reward to the codefendant for entering a plea.

Both the U.S. Constitution and the Ohio Constitution guarantee defendants the right to a trial by jury. Sixth Amendment to the U.S. Constitution; Article I, Section 10, Ohio Constitution. And, this Court has held that defendants, like Rickym, are “guaranteed the right to a trial and should never be punished for exercising that right.” *State v. O’Dell*, 45 Ohio St.3d 140, 147, 543 N.E.2d 1220 (1989). The Second District agreed, noting that this fundamental protection is “beyond dispute.” *Anderson II*, 2016-Ohio-135, at ¶ 7. The U.S. Supreme Court has also declared that defendants “may not be punished for exercising a protected statutory or constitutional right.” *United States v. Goodwin*, 457 U.S. 368, 372, 102 S.Ct. 2485, 73 L.Ed.2d 74 (1982).

Yet the appellate court circumvented this bedrock protection with a semantic rephrasing: the court below declared that, in fact, Rickym’s codefendant, Dylan Boyd, received a sentence *reduction* for pleading guilty, which resulted in the disparity between the two sentences. This is not a valid explanation for the sentencing disparity between the two codefendants, and this Court should direct Ohio courts that such a disparity must be supported by more than just one codefendant’s decision to proceed to trial.

Rickym and Dylan's charges were nearly identical. While Rickym was convicted of one additional felony, Dylan's crimes were more severe: he shot someone during a robbery. And, as a result, he faced a conviction for felonious assault. *Anderson II* at ¶ 2. In fact, the trial court held that Rickym and his codefendant were equally culpable. *Id.* at ¶ 5. Yet, Rickym was given a total sentence of 19 years, while Dylan received a sentence of nine years. *Id.*

While this Court has not yet directly addressed the issue of evaluating "trial taxes," many Ohio appellate courts have recognized that, in sentencing two similarly situated codefendants like Rickym and Dylan, a trial court must be careful not to punish one of those codefendants for exercising his right to go to trial. *See, e.g., State v. Beverly*, 2d Dist. Clark No. 2011 CA 64, 2013-Ohio-1365, ¶ 57; *State v. Henry*, 9th Dist. Summit No. 27392, 2015-Ohio-5095, ¶ 19; *State v. Noble*, 12th Dist. Warren No. CA2014-06-080, 2015-Ohio-652, ¶ 12. Courts have characterized this kind of disparate sentencing as a "trial tax." *E.g., Beverly* at ¶ 57; *Henry* at ¶ 18; *Noble* at ¶ 12. However, the court below drew a distinction between an impermissible trial tax and what it called a "reward" for entering a plea and agreeing to testify against Rickym. *Anderson II*, 2016-Ohio-135, at ¶ 11. Offering a sentencing benefit to Dylan for pleading guilty instead of going to trial, the Second District reasoned, was not punishing Rickym for going to trial, but rewarding Dylan for *not* doing so. *Id.* This characterization is a distinction without a difference: any mechanism for saddling an equally culpable codefendant who chooses to exercise his right to trial with a longer sentence, absent a proper justification for the longer sentence, is an impermissible trial tax.

Trial-tax arguments are inherently difficult to address, as they implicate the motivations of a sentencing court. These motivations can be hard to determine, and as such, trial-tax case law sometimes hinges on actual statements by a court. *See, e.g., Henry* at ¶ 19; *Noble* at ¶ 13; *see also State v. Johnson*, 5th Dist. Licking No. 14-CA-54, 2015-Ohio-1110, ¶ 53 (noting that a trial court explaining its reasoning for disparate sentences dispels trial-tax concerns). However, this kind of direct evidence is unnecessary when two similarly situated codefendants come before the same court. The comparison is much simpler, especially when the court declares unequivocally that it considers both codefendants “equally culpable.” The semantic exercise of reframing a “trial tax” into a “plea reward” ignores this simple reality: at no point did either the trial court or the appellate court determine that Rickym was more culpable or deserved a longer sentence based on the facts adduced at trial or sentencing. Rather, the similarities between the two codefendants are evident from the record, as is the trial court’s belief that they were equally culpable.

Thus, a marked difference between the sentences for two codefendants, where one of those codefendants entered a plea and the other went to trial, gives rise to trial-tax concerns. *See, e.g., Beverly* at ¶ 57; *United States v. Wiley*, 278 F.2d 500, 503 (7th Cir.1960). And, if no other evidence appears on the record to justify the large disparity between the codefendants’ sentences, then the disparity should be construed as a trial tax, and the impermissibly enhanced sentence should be reversed. *Beverly* at ¶ 57.

Here, despite adopting exactly this analysis in the past, the Second District has abandoned this well-reasoned approach, instead declaring that when Rickym “stood on

his rights and went to trial,” he lost the “reward” of a sentence reduction for pleading guilty. *Anderson II*, 2016-Ohio-135, at ¶ 11. This declaration is as dangerous as it is unambiguous: according to the court below, if an Ohio citizen stands on her rights, she gets a longer sentence. Disguising trial taxes as missing out on a “reward” for a plea could do incalculable damage to criminal defendants and the perception of fairness in Ohio’s criminal justice system. See *Noble*, 2015-Ohio-652, at ¶ 12 (“The appearance of a trial tax is impermissible as it creates a chilling effect on one’s constitutional right to trial.”).

There are numerous reasons a trial court could give for dissimilar sentences for two codefendants, including prior criminal activity, indications of their danger to society, or, most simply, different levels of culpability. Neither the appellate court nor the trial court made any attempt to list any permissible reasons for the sentencing disparity here, instead saying only that Rickym’s sentence was longer because Dylan “entered into a plea deal.” *Anderson II* at ¶ 11. The appellate court asserted that this reason was “among other” reasons, but it did not provide a single reason for the disparity beyond that Dylan entered a guilty plea and Rickym did not. *Id.*

The Second District’s decision unravels protections that Ohio defendants had against impermissible trial taxes. It could cause other Ohio courts to reframe impermissible trial taxes into “plea rewards,” insulating trial-tax issues from review. This Court should therefore reverse Rickym’s sentence and restore meaning to its proclamation that “a defendant is guaranteed the right to a trial and should never be punished for exercising that right.” *O’Dell*, 45 Ohio St.3d at 147, 543 N.E.2d 1220.

Proposition of Law II

The mandatory sentencing statutes in R.C. 2929 are unconstitutional as applied to children because they do not permit the trial court to make an individualized determination about a child's sentence or the attributes of youth.

The U.S. Supreme Court has recognized that “a child’s age is far ‘more than a chronological fact.’” *J.D.B. v. North Carolina*, 564 U.S. 261, 271, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011). “It is a fact that generates commonsense conclusions about behavior and perception.” *Id.* The Court also recognized that children are different from adults – even those whose cases are transferred for prosecution in criminal court – as follows:

1) “[C]hildren have a ‘lack of maturity and an underdeveloped sense of responsibility’ leading to recklessness, impulsivity, and heedless risk-taking.” *Miller v. Alabama*, 132 S.Ct. 2455, 2464, 183 L.Ed.2d 407 (2012), quoting *Roper v. Simmons*, 543 U.S. 551, 569, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

2) “[C]hildren ‘are more vulnerable * * * to negative influences and outside pressures,’ including from their family and peers; they have limited ‘contro[l] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings.” *Miller* at 2464; see also Jason Chein, et al. *Peers increase adolescent risk taking by enhancing activity in the brain’s reward circuitry* 14 Dev.Sci. F1, F1 (2011), available at <http://www.ncbi.nlm.nih.gov/pubmed/21499511> (accessed Aug. 3, 2016) (“One of the hallmarks of adolescent risk taking is that it is much more likely than that of adults to occur in the presence of peers * * *.”).

3) “[A] child’s character is not as ‘well formed’ as an adult’s; his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievabl[e] deprav[ity].’” *Miller* at 2464, citing *Roper* at 570.

The studies cited in *Miller* demonstrate that children’s “transient rashness, proclivity for risk, and inability to assess consequences” not only lessen a child’s “moral culpability,” but also “enhance[] the prospect that as the years go by and neurological development

occurs, [the] ‘deficiencies will be reformed.’” (Citations omitted). *Miller* at 2464-2465. Thus, the passage of time, coupled with appropriate services, significantly decreases the likelihood of recidivism for children. It is imperative that a child’s prospect for change be considered at sentencing. See *Montgomery v. Louisiana*, 136 S.Ct. 718, 733, 193 L.Ed.2d 599 (2016) (acknowledging that “*Miller* took as its starting premise the principle * * * that ‘children are constitutionally different from adults for purposes of sentencing’”).

The Second District determined that the *Miller* line of reasoning was inapplicable to Rickym’s case because he was not charged with a homicide offense or sentenced to life in prison. *Anderson II*, 2016-Ohio-135, at ¶ 34-36. However, as Chief Justice O’Connor noted in 2014, “the legal lens through which we view [the sentencing of youth] has changed.” *State v. Long*, 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890, ¶ 32 (O’Connor, J., concurring).

Ohio’s mandatory minimum sentencing scheme provides no opportunity for the sentencing court to consider the child’s age and the mitigating factors of youth; the child’s family and home environment; the “circumstances relating to youth that may have played a role in the commission of the crime”; the challenges that the child faces when navigating the adult, criminal justice system; and, the possibility of rehabilitation and the child’s capacity for change. See *Iowa v. Lyle*, 854 N.W.2d 378, 404, fn. 10 (Iowa 2014), citing *Miller* at 2468. Without these considerations, Ohio’s sentencing scheme is unconstitutional as applied to children.

A. The Eighth Amendment requires an individualized determination about a child's sentence.

The Eighth Amendment to the U.S. Constitution prohibits the imposition of cruel and unusual punishment. *See Furman v. Georgia*, 408 U.S. 238, 239, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (per curiam); Article I, Section 9, Ohio Constitution. This right “flows from the basic ‘precept of justice that punishment for crime should be graduated and proportioned’ to both the offender and the offense.” *Miller*, 132 S.Ct. at 2463, 183 L.Ed.2d 407, citing *Roper*, 543 U.S. at 560, 125 S.Ct. 1183, 161 L.Ed.2d 1. To evaluate a law under Eighth Amendment standards, a court must first consider whether there is a community consensus against a practice and then conduct an independent review to determine “whether the punishment in question violates the Constitution.” *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 29. In *Miller*, the Supreme Court determined that the Eighth Amendment requires an individualized determination about the appropriate punishment for children. *Miller* at 2465-2466. And, contrary to the Second District’s determination, the Court’s decision was not limited to life-without-parole sentences. *Anderson II* at ¶ 34-36, 40. Rather, *Miller* explained that children are different from adults for all time and in all occasions. But, Ohio’s sentencing scheme mandates that a court ignore those differences and instead treat children as if they were adults.

B. Community consensus is not dispositive in an Eighth Amendment analysis.

“Community consensus, while ‘entitled to great weight,’ is not itself determinative of whether a punishment is cruel and unusual.” *Graham v. Florida*, 560

U.S. 48, 67, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), quoting *Kennedy v. Louisiana*, 554 U.S. 407, 434, 128 S.Ct. 2641, 171 L.Ed.2d 525. In 2014, the Iowa Supreme Court held that while most jurisdictions in the U.S. “permit or require” mandatory minimum sentences for juvenile offenders, the national consensus was not determinative; rather, the court recognized that it could not “ignore that over the last decade, juvenile justice has seen remarkable, perhaps watershed change.” *Lyle* at 386-387, 390. In finding its statute unconstitutional, Iowa looked at U.S. Supreme Court precedent, but also at its own shift in legislation, which signaled a concern with how juveniles were treated. *Id.* at 381, 387 (finding that “juvenile offenders cannot be mandatorily sentenced under a mandatory minimum sentencing scheme” because the scheme failed to permit the trial court to consider any circumstances based on the attributes of youth).

The Second District correctly noted that, like Iowa, Ohio has a mandatory sentencing scheme: among many others, Ohio law mandates certain sentences for firearm specifications, at least a three-year sentence for first-degree felonies, and that certain sentences must be served consecutively to others. *Anderson II*, 2016-Ohio-135, at ¶ 39; R.C. 2929.14(A)(1); 2929.14(B)(1)(a); 2929.14(C)(1)(a). Because of this scheme, the trial court was not permitted to make an individualized determination about Rickym and depart from the mandatory minimums. Also like Iowa, Ohio’s legislation has marked a shift in how juveniles are treated. For example, in 2011, the General Assembly enacted a “reverse waiver” statute to provide a mechanism for certain youth whose cases are required to be transferred to the adult system to return to the juvenile system after conviction in adult court. *See* R.C. 2152.121.

In declining to follow Iowa's example, the Second District surmised that U.S. and Ohio Supreme Court precedent does not prohibit mandatory sentences outside of the life-without-parole context. *Anderson II* at ¶ 37. To read the cases with such a narrow view renders the precedent about children and their differences from adults meaningless. This Court has not yet considered the constitutionality of Ohio's mandatory minimum sentencing scheme in light of *Miller*. But, this Court has or is considering the *Roper-Graham-Miller* line of reasoning in other contexts. See, e.g., *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 86 (utilizing the Supreme Court's reasoning in *Graham* to hold that R.C. 2152.86's mandatory, lifetime sex offender registration and classification requirement was unconstitutional for juvenile offenders); *State v. Hand*, Case No. 2014-1814, docket available at <http://www.supremecourt.ohio.gov/Clerk/ecms/#/caseinfo/2014/1814> (argued Dec. 1, 2015) (considering whether juvenile adjudications can be used as mandatory enhancements for adult convictions); *State v. Aalim*, Case No. 2015-0677, docket available at <http://www.supremecourt.ohio.gov/Clerk/ecms/#/caseinfo/2015/0677> (argued Apr. 20, 2016) (considering the constitutionality of Ohio's mandatory transfer statutes). The decisions in *Miller*, and the cases before it, reflect an ultimate conclusion: the same harsh penalties that are appropriate for adults should not be mandated for children. *Miller*, 132 S.Ct. at 2469, 183 L.Ed.2d 407 (requiring a court "to take into account how children are different"); *Graham* at syllabus; *Roper*, 543 U.S. at 568-569, 125 S.Ct. 1183, 161 L.Ed.2d 1.

The second part of an analysis under the Eighth Amendment is to examine the practice independently and look at the evolution of the process. This step focuses on the

changing nature of how children are treated in the adult criminal justice system. *See Lyle*, 854 N.W.2d at 390; *Miller* at 2463 (looking “beyond historical conceptions to ‘the evolving standards of decency that mark the progress of a maturing society’”).

C. Because children are not miniature adults, due process demands that the adult court should be given discretion to sentence according to the juvenile or adult codes.

In *C.P.*, this Court held that the punishment imposed on the child violated the Eighth Amendment and the procedure used to impose the punishment violated the Due Process Clause. *C.P.* at ¶ 86. “A sentencing rule permissible for adults may not be so for children.” *Miller* at 2470. Further, those sentencing decisions recognize that “children cannot be viewed simply as miniature adults.” *Id.* “The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question, * * * [and] whether the challenged sentencing practice serves legitimate penological goals.” *C.P.* at ¶ 38. The Due Process Clause is implicated when a court is forbidden from making an individualized determination about a juvenile offender.

The guarantees of the Due Process Clause apply to juveniles and adults alike. *In re Gault*, 387 U.S. 1, 30-31, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); *In re Winship*, 397 U.S. 358, 362, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970); *McKeiver v. Pennsylvania*, 403 U.S. 528, 543, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971) (holding that the applicable due process standard in juvenile proceedings is fundamental fairness). A legislative choice based on a categorical determination violates due process when it creates “a non-rebuttable presumption that the juvenile who committed the crime is equally morally culpable as

an adult who committed the same act.” Martin Guggenheim, *Graham v. Florida and A Juvenile’s Right to Age-Appropriate Sentencing*, 47 Harv.C.R.-C.L.L.Rev. 457, 490-91 (2012); see also *In the Interest of J.B.*, 107 A.3d 1, 20 (Pa.2014) (finding that the irrebuttable presumption created by Pennsylvania’s SORNA violated the due process rights of juvenile offenders). Further, irrebuttable presumptions “have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments.” *Vlandis v. Kline*, 412 U.S. 441, 446, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973). An irrebuttable presumption violates due process when the presumption is deemed not universally true and a reasonable alternative means of ascertaining the presumed fact is available. *J.B.* at 39, citing *Vlandis* at 452. Ohio’s mandatory sentencing requirements contain irrebuttable presumptions that do not permit individualized determinations about juvenile offenders.

To make the law constitutional, there must be individualized sentencing. *Miller*, 132 S.Ct. at 2469, 183 L.Ed.2d 407; *Lyle*, 854 N.W.2d at 386-387, 390. In determining that its mandatory minimum sentencing scheme was unconstitutional, the Iowa Supreme Court and held that “[t]he youth of this state will better be served when judges are permitted to carefully consider all of the circumstances of each case to craft an appropriate sentence and give each juvenile the individual sentencing attention they deserve.” *Lyle* at 403. And, Nebraska permits adult courts to sentence juvenile offenders under the juvenile dispositional code. Neb.Rev.Stat. 29-2204(5) (providing that in certain situations, when the defendant was under 18 when he committed the offense, “the court may, in its discretion, instead of imposing the penalty provided for the crime,

make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code”). The dispositional options available to a juvenile court should also be available to an adult court. For example, R.C. 2152.17(B)(1) provides that if a child is not the principal offender, the juvenile court may decline to give a child a firearm specification sentence, or may give the child a maximum of a one-year firearm specification sentence. That option was not available in the adult court. In adult court, an accomplice must receive the same firearm specification as the principal offender. R.C. 2929.14(A)(1).

Miller mandates that “a sentencer follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” *Miller* at 2471. An adult court must have “the discretion to consider youth and its attendant circumstances as a mitigating factor” in order to sentence a juvenile offender accordingly. *Lyle* at 404.

The *Roper-Graham-Miller* line of reasoning about individualized determinations and the differences between adults and children is not limited to analyzing lengthy prison sentences for children; rather, it applies to all instances in which a court must ignore a child’s youthfulness when determining a sentence. *Id.* at 381, 387; *see also C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 86; *Hand*, Case No. 2014-1814; *Aalim*, Case No. 2015-0677. Ohio’s mandatory minimum sentencing scheme requires the trial court to miss too much when it is forbidden from considering the mitigating characteristics of youth and when it is required to treat a child, like Rickym, as though he were an adult. *See Miller* at 2468. Therefore, this Court should hold that the

mandatory sentencing statutes in R.C. 2929 are unconstitutional as applied to children because they do not permit the trial court to make an individualized determination about a child's sentence or consider the attributes of youth.

Conclusion

When a sentencing court cannot articulate any reasons for a large disparity between two codefendants, aside from the fact that one pleaded guilty and the other went to trial, this creates the appearance of an inappropriate trial tax. This Court should adopt the first proposition of law to articulate to Ohio courts that the chilling effect of a trial tax cannot be dispelled merely by calling it a "plea reward" instead. And, Ohio's mandatory minimum sentencing scheme runs afoul of *Miller's* vision. Children are different from adults for all time and in all occasions. But, Ohio's sentencing scheme mandates that a court ignore those differences and instead treat children as if they were adults. Accordingly, this Court should adopt the second proposition of law in this case as a natural extension of *Miller*.

Respectfully submitted,

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Certificate of Service

The undersigned counsel certifies that a copy of the foregoing **Merit Brief of Appellant Rickym Anderson** was served by ordinary U.S. Mail this 5th day of August, 2016 to Andrew T. French, Assistant Prosecuting Attorney, Montgomery County Prosecutor's Office, 301 West Third Street, 5th Floor, Courts Building, Dayton, Ohio 45402.

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Assistant State Public Defender

Counsel for Rickym Anderson

#470009

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	CASE No. 2016-0317
	:	
PLAINTIFF-APPELLEE,	:	
	:	ON APPEAL FROM THE MONTGOMERY
V.	:	COUNTY COURT OF APPEALS
	:	SECOND APPELLATE DISTRICT
RICKYM ANDERSON,	:	
	:	
DEFENDANT-APPELLANT.	:	C.A. CASE No. 26525

APPENDIX TO MERIT BRIEF OF APPELLANT RICKYM ANDERSON

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : CASE NO. _____
: :
PLAINTIFF-APPELLEE : :
: :
V. : ON APPEAL FROM THE MONTGOMERY
: COUNTY COURT OF APPEALS
: SECOND APPELLATE DISTRICT
RICKYM ANDERSON, : :
: :
DEFENDANT-APPELLANT. : C.A. CASE No. 26525

NOTICE OF APPEAL OF DEFENDANT-APPELLANT RICKYM ANDERSON

Montgomery County Prosecutor's Office

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Notice of Appeal of Appellant Rickym Anderson

Rickym Anderson hereby gives notice of appeal to the Supreme Court of Ohio from the Decision and Judgment Entry of the Montgomery County Court of Appeals, Second Appellate District, entered in Court of Appeals Case No. 26525, on January 15, 2106. This case involves felony-level offenses, a substantial constitutional question, and is of public or great general interest.

Respectfully submitted,

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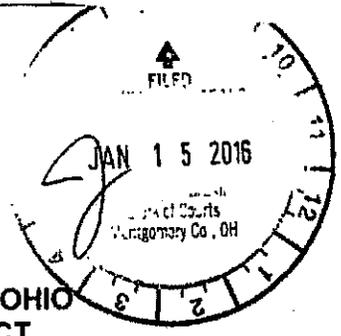
A copy of the foregoing **Notice of Appeal of Rickym Anderson** was forwarded by regular U.S. Mail this 29th Day of February, 2016 to the office of Mathias H. Heck, Jr., Montgomery County Prosecutor, Montgomery County Prosecutor's Office, 301 West Third Street, 5th Floor, Courts Building, P.O. Box 972, Dayton, Ohio 45402.

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CASE: CA 026525
002512708
DATE: 01/05/16



IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

R

STATE OF OHIO

Plaintiff-Appellee

v.

RICKYM ANDERSON

Defendant-Appellant

Appellate Case No. 26525

Trial Court Case No. 12-CR-1911/1

(Criminal Appeal from
Common Pleas Court)

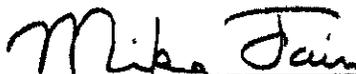
FINAL ENTRY

Pursuant to the opinion of this court rendered on the 15th day
of January, 2016, the judgment of the trial court is affirmed.

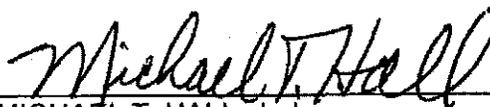
Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the
Montgomery County Court of Appeals shall immediately serve notice of this judgment upon
all parties and make a note in the docket of the mailing.

Jeffrey E. Froelich
JEFFREY E. FROELICH, Presiding Judge



MIKE FAIN, Judge



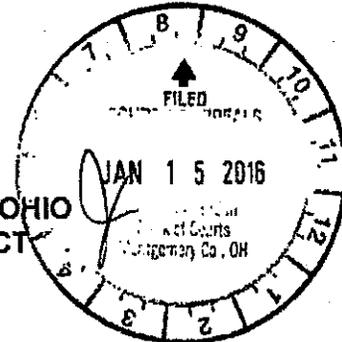
MICHAEL T. HALL, Judge

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IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

RICKYM ANDERSON

Defendant-Appellant

Appellate Case No. 26525

Trial Court Case No. 12-CR-1911/1

(Criminal Appeal from
Common Pleas Court)

.....
OPINION
.....

Rendered on the 15th day of January, 2016.

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Attorney for Plaintiff-Appellee

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Attorney for Defendant-Appellant

.....
HALL, J.

{¶ 1} Rickym Anderson appeals from his resentencing on several charges following our remand to correct the trial court's failure to make consecutive-sentence findings and its improper award of jail-time credit.

{¶ 2} The facts and procedural history of Anderson's case are detailed in *State v. Anderson*, 2d Dist. Montgomery No. 25689, 2014-Ohio-4245, which ordered the remand. Briefly, 16-year-old Anderson and two companions, Dylan Boyd and M.H., robbed two victims in a residential garage at gunpoint, shooting one of the victims and locking the other in the trunk of a car. *Id.* at ¶ 8-12. Boyd was the shooter in that incident. Anderson, Boyd, and another teenager then stole a third victim's purse at gunpoint. Anderson held the gun during that offense and threatened to shoot the victim. *Id.* at ¶ 14. Anderson and Boyd subsequently were apprehended. Anderson admitted involvement in both robberies. He initially was charged in juvenile court. He then was bound over to the general division of the common pleas court for trial as an adult. He was charged with three counts of aggravated robbery, one count of kidnapping, and one count of felonious assault. A firearm specification accompanied each charge. *Id.* at ¶ 18. A jury found Anderson guilty of everything except felonious assault. The trial court imposed an aggregate 28-year prison term. Boyd, who previously had pled guilty, received a nine-year sentence. *Id.*

{¶ 3} In his prior direct appeal, Anderson raised eight assignments of error. First, he argued that the trial court had erred in overruling a suppression motion. Second, he claimed his sentence was unlawfully disproportionate to the sentence Boyd received. Third, he asserted that the trial court had erred in failing to comply with R.C. 2929.14(C), which requires findings for consecutive sentences. Fourth, he challenged the trial court's award of jail-time credit. In his fifth, sixth, and seventh assignments of error, Anderson claimed Ohio's mandatory-transfer statutes, which require certain juvenile cases to be transferred to adult court, violated due process and equal protection and constituted cruel

and unusual punishment. Finally, Anderson's eighth assignment of error alleged ineffective assistance of counsel.

{¶ 4} On review, we overruled the first, fifth, sixth, seventh, and eighth assignments of error. *Anderson* at ¶ 87. We overruled the second assignment of error, which alleged disproportionate sentencing, as moot because we were remanding for resentencing. *Id.* We sustained the third and fourth assignments of error, finding that the trial court had failed to award proper jail-time credit and had failed to make the statutory findings necessary for consecutive sentences. As a result, we vacated Anderson's sentence and remanded the cause "for a new sentencing hearing." *Id.*

{¶ 5} On remand, the trial court held a resentencing hearing on November 19, 2014. During the hearing, defense counsel asked the trial court to impose the same nine-year sentence Boyd had received, arguing that Anderson in fact was less culpable than Boyd. Defense counsel also argued that consecutive sentences were not justified. (Resentencing Tr. at 8-10). The trial court disagreed. It imposed an aggregate 19-year prison term. The aggregate sentence included concurrent 11-year prison terms for the three counts of aggravated robbery in addition to a consecutive five-year term for kidnapping and a mandatory, consecutive three-year term for a firearm specification. (*Id.* at 14-15). The trial court also made the statutory findings for consecutive sentences. (*Id.* at 20-21). In addition, the trial court explained why it believed Anderson deserved a more severe sentence than Boyd. (*Id.* at 16-19). Finally, the trial court recognized that it had increased Anderson's sentence on counts one and two from nine years to 11 years, while reducing his aggregate sentence from 28 years to 19 years. (*Id.* at 22). The trial court memorialized its resentencing in a November 21, 2014 "amended termination entry."

(Doc. #19). At the same time, the trial court separately filed a "supplemental termination entry" containing its findings in support of consecutive sentences. (Doc. #20).

{¶ 6} In his present appeal, Anderson advances seven assignments of error from his resentencing. His first assignment of error challenges the trial court's imposition of an aggregate 19-year sentence. Anderson claims this sentence is impermissibly disproportionate¹ to the nine-year sentence received by Boyd, who pled guilty. Anderson reasons that he and Boyd were "similarly situated" defendants and that the additional 10 years in prison he received amounted to an unconstitutional "trial tax" insofar as it punished him for exercising his right to a jury trial.

{¶ 7} It is beyond dispute that a defendant cannot be punished for refusing to plead guilty and exercising his right to a trial. *State v. Blanton*, 2d Dist. Montgomery No. 18923, 2002 WL 538869, *2-3 (April 12, 2002). "Accordingly, when imposing a sentence, a trial court may not be influenced by the fact that a defendant exercised his right to put the government to its proof rather than pleading guilty." *Id.* Where the record creates an inference that a defendant's sentence was enhanced because he elected to put the government to its proof, we have looked for additional evidence dispelling the inference and unequivocally explaining the trial court's sentencing decision. *Id.*

{¶ 8} Here Anderson contends an unrebutted inference *does* exist that the trial court punished him for exercising his right to a jury trial. According to Anderson, this inference is supported by the fact that Boyd received a nine-year sentence. Anderson

¹ This is more accurately a consistency argument, regarding whether the sentence is consistent with other defendants' sentences for the same or similar offenses. Proportionality in sentencing more correctly concerns the relationship between the nature of the offense and its resulting sentence.

asserts that the only apparent distinction between himself and Boyd is that he went to trial whereas Boyd pled guilty. Our record contains little factual information about Boyd's background or what was considered by the trial court in regard to Boyd's sentence, other than it was agreed upon. Nevertheless, Anderson claims the trial court acknowledged that its sentence in his case was influenced by the fact that Boyd pled guilty whereas Anderson did not.

{¶ 9} Upon review, we agree that Anderson and Boyd received different sentences. We also recognize that, in rejecting Anderson's claim that he was less culpable than Boyd, the trial court characterized the two defendants as being "equally culpable." (Resentencing Tr. at 18). It does not follow, however, that equally culpable defendants necessarily must receive the same or similar sentences. Although Anderson and Boyd may have had a shared level of criminal culpability for their activity in this case, the record supports a finding that they were not similarly situated in all relevant respects for purposes of sentencing.

{¶ 10} At the resentencing hearing, the State and the trial court both recognized (and Anderson does not dispute) that Boyd had agreed to plead guilty and to testify against Anderson, if requested, as part of a plea deal that included an agreed nine-year prison sentence. (*Id.* at 13, 15-16). The trial court explained that it imposed a nine-year sentence in Boyd's case precisely because it was an agreed sentence that was part of a negotiated deal. (*Id.* at 16). The trial court added that "go[ing] to trial * * * has nothing to do" with the sentences it imposes. *Id.*

{¶ 11} Having examined the record, we conclude that the trial court adequately dispelled any inference that Anderson's aggregate 19-year sentence included a so-called

"trial tax" or penalty for exercising his right to a jury trial. Among other things, the fact that Boyd entered into a plea deal and agreed to testify against Anderson in exchange for an agreed sentence of nine years adequately distinguishes the two cases and provides a valid reason for the different sentences imposed. In essence, Boyd was rewarded for pleading guilty and agreeing to testify against Anderson. It is permissible to reward a defendant by mitigating his sentence when he chooses to waive a constitutional right and cooperate with authorities. *State v. Smith*, 2d Dist. Clark No. 08-CA-37, 2009-Ohio-1041, ¶ 15-16. Anderson, who stood on his rights and went to trial, received no such reward. Although the distinction may be subtle, this does not mean he was punished for exercising his constitutional rights. *Id.* The first assignment of error is overruled.

{¶ 12} In his second assignment of error, Anderson claims the trial court's consecutive-sentence findings clearly and convincingly are not supported by the record. This argument implicates R.C. 2929.14(C)(4), which permits consecutive prison terms 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: * * *

(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.

{¶ 13} Here the trial court made the foregoing findings, including findings under both R.C. 2929.14(C)(4)(b) and (c). (Resentencing Tr. at 20-21; Supplemental Termination Entry, Doc. # 20 at 1-2). Under the standard of review set forth in R.C. 2953.08(G)(2), however, Anderson argues that the trial court's findings clearly and convincingly are not supported by the record. See, e.g., *State v. Kay*, 2d Dist. Montgomery No. 26344, 2015-Ohio-4403, ¶ 15 (applying R.C. 2953.08(G)(2) to determine whether consecutive-sentence findings clearly and convincingly were unsupported by the record). He asserts that his aggregate sentence is disproportionate to Boyd's—an issue that we fully addressed above. He also claims no evidence exists to justify a finding that the harm he caused was so great or unusual that no single prison term would suffice. Finally, he contends his criminal history does not indicate the need for incarceration longer than a single prison term would allow.

{¶ 14} Upon review, we do not believe the record clearly and convincingly fails to support the trial court's findings. The trial court first found that consecutive service of the kidnapping sentence was necessary to protect the public from future crime and to punish the defendant. Affirmative support for these findings exists in the PSI report, which details Anderson's criminal history, and the trial transcripts, which reveal the facts underlying his current offenses. Anderson, who was 16 years old at the time of the crimes at issue, had a prior juvenile adjudication for robbery, a second-degree felony if committed by an adult. (PSI at 5). He violated the terms of his supervision in that case and received a juvenile

commitment. (*Id.*) He also had juvenile adjudications for theft and disorderly conduct (fighting). (*Id.*) With regard to the instant offenses, the record reflects that he and two companions smoked marijuana before approaching two victims in a garage. One of Anderson's companions, Dylan Boyd, shot one of the victims in the back as he tried to flee, resulting in the removal of major portions of his intestines and requiring his use of a colostomy bag. *Anderson* at ¶ 7-11. After searching for a set of car keys, Boyd then ordered the other victim into the trunk of a car. While in the trunk, the victim could hear Anderson and his companions rummaging around the car. She also heard Boyd tell someone to grab her purse. *Id.* at ¶ 12. The three teenagers then left and went to an abandoned house where they left the purse and smoked cigarettes found in it. *Id.* at ¶ 14. Accompanied by another friend, Boyd and Anderson later saw a third victim taking out her trash. Anderson approached her with a gun, asked whether she had any money, and threatened to shoot her. In response, the victim, who was developmentally disabled, handed over her purse, which contained a cell phone. *Id.* Police later apprehended Anderson with the cell phone in his pocket. They found a gun 30 to 40 feet away from where he was apprehended. *Id.* at ¶ 16. As a result of the incident, the victim "felt compelled to relocate for her safety" and "is now fearful and paranoid when she takes out the trash." (PSI at 10). When asked about his involvement in the crimes, Anderson stated that he "personally did not commit any offense, but he was hanging around the people that did and he was not under control of himself as the drugs he was on had taken over his mind." (PSI at 4).

{¶ 15} At sentencing, the trial court explained why it found the kidnapping offense particularly dangerous: " * * * This woman was placed in the trunk of a car and all three

people were looking for the keys. Had they found the keys and driven her off, who knows what would've happened. Luckily, they couldn't find the keys, ran away." (Resentencing Tr. at 16-17). The trial court added:

* * * Now Mr. Anderson, did he say, "Oh, my gosh, I shouldn't have done that. Let me go back to school. Let me go back home?" No. He was the one with the gun at the next offense. And here, there was a handicapped young lady who was frightened, who saw that gentleman—not a kid—with a gun while they asked for her cell phone.

In talking to the police, Mr. Anderson indicated that Mr. Boyd had the gun at the first offense. However, the second offense—oh for—also at the first offense after they placed [the victim] in the trunk, they took her purse, they couldn't find the keys, but they took a credit card, they took the cigarettes, then went somewhere from her, smoked the cigarettes, and apparently made their next plan.

Mr. Anderson, when talking to the police admitted he had the gun at him (sic) at the second offense but pretty much denied culpability. At the time of the presentence report, Mr. Anderson, rather than taking full responsibility, reported he was with some people who decided to rob some people. He said that as a result of the robbery, someone was shot and a female was put in a truck (sic) of the vehicle and her purse was stolen. He stated that he and the people he was with then left the area and robbed another girl. He stated that a short time later, the police came up and arrested them.

Mr. Anderson advised that he never fired the gun but that at some point in the night he was in possession of it. Asked why he committed the offense, he stated he personally did not comment (sic) any offense but was hanging around with people who did and that he was not under the control of himself as the drugs had taken over his mind, apparently smoking some marijuana earlier in the day and taking a couple of Xanax.

(*Id.* at 17-18).

{¶ 16} The trial court then reviewed Anderson's criminal history (set forth above) and concluded based on (1) the facts of the present crimes, (2) his criminal history, and (3) his continued denial of responsibility, that the sentence it imposed was appropriate. (*Id.* at 19). In our view, these considerations support a finding that a consecutive sentence on the kidnapping charge was necessary to protect the public from future crime and to punish the offender. We certainly cannot say the record clearly and convincingly fails to support these findings by the trial court. The same facts and circumstances discussed above also support the trial court's additional findings that consecutive sentences are not disproportionate to the seriousness of Anderson's conduct and to the danger he poses to the public. Again, we cannot say the record clearly and convincingly fails to support these findings.

{¶ 17} The only other required finding was *either* that "[a]t 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," or that "the

offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender." R.C. 2929.14(C)(4)(b) and (c). Although the trial court made both of these findings, either one was sufficient. Here the record supports the second finding regarding Anderson's history of criminal conduct demonstrating that consecutive sentences were necessary to protect the public from future crime. Anderson, who was only 16-years-old, already had a prior juvenile adjudication for robbery, a second-degree felony if committed by an adult. He violated the terms of his supervision in that case and served a period of commitment. He also had prior juvenile adjudications for theft and disorderly conduct. After those incidents, he participated in the present crimes, which involved shooting one victim, kidnapping another victim, and robbing them. Later that same day, he pulled a gun on a disabled woman and stole her purse while threatening to shoot her. Even after being convicted, he continued to deny any real responsibility for his actions. In light of these facts, we cannot say the record clearly and convincingly fails to support the trial court's finding that Anderson's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime. As a result, we need not consider the trial court's alternative finding that "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." The second assignment of error is overruled.

{¶ 18} In his third assignment of error, Anderson contends the trial court erred in failing to journalize its consecutive-sentence findings in its sentencing entry, as required by *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.2d 659. In short,

Anderson contends the trial court should have journalized its consecutive-sentence findings in its November 21, 2014 "Amended Termination Entry," which it filed at 3:27 p.m., rather than in its November 21, 2014 "Supplemental Termination Entry; Findings in Support of Consecutive Sentences," which it filed at 3:45 p.m. (Doc. # 19, 20).

{¶ 19} Upon review, we find no reversible error in the trial court's method of journalizing its consecutive-sentence findings. In *Bonnell*, the Ohio Supreme Court stated that a trial court must make consecutive-sentence findings at the sentencing hearing and incorporate those findings into its sentencing entry. *Bonnell* at ¶ 29. The *Bonnell* court added, however, that an "inadvertent failure to incorporate the statutory findings in the sentencing entry after properly making those findings at the sentencing hearing does not render the sentence contrary to law." *Id.* at ¶ 30. In other words, it does not constitute grounds for reversal, and a trial court may correct its omission with a nunc pro tunc entry, which itself is not appealable. *Id.* at ¶ 31.

{¶ 20} Here the trial court filed an amended termination entry resentencing Anderson to 19 years in prison. Eighteen minutes later it filed a "supplemental" termination entry containing the consecutive-sentence findings it made at the sentencing hearing. The supplemental entry stated that "[t]he findings herein are hereby incorporated within this Court's Sentencing Termination Entry." (Doc. # 20 at 2). Nothing more was required. The third assignment of error is overruled.

{¶ 21} In his fourth assignment of error, Anderson claims the trial court impermissibly punished him for his successful prior appeal when, at resentencing, it increased his sentence on three counts without providing an adequate explanation for doing so. He argues that an un rebutted presumption of vindictive sentencing exists and

that the increased sentence violated his due process rights.

{¶ 22} On the record before us, we find no presumption of vindictiveness and no indication that the trial court punished Anderson for his prior successful appeal. “The U.S. Supreme Court in *North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969), ‘created a presumption of judicial vindictiveness that applies when a judge imposes a more severe sentence upon a defendant.’ ” *State v. Rammel*, 2d Dist. Montgomery Nos. 25899, 25900, 2015-Ohio-2715, ¶ 19, quoting *Plumley v. Austin*, ___ U.S. ___, 135 S.Ct. 828, 190 L.Ed.2d 923 (2015) (Thomas, J., dissenting). The presumption of vindictiveness does not apply, however, every time a defendant receives a higher sentence. *Id.* at ¶ 20, citing *Alabama v. Smith*, 490 U.S. 794, 799, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989). The presumption applies only when circumstances are such that there exists a “reasonable likelihood” the increased sentence is the product of actual vindictiveness on the part of the sentencing judge. *Smith* at 799, citing *United States v. Goodwin*, 457 U.S. 368, 373, 102 S.Ct. 2485, 73 L.Ed.2d 74 (1982).

{¶ 23} The record here falls short of establishing a reasonable likelihood that Anderson’s sentence was influenced by judicial vindictiveness. Prior to Anderson’s successful appeal, the trial court imposed the following sentences: (1) two concurrent nine-year prison terms for two counts of aggravated robbery; (2) a consecutive seven-year term for a third count of aggravated robbery; (3) a consecutive six-year term for one count of kidnapping; (4) a consecutive three-year term for three merged firearm specifications, and (5) a consecutive three-year term for another firearm specification that it did not merge. The result was an aggregate 28-year prison term.

{¶ 24} We vacated the entire sentence and remanded for a new sentencing hearing.² *Anderson* at ¶ 51, 87. On remand, the trial court held a new hearing at which it imposed the following sentences: (1) three concurrent 11-year terms on all three counts of aggravated robbery; (2) a consecutive five-year term for one count of kidnapping, and (3) one consecutive three-year term upon the merger of all four firearm specifications. The result was an aggregate 19-year prison term.

{¶ 25} On appeal, Anderson complains about the trial court increasing his sentence on the three aggravated robbery convictions (counts one, two, and three) from two nine-year terms and one seven-year term to three 11-year terms. Although his aggregate sentence decreased from 28 years to 19 years, Anderson cites *State v.*

² The basis for vacating the sentence was the trial court's failure to make the requisite consecutive-sentence findings. Although this rationale did not apply to the two counts of aggravated robbery on which Anderson had received concurrent sentences (counts one and two), we drew no such distinction in our prior opinion. *Anderson* at ¶ 51, 87. In fact, after vacating "the sentence" and remanding for a new sentencing hearing, we overruled as moot another assignment of error challenging the aggregate sentence on the basis that it punished Anderson for going to trial, thereby imposing an unlawful "trial tax." We found this issue moot "because Anderson's sentence [was] being vacated, and the matter [was] being remanded for a new sentencing hearing." *Id.* at ¶ 52-54. In retrospect, this court perhaps should not have vacated Anderson's entire sentence. See generally *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824 (rejecting the "sentencing package doctrine" in Ohio and finding that an error in the imposition of sentence on one count does not permit vacating all sentences imposed for multiple offenses); see also *State v. Franklin*, 2d Dist. Montgomery No. 25125, 2012-Ohio-6223, ¶ 8 ("* * * Ohio has rejected the federal model, which allows the modification or vacation of all sentences imposed for multiple offenses, even when there is an appeal from and reversal of only one of the sentences imposed."). This court did vacate the entire sentence, however, and that unappealed decision was the law of the case with regard to resentencing in the trial court. Consistent with our remand, the trial court proceeded to hold a de novo sentencing hearing on all counts. We note too that Anderson largely benefitted from the trial court resentencing him on all counts. It reduced his prison term for kidnapping from six years to five years. It also merged all four firearm specifications into one and imposed a single, three-year term instead of the two separate three-year terms it originally had imposed.

Bradley, 2d Dist. Champaign No. 06CA31, 2008-Ohio-720, and *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, and argues that "in evaluating a sentence for vindictiveness, a reviewing court must consider each sentence individually, not as a package." (Appellant's brief at 12). Anderson then asserts that the record contains no new information justifying the increase in his sentence on counts one, two, and three following his successful appeal. Therefore, he maintains that an un rebutted presumption of vindictiveness exists.

{¶ 26} We find Anderson's argument unpersuasive. Assuming for the moment that Anderson's argument is that the trial court was required to apply the same prior numerical sentences at his resentencing, allowing only reconsideration of the non-mandatory consecutive sentencing, Anderson would have received a 21-year aggregate sentence and not a 19-year sentence. The vacated sentences were 9 years and 9 years and 7 years for three aggravated robberies, six years for the kidnapping and two three-year firearm specifications, one for each of the robbery events that were separated in time and victim. If those same numbers apply, with the trial court making the kidnapping consecutive, as it did upon resentencing, then the sentence is nine years, nine years, and seven years, concurrent for a total of nine years, plus six years for the kidnapping, consecutive for a total of 15 years, plus three years and three years for the two separate firearm specifications, statutorily consecutive, for a total of 21 years, not 19. We fail to see how this lesser sentence is vindictive.

{¶ 27} We also view Anderson's reference to an improper "package" sentence as misplaced. As this court noted in *Bradley*, *Saxon* stands for the proposition that a trial court may not consider the sanction imposed for each of multiple offenses as a

component of a single, overarching sentence. *Bradley* at ¶ 21- 25. As a result, an appellate court can modify, remand, or vacate only the sentence for an offense that is appealed. Upon finding an error with regard to the sentence for one count, it cannot modify, remand, or vacate the entire multiple-offense sentence. *Id.* at ¶ 24. The particular error in *Saxon* involved the appellate court's "reversal of multiple sentences on a finding that one was imposed contrary to law." *Id.* at ¶ 33.

{¶ 28} In the present case, this court previously did vacate all of Anderson's multiple sentences upon a finding that consecutive sentences had been imposed on some counts without the necessary findings. But Anderson did not appeal that decision, and, consistent with our remand, the trial court proceeded to conduct an entirely new resentencing hearing.

{¶ 29} In *State v. Rammel*, 2d Dist. Montgomery Nos. 25899, 25900, 2015-Ohio-2715, this court recently found the sentencing-package doctrine inapplicable where we previously had "reversed the entire sentence and remanded for a new sentencing hearing." *Id.* at ¶ 16. In *Rammel*, the trial court initially had imposed an aggregate eight-year prison sentence for multiple offenses. On appeal, we found that the trial court had exceeded the statutory maximum sentence for some counts and had failed to make the findings necessary to impose partially consecutive sentences. As a result, we vacated the entire sentence and remanded for resentencing. *Id.* at ¶ 2-5. On remand, the trial court reduced the sentence it had imposed on some counts. However, the trial court also reconfigured its prior concurrent-consecutive sentencing, changing the sentence on a breaking-and-entering charge from concurrent to consecutive. The result of this restructuring was an aggregate seven-year term. *Id.* at ¶ 6. The defendant appealed,

arguing that the trial court simply should have reduced his sentence on those counts in which it had exceeded the statutory maximum. Doing so would have resulted in a lesser aggregate term. The appellant argued that the trial court's failure to follow this approach violated the sentencing-package doctrine and demonstrated judicial vindictiveness attributable to his successful appeal. *Id.* at ¶ 9.

{¶ 30} We rejected both arguments in *Rammel*. With regard to the sentencing-package doctrine, we reasoned in part: "The trial court did not use the sentencing-package doctrine or exceed the scope of remand. We concluded in *Rammel II* that changes in sentencing law rendered Rammel's original sentence void. Consequently we reversed the entire sentence and remanded for a new sentencing hearing. The trial court had to reconsider all of its sentencing decisions, including which sentences to require Rammel to serve consecutively." *Id.* at ¶ 16. The same can be said in Anderson's case. In light of our prior opinion vacating his sentences and remanding for resentencing, the trial court had to reconsider all of its sentencing decisions, including the term of imprisonment for the three aggravated robberies. The sentencing-package doctrine imposed no impediment.

{¶ 31} Finally, with regard to vindictive sentencing in *Rammel*, we reasoned:

There is no basis for a presumption of vindictiveness in a case in which the defendant has agreed to a narrowly set range for sentencing and the total length of a defendant's sentence after resentencing for multiple offenses is shorter than the total length of the original sentence. Rammel's agreed 5-8 year sentencing range for multiple offenses solidified his concern over the total length of his sentence, not the length of any individual

sentence. Indeed even when the burglary charges were believed to allow maximum 5 year sentences, the only way for the trial court to impose more than the minimum of the 5-8 year range was for some combination of the sentences to be served consecutively. He chose to continue with the agreed range. Thus, in this case the vindictiveness presumption simply does not apply.

Moreover, "vindictiveness of a sentencing judge is the evil the [*Pearce*] Court sought to prevent rather than simply enlarged sentences." [Citation omitted]. The *Pearce* Court wanted to prevent judges when resentencing a defendant who had successfully challenged his conviction from punishing the defendant with a heavier sentence. Imposing a shorter total sentence within an agreed-upon range of sentence is hardly a punishment. Here, the trial court followed Rammel's agreement and reduced the total length of his sentence by one year. Accordingly, the circumstances in this case do not indicate a need to guard against vindictiveness.

If the *Pearce* presumption does not apply, "the burden remains upon the defendant to prove actual vindictiveness." (Citation omitted.) *Smith*, 490 U.S. at 799, 109 S.Ct. 2201, 104 L.Ed.2d 865. Rammel does not attempt to show actual vindictiveness, and we do not see any evidence of it.

Id. at ¶ 21-23.

(¶ 32) *Rammel* is distinguishable from Anderson's case insofar as it involved a plea deal that included an agreed sentencing range. It is analogous, however, in two

important respects. First, just as the trial court on remand increased Anderson's sentence on three counts of aggravated robbery, the trial court on remand in *Rammel* increased the appellant's sentence when it changed a previously-concurrent sentence for one count of breaking-and-entering to a consecutive sentence. Second, in Anderson's case and in *Rammel*, the net effect following a remand for resentencing was that the defendant's aggregate sentence was *reduced*. Under these circumstances, we find no "reasonable likelihood" of actual vindictiveness on the part of the sentencing judge.³ Accordingly, the fourth assignment of error is overruled.

{¶ 33} In his fifth assignment of error, Anderson contends the "mandatory" nature of the felony sentencing statutes in Revised Code Chapter 2929 constitutes cruel and unusual punishment as applied to him. He argues that the sentencing statutes compelled the trial court to impose "mandatory prison terms" without the ability to consider his age and various attendant circumstances of youth. In particular, he complains about mandatory three-year terms for firearms specifications, minimum sentences of at least three years for first-degree felonies, and mandatory consecutive sentencing. He reasons

³ In explaining its new sentence, the trial court stated: "First of all, in light of looking at the Second District Court of Appeals case which I'm going to follow, I believe a modification of the sentence is appropriate since some of them will be going back to Juvenile Court." (Resentencing Tr. at 14). The trial court appears to have been referring to *State v. Brookshire*, 2d Dist. Montgomery No. 25859, 2014-Ohio-4858. In *Brookshire*, which was decided shortly before Anderson's resentencing, this court addressed a situation involving multiple charges against a juvenile, some of which were subject to mandatory bindover and some of which were not. This court concluded that the proper procedure in such a case, after conviction, was for the adult court to impose an adult sentence on the non-mandatory bindover counts but then stay the sentence and return those counts to juvenile court. *Id.* at ¶ 20-22. "At that point, the juvenile court can ultimately transfer the case back to the adult system or make a Serious Youthful Offender disposition along with a traditional juvenile disposition." *Id.* at ¶ 20. *Brookshire* has been accepted for review by the Ohio Supreme Court in case # 2015-0192 as being in conflict with *State v. Mays*, 2014-Ohio-3815, 18 N.E.3d 850 (8th Dist.).

that the felony sentencing statutes foreclosed an "individualized determination" regarding an appropriate sentence for him. Anderson raises his argument under the Eighth Amendment to the U.S. Constitution and Article I, Section 9 of the Ohio Constitution.

{¶ 34} Upon review, we find Anderson's argument to be unpersuasive. In support of his cruel-and-unusual punishment claim, he analogizes his case to precedent including *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), and *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). But Anderson's reliance on these cases and other similar cases is misplaced. They bear no similarity to his situation.

{¶ 35} In *Miller*, the U.S. Supreme Court invalidated mandatory sentencing schemes that require juveniles convicted of homicide to "receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes[.]" *Miller* at 2475. In *Graham*, the Court held that the Eighth Amendment prohibits sentences of life without parole for juvenile offenders who commit non-homicide offenses. *Graham* at 82. In *Roper*, the Court held that the Eighth Amendment prohibits execution of individuals who were juveniles when they committed their crimes. *Roper* at 578.

{¶ 36} In the present case, of course, Anderson was not convicted of homicide. Nor did he receive a death sentence or a sentence of life without parole. Therefore, the foregoing cases are not applicable to him. We note that the only "mandatory" aspect of Anderson's individual sentences was a three-year prison term for the newly merged firearm specifications and, it appears, a minimum three-year prison term on the substantive counts. By law, the three-year term for the firearm specification was

mandatory and was required to be served consecutively. See R.C. 2929.14(B)(1)(a)(ii) and (C)(1)(a). Anderson's aggravated robbery and kidnapping convictions were first-degree felonies. The minimum term of imprisonment for those felonies was three years, and that term appears to have been mandatory because a firearm was involved, making Anderson ineligible for community control.⁴ See *State v. Becraft*, 2d Dist. Clark No. 2013-CA-54, 2015-Ohio-3911, ¶ 14 (noting that imprisonment is required for aggravated robbery and other felonies when a firearm is involved or when a firearm specification is charged and proven). But consecutive sentencing was not mandatory for these substantive counts. In fact, the trial court on resentencing imposed three concurrent sentences for aggravated robbery. It imposed a discretionary consecutive sentence only for kidnapping.

{¶ 37} Even accepting, *arguendo*, that Ohio law compelled the trial court to impose punishment of at least three years in prison for Anderson's substantive first-degree felony counts and a consecutive three-year term for the merged firearm specifications, we see no violation of the Eighth Amendment to the U.S. Constitution or Article I, Section 9 of the Ohio Constitution. Contrary to the implication of Anderson's appellate brief, not all "mandatory" punishment imposed on juveniles in adult court is cruel and unusual. In *State v. Long*, 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890, for example, the Ohio Supreme Court considered whether Ohio's felony sentencing scheme constituted cruel and unusual punishment as applied to a juvenile convicted of aggravated murder in adult court and sentenced to life without parole. In *Long*, the defendant faced a mandatory

⁴ The PSI reflects, however, that there was merely a statutory "presumption" under R.C. 2929.13(D) that a prison term was necessary for the aggravated robbery and kidnapping charges. (PSI at 11).

minimum sentence of life with parole eligibility after twenty years. *Long* at ¶ 5. In the course of its ruling, the Ohio Supreme Court recognized that *Miller* banned *mandatory life-without-parole* sentences on juveniles tried in adult court. *Id.* at ¶ 8. Nowhere in *Long*, however, did the court suggest that that the Eighth Amendment or Article I, Section 9 prohibit *any and all* mandatory sentences on juveniles tried in adult court. See also *State v. Reidenbach*, 5th Dist. Coshocton No. 2014CA0019, 2015-Ohio-2915 (rejecting argument by juvenile tried in adult court that imposition of punitive and mandatory Tier III sex-offender requirements on him constituted cruel and unusual punishment).

{¶ 38} The only authority Anderson cites directly supporting the proposition that all mandatory minimum sentences imposed on juveniles tried in adult court constitute cruel and unusual punishment is *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014). In *Lyle*, the defendant was tried in adult court for a robbery he committed as a juvenile. The sentencing statute in adult court required a prison term of at least seven years. The defendant argued that application of the statute constituted cruel and unusual punishment "when applied to all juveniles prosecuted as adults because the mandatory sentence failed to permit the court to consider any circumstances based on his attributes of youth or the circumstances of his conduct in mitigation of punishment." *Id.* at 380. In a 4-3 decision, the Iowa Supreme Court agreed, concluding that "all mandatory minimum sentences of imprisonment for youthful offenders are unconstitutional under the cruel and unusual punishment clause in article I, section 17 of our constitution." *Id.* at 400.

{¶ 39} Upon review, we decline to adopt the majority approach in *Lyle*. Notably, the Iowa Supreme Court conceded that "no other court in the nation has held that its constitution or the Federal Constitution prohibits a statutory schema that prescribes a

mandatory minimum sentence for a juvenile offender." *Id.* at 386. Although such consensus against Anderson's position is not dispositive, it cannot lightly be ignored either. The *Lyle* also court acknowledged that "most states permit or require some or all juvenile offenders to be given mandatory minimum sentences." *Id.* Ohio is among them because nothing in the Revised Code precluded the trial court from imposing a mandatory prison sentence on Anderson once he was bound over to adult court and subjected to Ohio's felony sentencing scheme.

{¶ 40} Having examined Eighth Amendment jurisprudence, as well as Article I, Section 9 of the Ohio Constitution, we are persuaded by the three dissenters in *Lyle* who found no support, in any other case in the nation, for the proposition that any mandatory minimum sentence imposed on a juvenile offender in adult court constitutes cruel and unusual punishment. In the present case, Anderson received three concurrent 11-year prison terms for aggravated robbery, a consecutive five-year term for kidnapping, and a consecutive three-year term for merged firearm specifications. For Eighth Amendment purposes, he appears to propose a categorical restriction prohibiting mandatory prison sentences on juveniles convicted in adult court. As set forth above, however, the only similar categorical prohibitions that have been established outside of Iowa involve sentencing juveniles to mandatory life without parole (*Miller, supra*), to life without parole for non-homicide offenses (*Graham, supra*), or to death for offenses committed as juveniles (*Roper, supra*). We agree with the *Lyle* dissenters that this line of cases cannot reasonably be extended to prohibit any and all mandatory sentences for juveniles tried in adult court.

{¶ 41} Finally, we find no violation of Article I, Section 9 in Anderson's case. Under the Ohio Constitution, cruel and unusual punishments are "rare" and are limited to sanctions that under the circumstances would be shocking to any reasonable person. *State v. Blankenship*, ___ N.E.3d ___, 2015-Ohio-4624, ¶ 32. We find nothing conscience-shocking about subjecting a juvenile tried in adult court to a mandatory consecutive three-year prison term when a firearm is used in the commission of his offense. Nor do we find anything conscience-shocking about such a defendant being subjected to a minimum three-year prison term when he commits a first-degree felony such as aggravated robbery or kidnapping. Accordingly, the fifth assignment of error is overruled.

{¶ 42} In his sixth and seventh assignments of error, Anderson asserts that the mandatory-transfer provisions of R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b), which involve the transfer of juvenile cases to adult court, violate his right to due process and equal protection.

{¶ 43} In Anderson's prior appeal, we addressed and rejected precisely the same assignments of error challenging the mandatory-transfer provisions of R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) on the basis that they violate due process and equal protection. *Anderson* at ¶ 62-76. Anderson insists, however, that his present appeal raises one or more *new arguments* in support of these assignments of error. He also contends we have the discretion to ignore the res judicata effect of our prior opinion.⁵

{¶ 44} Upon review, we find res judicata applicable. The doctrine bars re-litigation of matters that either were raised in a prior appeal or could have been raised in a prior

⁵ In a footnote, however, Anderson explains that he is presenting his sixth and seventh assignments of error to preserve them for further appeal. (Appellant's Reply Brief at 9, fn.1).

appeal. *State v. McCoy*, 2d Dist. Greene No. 04CA112, 2005-Ohio-6837, ¶ 15. Even if Anderson's sixth and seventh assignments of error address one or more new arguments that he did not raise previously, he *could have* raised them in his earlier appeal, which presented the same assignments of error. As for Anderson's assertion that we may disregard res judicata in an appropriate case, we see no reason to do so here. This court consistently has rejected due process and equal protection challenges to the mandatory-transfer provisions in R.C. 2152.10 and R.C. 2152.12. See *State v. Sowers*, 2d Dist. Miami No. 2014-CA-25, 2015-Ohio-2788, ¶ 4 (citing cases). We see no reason to disregard res judicata here in light of that precedent. The sixth and seventh assignments of error are overruled.

{¶ 45} Having overruled all assignments of error, we affirm the judgment of the Montgomery County Common Pleas Court.

FROELICH, P.J., and FAIN, J., concur.

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Case: CR 025689
2014 SEP 26 AM 8:48
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CLERK OF COURTS
MONTGOMERY CO. OHIO
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IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

RICKYM ANDERSON

Defendant-Appellant

Appellate Case No. 25689

Trial Court Case No. 2012-CR-1911/1

(Criminal Appeal from
Common Pleas Court)

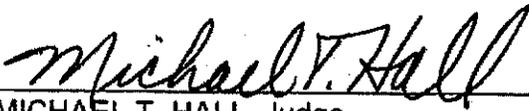
FINAL ENTRY

Pursuant to the opinion of this court rendered on the 26th day
of September, 2014, the judgment of the trial court is affirmed in part and reversed
in part. The sentence is vacated and this matter is remanded for a new sentencing
hearing.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the Montgomery
County Court of Appeals shall immediately serve notice of this judgment upon all parties and
make a note in the docket of the mailing.


JEFFREY E. FROELICH, Presiding Judge


MICHAEL T. HALL, Judge


JEFFREY M. WELBAUM, Judge

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[Cite as *State v. Anderson*, 2014-Ohio-4245.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

RICKYM ANDERSON

Defendant-Appellant

Appellate Case No. 25689

Trial Court Case No. 2012-CR-1911/1

(Criminal Appeal from
Common Pleas Court)

.....
OPINION

Rendered on the 26th day of September, 2014.
.....

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.....

WELBAUM, J.

{¶ 1} Defendant-Appellant, Rickym Anderson, appeals from his conviction and sentence on three counts of aggravated robbery and one count of kidnapping, with gun specifications. Following a jury trial, Anderson was sentenced to a total of 28 years in prison.

{¶ 2} In support of his appeal, Anderson contends that the trial court erred when it overruled his motion to suppress statements made to police and in sentencing him to a prison term that was disproportionate to that of a more culpable co-defendant who pled guilty. Anderson further contends that the trial court erred by sentencing him to consecutive sentences without complying with R.C. 2929.14, and by failing to properly calculate jail-time credit.

{¶ 3} In addition, Anderson contends that the juvenile court erred in transferring his case to adult court, in violation of his rights under the Due Process Clause and the Equal Protection Clause, and in violation of state and federal prohibitions against cruel and unusual punishment. Finally, Anderson contends that he was denied the effective assistance of counsel.

{¶ 4} We conclude that the trial court did not err in overruling the motion to suppress, because the evidence at the suppression hearing supports the trial court's conclusion that Anderson knowingly, voluntarily, and intelligently waived his Miranda rights.

{¶ 5} We further conclude that the mandatory transfer provisions for juvenile offenders in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) do not violate due process rights, equal protection rights, or prohibitions against cruel and unusual punishment.

{¶ 6} However, the trial court did err by failing to comply with R.C. 2929.14(C)'s provisions for imposing consecutive sentences, and by failing to properly calculate jail-time

credit. In view of this holding, the issue of the court's alleged error in imposing a disproportionate sentence is moot, because Anderson's sentence will be vacated and the matter will be remanded for a new sentencing hearing. Finally, any alleged ineffectiveness of trial counsel did not prejudice Anderson, because all of his arguments have been considered, with the exception of his trial tax argument, which is moot, due to the vacation of the sentence. Accordingly, the judgment of the trial court will be affirmed in part and reversed in part. Anderson's sentence will be vacated, and this matter will be remanded to the trial court for a new sentencing hearing.

I. Facts and Course of Proceedings

{¶ 7} This case arises from two separate incidents that occurred on April 20, 2012. On the morning of that day, Rickym Anderson and two high school friends, Dylan Boyd and M.H., met at the RTA hub in downtown Dayton.¹ At the time, Anderson was sixteen years old. Because the three teenagers had smoked marijuana, they were late for school. Instead of going to school, they began walking, and walked around most of the day.

{¶ 8} At around 3:00 p.m., the three teens went down an alley next to 615 Yale Avenue in Dayton, Ohio, and passed a garage with an overhead door that was partially up. At the time, Boyd was carrying a 38 caliber Smith and Wesson revolver that was black in color, with a wooden handle grip.

{¶ 9} Brian Williams and his girlfriend, Tiesha Preston, were in the garage, smoking

¹ The full names of Anderson and Boyd are being used because they were bound over for trial as adults. Initials are being used for the third teenager, as there is no indication in the record that he was tried as an adult.

marijuana and talking. Almost immediately after Williams saw the three people walk by the door, Boyd came back. Boyd said, "Don't move," and when Williams tried to run out the back door of the garage, Boyd opened fire. Boyd fired one bullet, which hit Williams in the back and exited through his abdomen.

{¶ 10} Williams ran across the street to a neighbor's house. When he got to the porch, he could see Boyd gesturing for Preston to get into the trunk of a gray Impala automobile that was parked in the driveway at 615 Yale. The keys to the Impala had been left on the trunk of another car that was sitting in the garage. However, the trunk of the Impala could be opened by using a release button located inside the Impala.

{¶ 11} The first neighbors that Williams approached shut the door and refused to help him, but Williams was eventually able to get help from a neighbor up the street. That neighbor took Williams to the hospital, where surgeons removed major parts of his small and large intestines. At the time of the trial, which was held nearly a year after the incident, Williams was still wearing a colostomy bag.

{¶ 12} After shooting Williams, Boyd first asked Preston where the keys to the Impala were. When she said she did not know, he told M.H. to search the Impala. When M.H. could not find the keys, Boyd told Anderson to search. Boyd also told Anderson and M.H. to get whatever they could find. Boyd then said to Preston, "Bitch, come on. Get in the trunk." Transcript of Proceedings, Volume II, p. 288. After Preston got into the trunk, she could hear the teenagers rummaging around in the car, and also heard Boyd tell the others to grab her purse. After about 25 to 30 minutes, Preston heard neighbors talking, and began beating on the trunk. She was then released from the trunk.

{¶ 13} Following the robbery at 615 Yale, Boyd, Anderson, and M.H. went to an abandoned house on Windsor Avenue, which was about a block and a half away from where Williams had been shot. There was no money in Preston's purse; instead, the purse contained only credit cards, identification, a food stamp card, and some cigarettes.

{¶ 14} After smoking the cigarettes, they left the purse in the abandoned house. M.H. then went home, and Boyd and Anderson continued walking. After meeting another high school student, the three teenagers saw a young woman (Star MacGowan) at an apartment building taking out her trash. At that point, Anderson was carrying the gun. Anderson asked MacGowan if she had any money, and threatened her. He told her he was going to "pop her." Transcript of Proceedings, Volume II, p. 351. MacGowan handed over her purse, which contained a lime-green cell phone.

{¶ 15} Just then, another resident of the apartment building came by and heard MacGowan yelling that her purse had been taken. Anderson took the phone out of the purse, dropped the purse, and ran off. The three teenagers ran in different directions.

{¶ 16} The police were called, and were given a description of the three suspects, including their race, type of clothing, weight, and height. Shortly thereafter, Dayton Police Officer, Jeff Hieber, saw Boyd and Anderson walking in the vicinity, wearing clothing that matched the descriptions he had been given. After slowing down to get a better look, Hieber turned his car around and made a left onto Yale Avenue, where the suspects had been heading. When Hieber caught up to Boyd and Anderson, he detained them and ultimately patted them down. Hieber found a lime-green cell phone in Anderson's pocket, and the police subsequently located a gun about 30 to 40 feet away from where Boyd and Anderson were apprehended.

None of the witnesses were able to identify Anderson from a photo spread, but they all later identified him at trial.

{¶ 17} Both Boyd and Anderson were detained and were questioned that night by the police. After waiving his *Miranda* rights, Anderson admitted to his involvement in both robberies, and led police to the abandoned house where Preston's purse had been hidden.

{¶ 18} Anderson was initially charged in juvenile court, but he was subsequently bound over to the general division of the common pleas court for trial as an adult. Anderson was indicted on three counts of aggravated robbery, one count of kidnapping, and one count of felonious assault, with gun specifications for each charge. Following a jury trial, he was found guilty of all charges, other than the felonious assault charge, which pertained to the shooting of Williams. As was noted, the court sentenced Anderson to a total of 28 years in prison. Williams' co-defendant, Boyd, had previously pled guilty, and had received a nine-year prison sentence.

II. Did the Trial Court Err in Overruling the Motion to Suppress?

{¶ 19} Anderson's First Assignment of Error states as follows:

The Trial Court Erred When It Overruled Rickym Anderson's Motion to Suppress His Statements, in Violation of the Fifth And Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution (October 23, 2012 Decision, Order and Entry Overruling Defendant Anderson's Motion to Suppress, p. 6).

{¶ 20} Under this assignment of error, Anderson presents two main arguments. The

first is that the State failed to prove that he intelligently and knowingly waived his constitutional rights. Anderson's second argument is that the use of deceptive interrogation techniques undermines a vulnerable child's voluntary waiver of rights. We will address each matter separately.

A. Intelligent and Voluntary Wavier of Rights

{¶ 21} In arguing that Anderson's waiver of rights was neither intelligent nor voluntary, Anderson focuses on the fact that he was treated in the same manner as an adult, without recognition of his individual circumstances or of current research and precedent, which indicate that children need greater protection than adults.

{¶ 22} Before addressing these points, we note that the standards for reviewing decisions on motions to suppress are well established. In ruling on motions to suppress, a trial court "assumes the role of the trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate the credibility of the witnesses." *State v. Retherford*, 93 Ohio App.3d 586, 592, 639 N.E.2d 498 (2d Dist.1994), citing *State v. Clay*, 34 Ohio St.2d 250, 298 N.E.2d 137 (1973). Consequently, when we review suppression decisions, "we are bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting those facts as true, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard." *Id.* at 592.

{¶ 23} "The Fifth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution guarantee that no person in any criminal case shall be compelled to

be a witness against himself. The concern that animated the framers to adopt the Fifth Amendment was that coerced confessions are inherently untrustworthy.” *State v. Jackson*, 2d Dist. Greene No. 02CA0001, 2002-Ohio-4680, ¶ 19, citing *Dickerson v. United States*, 530 U.S. 428, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000). “A suspect may waive his constitutional right against self-incrimination, provided that waiver is voluntary. A suspect's decision to waive his privilege against self-incrimination is made voluntarily absent evidence that his will was overborne and his capacity for self-determination was critically impaired because of coercive police conduct.” *Id.* at ¶ 20, citing *Colorado v. Connelly*, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986). (Other citation omitted.)

{¶ 24} We also noted in *Jackson* that:

The issues of whether a confession is voluntary, and whether a suspect has been subjected to custodial interrogation so as to require *Miranda* warnings, are analytically separate issues. The due process clause continues to require an inquiry, separate from custody considerations, concerning whether a defendant's will was overborne by the circumstances surrounding the giving of his confession.

This due process test takes into consideration the totality of all the surrounding facts and circumstances, including the characteristics of the accused and the details of the interrogation. Factors to be considered include the age, mentality, and prior criminal experience of the accused; the length, intensity and frequency of the interrogation; the existence of physical deprivation or mistreatment; and the existence of threats or inducements. *State v. Edwards* (1976), 49 Ohio St.2d 31, 358 N.E.2d 1051.

(Citations omitted.) *Jackson* at ¶ 21.

{¶ 25} In rejecting the motion to suppress, the trial court found no evidence of police coercion and no evidence that the police made promises or guarantees to Anderson. The court also noted that Anderson did not ask for his parents to be present, was not a “young” juvenile, and was subject to a relatively short interview.

{¶ 26} After reviewing the record, we agree with the trial court. At the time of the interrogation, Anderson was 16 years old, and had prior experience with the criminal justice system. Consistent with the dictates of *Miranda*, the police explained each right to him and confirmed that he understood his rights. The questioning took place over a period of less than two hours, with one interview lasting about 20 to 30 minutes and the other lasting about a half hour. Although the police did not offer Anderson food or water, or a restroom break, they would have let him take a break if he had asked.

{¶ 27} It is true that the police did not call Anderson’s parents before speaking with him. However, “the law in Ohio does not require that a juvenile's parent or legal custodian be present during a custodial interrogation.” *State v. Kimmie*, 8th Dist. Cuyahoga No. 99236, 2013-Ohio-4034, ¶ 58. “The presence of a parent or custodian during a juvenile's interrogation, therefore, is only one factor to consider in determining whether, under the totality of the circumstances surrounding the juvenile's statements, there is a valid waiver of the juvenile suspect's *Miranda* rights.” (Citations omitted.) *Id.*

{¶ 28} In arguing that the trial court erred by failing to treat him differently from an adult, Anderson points to recent cases from the United States Supreme Court, which recognize that children are not adults and should not be treated as such. For example, in *Roper v.*

Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), the Supreme Court of the United States reconsidered its prior authority, and held that the Eighth Amendment requires rejection of the imposition of the death penalty on juvenile offenders under the age of 18. *Id.* at 568. To analyze the issue, the court first conducted “a review of objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question.” *Id.* at 564. The court then decided, by exercising its “own independent judgment, whether the death penalty is a disproportionate punishment for juveniles.” *Id.*

{¶ 29} In finding that the death penalty was a disproportionate penalty, the court relied, among other things, on three general differences between juveniles and adults. These included the fact that “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” *Id.* at 569, quoting *Johnson v. Texas*, 509 U.S. 350, 367, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993). The court further noted that “[t]he second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.” *Id.*, citing *Eddings v. Oklahoma*, 455 U.S. 104, 115, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982).

{¶ 30} Finally, the court observed that “[t]he third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” *Id.* at 570, citing E. Erikson, *Identity: Youth and Crisis* (1968).

With regard to the three general differences, the court stressed that:

These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and

irresponsible behavior means “their irresponsible conduct is not as morally reprehensible as that of an adult.” *Thompson [v. Oklahoma], supra*, [487 U.S. 815] at 835, 108 S.Ct. 2687 [101 L.Ed.2d 702 (1988)] (plurality opinion). Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, “[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.” *Johnson, supra*, at 368, 113 S.Ct. 2658 * * *.

(Citation omitted.) *Roper*, 543 U.S. at 570, 125 S.Ct. 1183, 161 L.Ed.2d 1.

{¶ 31} Subsequently, in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), the Supreme Court held that “for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.” *Id.* at 74. And, in another decision cited by Anderson, the United States Supreme Court recently held that “a child's age properly informs the *Miranda* custody analysis.” *J.D.B. v. North Carolina*, ___ U.S. ___, 131 S.Ct. 2394, 2399, 180 L.Ed.2d 310 (2011).

{¶ 32} In *J.D.B.*, the minor was 13 years old, and was interrogated by police at his school. He was not given *Miranda* warnings, and confessed to crimes for which he was subsequently adjudicated delinquent. *Id.* at 2399-2400. The Supreme Court concluded that “so long as the child’s age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test.” *Id.* at 2406. In reaching this conclusion, the court stressed the distinctions between children and adults, including that “children ‘generally are less mature and responsible than adults,’ * * *; that they ‘often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them’ * * *; that they ‘are more vulnerable or susceptible to ... outside pressures’ than adults * * *; and so on.” (Citations omitted.) *Id.* at 2403.

{¶ 33} The Supreme Court declined to consider, however, whether additional procedural *Miranda* warning safeguards are needed for juveniles. In this regard, the court stated that:

Amici on behalf of *J.D.B.* question whether children of all ages can comprehend *Miranda* warnings and suggest that additional procedural safeguards may be necessary to protect their *Miranda* rights. Brief for Juvenile Law Center et al. as *Amici Curiae* 13-14, n. 7. Whatever the merit of that contention, it has no relevance here, where no *Miranda* warnings were administered at all.

J.D.B. at 2401, fn. 4.

{¶ 34} In the final Supreme Court case cited by Anderson, the court invalidated

mandatory sentencing schemes that require children convicted of homicide to “receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes * * *.” *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455, 2475, 183 L.Ed.2d 407 (2012). In *Miller*, the court noted its prior observations in *Roper* and *Graham* about studies pertaining to adolescents and the “ ‘fundamental differences between juvenile and adult minds.’ ” *Id.* at 2464, citing *Roper*, 543 U.S. at 570, 125 S.Ct. 1183, 161 L.Ed.2d 1, and quoting *Graham*, 560 U.S. at 68, 130 S.Ct. 2011, 176 L.Ed.2d 825. In this regard, the court also stressed that :

The evidence presented to us in these cases indicates that the science and social science supporting *Roper* 's and *Graham* 's conclusions have become even stronger. See, e.g., Brief for American Psychological Association et al. as *Amici Curiae* 3 (“[A]n ever-growing body of research in developmental psychology and neuroscience continues to confirm and strengthen the Court's conclusions”); *id.*, at 4 (“It is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance”); Brief for J. Lawrence Aber et al. as *Amici Curiae* 12-28 (discussing post- *Graham* studies) * * *.

Miller at 2465, fn. 5.

{¶ 35} In view of these indications from the Supreme Court of the United States, and studies which reveal that many juveniles do not fully understand their rights or the alternatives, Anderson argues that relying on adult presentation of rights and waiver forms does not adequately protect minors.

{¶ 36} In a decision issued after *J.D.B.*, a lower court concluded that it would take the defendant's age (13) into account as a "non-determinative" factor in deciding whether police tactics used in an interrogation were such that the defendant's "free will was overborne at the time he confessed." *In re Michael S.*, Cal. Ct. App. 2d Dist., Div.7, 2012 WL 3091576, *7. However, after considering the facts, the court in that case found the confession voluntary.²

{¶ 37} Nonetheless, even before *J.D.B.* was decided, Ohio courts included age as a factor that must be considered in deciding whether, under the totality of the circumstances, a defendant's confession is voluntary. *Jackson*, 2d Dist. Greene No. 02CA0001, 2002-Ohio-4680, at ¶ 21. When the trial court in the case before us ruled on the motion to suppress, it did, in fact, consider Anderson's age, by noting that Anderson was not a young minor.

{¶ 38} Furthermore, the Supreme Court of Ohio has recently rejected the argument that juveniles have a statutory right to counsel at interrogations conducted prior to the filing of a juvenile complaint. *See In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164, ¶ 2. The dissent in *M.W.* strongly disagreed, arguing that "[t]he custodial interrogation is at least as important as the events that subsequently unfold in court, and given its repercussions, a child must be afforded the right to counsel and parents during that period." *Id.* at ¶ 69, fn. 6 (O'Connor, C.J., dissenting). Nonetheless, the view that "juveniles are entitled to special protections because of the limitations on their cognitive abilities and legal capacity" "failed to garner majority support [in *M.W.*], and we are compelled to follow the dictates of the majority." *In re T.J.*, 6th Dist. Lucas No. L-12-1347, 2013-Ohio-3057, ¶ 10 (rejecting the argument that a

² The cited case is an unpublished opinion whose citation is restricted by California Rules of Court. We cite it not for the fact that age should or must be considered, but only to note that *J.D.B.* has been applied in this manner.

minor was entitled to have a parent or attorney present before he could waive his *Miranda* rights).³

{¶ 39} Accordingly, we cannot conclude that Anderson's rights were infringed by the failure to provide additional safeguards prior to the waiver of his *Miranda* rights. Anderson received all the protection he is currently due under Ohio law.

B. Deceptive Interrogation Techniques

{¶ 40} Anderson's second major issue concerning voluntary waiver involves deceptive interrogation techniques. As was noted, the interrogating detectives falsely told Anderson that he had been identified by witnesses. Anderson contends that a child's ability to understand and resist manipulative tactics is hampered by youthfulness, and that the International Association of Chiefs of Police, in fact, discourages use of deceptive interrogation tactics with children.

{¶ 41} "Deception is a factor bearing on voluntariness, but, standing alone, does not establish coercion * * *." *State Singleton*, 2d Dist. Montgomery Nos. 17003, 17004, 1999 WL

³ Some jurisdictions do provide *Miranda* warnings tailored to juveniles. For example, *Hall v. Thomas*, 623 F.Supp.2d 1302 (M.D.Ala. 2009), noted that: "Alabama law guarantees additional rights for juveniles subject to interrogation, and requires the police to read additional warnings, sometimes referred to as 'Super *Miranda*' warnings. Rule 11(B) of the Alabama Rules of Juvenile Procedure, which was effective at the time of Hall's arrest, lists the '[r]ights of a child before being questioned while in custody.' The interrogator must inform a juvenile of these rights before questioning him on 'anything concerning the charge' for which he was arrested. *Id.* They include 'the right to communicate' with the child's counsel, parent, or guardian and if he or she is not present, 'if necessary, reasonable means will be provided for the child to do so.' *Id.*" *Hall* at 1307, fn. 3. Similarly, Indiana provides additional protections for minors. See *J.L. v. State*, 5 N.E.3d 431, 437 (Ind.App. 2014) (discussing juvenile *Miranda* form, and the requirement that juveniles and parents be allowed to confer prior to waiver of rights). Ohio has not yet chosen to adopt these additional protections.

173357, *4 (March 31, 1999), citing *Frazier v. Cupp*, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1999). (Other citations omitted.) See, also, *State v. Brown*, 100 Ohio St.3d 51, 2003-Ohio-5059, 796 N.E.2d 506, ¶ 17.

{¶ 42} Anderson does not suggest, and we have not found, Ohio authority condemning deceptive interrogation techniques in situations involving children. In Ohio, as in other jurisdictions, deception in interrogation is only one factor in assessing voluntariness. For example in *State v. Jackson*, 333 Wis.2d 665, 2011 WI App 63, 799 N.W.2d 461, the defendant was 15 years old, had an IQ of 73, and was charged with attempted first degree intentional homicide. *Id.* at ¶ 1 and 21. The defendant claimed his confession was involuntary due to his IQ and age, as well as the fact that the police had lied to him. *Id.* at ¶ 21. However, the court of appeals disagreed, noting that:

The State responds that, while it may not have been true that multiple people had identified Jackson in a lineup, one person had. And misrepresentation or trickery does not make an otherwise voluntary statement involuntary – it is only one factor to consider in the totality of the circumstances. *State v. Ward*, 2009 WI 60, ¶ 27, 318 Wis.2d 301, 767 N.W.2d 236. As we explained in *State v. Triggs*, 2003 WI App 91, ¶ 19, 264 Wis.2d 861, 663 N.W.2d 396,

“Inflating evidence of [the defendant’s] guilt interfered little, if at all, with his ‘free and deliberate choice’ of whether to confess, for it did not lead him to consider anything beyond his own beliefs regarding his actual guilt or innocence, his moral sense of right and wrong, and his judgment regarding the likelihood that the police had garnered enough valid evidence linking him to the crime.”

(Citation omitted.) *Jackson* at ¶ 22.

{¶ 43} After reviewing the totality of the circumstances, we find no evidence that Anderson's waiver was involuntary. Although Anderson was a juvenile, he was 16 and had prior experience with Miranda warnings. Furthermore, there is no indication that Anderson was under the influence of any medication or other substance, that he had low intellectual ability, or that the police used coercive tactics.

{¶ 44} Because the evidence at the suppression hearing supports the trial court's decision that Anderson knowingly, voluntarily, and intelligently waived his Miranda rights, the trial court did not err in overruling the motion to suppress. Accordingly, Anderson's First Assignment of Error is overruled.

III. Did the Court Fail to Comply with R.C. 2929.14(C)?

{¶ 45} For purposes of convenience, we will next address Anderson's Third Assignment of Error, which states that:

The Trial Court Erred When It Sentenced Rickym Anderson to Consecutive Sentences without Complying with R.C. 2929.14, in Violation of His Right to Due Process as Guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

{¶ 46} Under this assignment of error, Anderson contends that the trial court erred by sentencing him to consecutive sentences without complying with R.C. 2929.14. Since Anderson failed to object to consecutive sentences at the sentencing hearing, "he has forfeited all but plain error." *State v. Jones*, 10th Dist. Franklin No. 14AP-80, 2014-Ohio-3740, ¶ 11, citing *Crim.R.*

52(B). (Other citation omitted.) “Under Crim.R. 52(B), ‘[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.’ ‘To constitute plain error, the error must be obvious on the record, palpable, and fundamental such that it should have been apparent to the trial court without objection.’” *Jones* at ¶ 11, quoting *State v. Gullick*, 10th Dist. Franklin No. 13AP-26, 2013-Ohio-3342, ¶ 3. (Other citation omitted.)

{¶ 47} With regard to consecutive sentences, R.C. 2929.14(C)(4) states that:

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.

{¶ 48} In a recent decision, the Supreme Court of Ohio held that “[i]n order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings.” *State v. Bonnell*, ___ Ohio St.3d ___, 2014-Ohio-3177, ___ N.E.2d ___, syllabus.

{¶ 49} In *Bonnell*, the trial court imposed consecutive sentences, and mentioned the defendant’s “atrocious” record, his lengthy prison record, the fact that up to that point, the defendant had shown very little respect for society and its rules, and the fact that the courts had given the defendant opportunities. *Id.* at ¶ 9-10. Nonetheless, the Supreme Court of Ohio indicated that these descriptions did not allow it to conclude that the trial court had made the required findings under R.C. 2929.14(C)(4). Accordingly, the court reversed the judgment, vacated the sentence, and remanded the case for further proceedings. *Id.* at ¶ 34-37.

{¶ 50} In *Jones*, the Tenth District Court of Appeals also held that failure to make the findings required under R.C. 2929.14(C)(4) causes a sentence to be contrary to law and constitutes plain error. *Jones*, 10th Dist. Franklin No. 14AP-80, 2014-Ohio-3740, at ¶ 18.

{¶ 51} In view of this authority, Anderson’s sentence is contrary to law under R.C. 2929.14(C)(4), and will be vacated and remanded for further proceedings. Accordingly, the Third Assignment of Error is sustained. Anderson’s sentence will be vacated, and this matter

will be remanded to the trial court for a new sentencing hearing.

IV. Was the Sentence Disproportionate to that of a Co-Defendant?

{¶ 52} Anderson's Second Assignment of Error states that:

The Trial Court Erred When it Sentenced Rickym Anderson, after a Jury Trial, to a Prison Term Disproportionate to that of a More Culpable CoDefendant Who Pleaded Guilty, in Violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 9, 10 and 16 of the Ohio Constitution (2/20/2013 T. p. 583; February 22, 2013 Judgment Entry of Sentence).

{¶ 53} Under this assignment of error, Anderson contends that he was sentenced to a significantly longer sentence than his co-defendant, Dylan Boyd, who received only a nine-year sentence for more culpable acts. Boyd was involved in both robberies, and was the shooter who caused serious physical harm to Brian Williams. After pleading guilty, Boyd was sentenced to nine years in prison, whereas Anderson received a total of 28 years in prison following a jury trial. Anderson contends that this amounted to a "trial tax" under our prior decision in *State v. Beverly*, 2d Dist. Clark No. 2011 CA 64, 2013-Ohio-1365.

{¶ 54} We need not address this matter, however, because Anderson's sentence is being vacated, and this matter is being remanded for a new sentencing hearing. Accordingly, the Second Assignment of Error is overruled, as moot.

V. Did the Trial Court Fail to Grant Proper Jail Time Credit?

{¶ 55} Anderson's Fourth Assignment of Error states as follows:

The Trial Court Erred When It Granted Rickym Anderson Only 240 days of Jail-time Credit, in Violation of His Right to Equal Protection as Guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

{¶ 56} Under this assignment of error, Anderson contends that the trial court erred by failing to grant him 67 days of additional jail-time credit for the time that he was confined by order of the juvenile court. The trial court credited Anderson with 240 days of jail-time credit, dating from the time of the indictment. According to Anderson's calculations, he was instead confined for 307 days.

{¶ 57} The State does not dispute the applicability of jail-time credit to confinement in a juvenile detention facility; instead, the State's position is that it is not clear from the record where Anderson served detention or whether he was able to leave. Both sides also agree that a plain error analysis applies, because Anderson failed to raise this issue in the trial court.

{¶ 58} As was noted, " 'To constitute plain error, the error must be obvious on the record, palpable, and fundamental such that it should have been apparent to the trial court without objection.' " (Citations omitted.) *Jones*, 10th Dist. Franklin No. 14AP-80, 2014-Ohio-3740, at ¶ 11.

{¶ 59} We have previously stressed that "[w]here, for whatever reason, a defendant remains in jail prior to his trial, he must be given credit on the sentence ultimately imposed for all periods of actual confinement on that charge." (Citations omitted.) *State v. Angi*, 2d Dist. Greene No. 2011 CA 72, 2012-Ohio-3840, ¶ 7. Furthermore, " '[a]lthough the [department of

rehabilitation and correction] has a mandatory duty pursuant to R.C. 2967.191 to credit an inmate with the jail time already served, it is the trial court that makes the factual determination as to the number of days of confinement that a defendant is entitled to have credited toward his sentence.’ ” *State v. Coyle*, 2d Dist. Montgomery No. 23450, 2010-Ohio-2130, ¶ 7, quoting *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, 786 N.E.2d 1286, ¶ 7. We also note that R.C. 2967.191 specifically includes confinement in a juvenile facility within the jail-time credit statute.

{¶ 60} The record is clear that Anderson was confined from the time he was initially arrested in April 2012. The juvenile court record is part of the file, and indicates that Anderson was remanded to detention on April 21, 2012 (the day after his arrest), based on the juvenile court’s finding that his continued residence in his home would be contrary to his best interests, and that detention was required under Juv.R. 7 due to the charges. The trial court file contains no indication that Anderson was allowed to leave juvenile detention for any reason. In fact, the record indicates otherwise, as Anderson was served at the Montgomery County Jail on June 18, 2012, with the juvenile court’s entry and order granting the State’s motion to relinquish jurisdiction. The indictment was not filed until around three weeks later, on July 5, 2012. Consequently, Anderson was clearly confined in jail or in a juvenile facility prior to the date of the indictment. Due to the error that is apparent on the face of the record, this case must be remanded for examination of proper jail time credit.

{¶ 61} Accordingly, Anderson’s Fourth Assignment of Error is sustained.

VI. Does Mandatory Bindover Violate Various Constitutional Rights?

{¶ 62} Anderson's Fifth, Sixth, and Seventh Assignments of Error deal with related issues, and will be discussed together. Anderson's Fifth Assignment of Error states that:

The Juvenile Court Erred When It Transferred Rickym Anderson's Case to Adult Court Because the Mandatory Transfer Provisions in R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) Violate a Child's Right to Due Process as Guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution. (June [1]8, 2012 Entry and Order Finding Probable Cause and Granting Motion to Relinquish Jurisdiction and Transfer to General Division, pp. 1-2).

{¶ 63} The Sixth and Seventh Assignments of Error are identical to the Fifth Assignment of Error, except that they raise violations of the Equal Protection Clause and of prohibitions against cruel and unusual punishment.

{¶ 64} Under these assignments of error, Anderson contends that R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) are unconstitutional because they prohibit juvenile courts from making any individualized decision about the appropriateness of transferring particular cases to adult court. Before addressing Anderson's arguments, we note that Anderson failed to raise constitutionality in the trial court.

{¶ 65} "Failure to raise at the trial court level the issue of the constitutionality of a statute or its application, which issue is apparent at the time of trial, constitutes a waiver of such issue." *State v. Awan*, 22 Ohio St.3d 120, 489 N.E.2d 277 (1986), syllabus. However, the Supreme Court of Ohio later clarified that "[t]he waiver doctrine * * * is discretionary." *In re M.D.*, 38 Ohio St.3d 149, 527 N.E.2d 286 (1988), syllabus. Thus, "[e]ven where wavier is clear,

[appellate courts may] consider constitutional challenges to the application of statutes in specific cases of plain error or where the rights and interests involved may warrant it.” *Id.* In our discretion, we will consider the assignments of error pertaining to the constitutionality of mandatory bindover.

A. Due Process

{¶ 66} R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) require mandatory transfer of a case to adult court where: a child is charged with a category two offense; the child is sixteen years of age or older at the time of the act charged; the child is alleged to have committed the offense with a firearm; and there is probable cause to believe the juvenile committed the act that has been charged.

{¶ 67} Anderson contends that mandatory transfer and Ohio’s failure to provide for an amenability hearing violate the due process holding in *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), which outlined eight factors to be considered in transfer proceedings before a juvenile court orders bindover. However, other appellate districts have rejected this argument, based on the fact that *Kent* involved discretionary, rather than mandatory transfer. See *State v. Lane*, 11th Dist. Geauga No. 2013-G-3144, 2014-Ohio-2010, ¶ 57, citing *State v. Kelly*, 3d Dist. Union No. 14-98-26, 1998 WL 812238, *19-20 (Nov. 18, 1998). Thus, “because the *Kent* factors were intended to address the problem of arbitrary decision-making and disparate treatment in discretionary bindover determinations, due process does not require use of these factors when the legislature has statutorily eliminated discretionary bindover determinations.” *Id.*

{¶ 68} In addition, we have previously held that mandatory bindover does not violate due process. *State v. Agee*, 133 Ohio App.3d 441, 448-449, 728 N.E.2d 442 (2d Dist.1999), citing *State v. Ramey*, 2d Dist. Montgomery No. 16442, 1998 WL 310741 (May 22, 1998). In this regard, we reasoned in *Ramey* that “[b]ecause amenability to treatment as a juvenile is not an issue determinative of transfer when the juvenile court finds that the underlying offense is one that [the statute] defines as an offense of violence, the juvenile is not thereafter entitled to a hearing to determine his amenability to treatment. Thus, no due process violation is demonstrated by the lack of an ‘amenability’ hearing * * *.” *Ramey* at *1.

{¶ 69} Recently, we stressed that we will continue to follow this precedent until the Supreme Court of Ohio advises otherwise. See *State v. Brookshire*, 2d Dist. Montgomery No. 25853, 2014-Ohio-1971, ¶ 30.

{¶ 70} Accordingly, we reject the argument that the mandatory transfer statutes violate due process.

B. Equal Protection

{¶ 71} Anderson also contends that R.C. 2152.10 and 2152.12 violate the Equal Protection Clause because: (1) they create classes of similarly situated children, based solely on age; and (2) the age-based distinctions in these statutes are not rationally related to the purpose of juvenile delinquency proceedings. In *Ramey*, we addressed and rejected an equal protection challenge to R.C. 2151.26, which was the predecessor statute to R.C. 2152.12. Specifically, we noted that:

R.C. 2151.26 classifies juveniles whose delinquent acts could constitute a

felony offense of violence if committed by an adult differently than it treats those whose acts would not constitute a felony offense of violence if committed by an adult. That class distinction bears a reasonable relationship to a legitimate governmental objective, which is to punish violent juvenile offenders more harshly by denying them the prospect of more lenient treatment in the juvenile system. Such distinctions may be made between different types of offenders, adult or juvenile, without denying persons involved the equal protection of law.

Ramey at *3.

{¶ 72} The classification we considered in *Ramey* is somewhat different than the classification being challenged in the case before us. Specifically, Anderson argues that transfer is mandatory for those 16 or older, is discretionary for offenders who are 14 or 15 years of age, and is not permitted for offenders who are less than fourteen years of age. According to Anderson, this bright-line, age-based classification is not rationally related to the State's legitimate objectives.

{¶ 73} In *Lane*, the Eleventh District Court of Appeals noted that “[t]he standard for determining if a statute violates equal protection is ‘essentially the same under state and federal law.’ ” *Lane*, 11th Dist. Geauga No. 2013-G-3144, 2014-Ohio-2010, at ¶ 64, quoting *Fabrey v. McDonald Village Police Dept.*, 70 Ohio St.3d 351, 353, 639 N.E.2d 31 (1994). “ ‘Under a traditional equal protection analysis, class distinctions in legislation are permissible if they bear some rational relationship to a legitimate governmental objective.’ ” *Id.*, quoting *State ex rel. Vana v. Maple Hts. City Council*, 54 Ohio St.3d 91, 92, 561 N.E.2d 909 (1990).

{¶ 74} As here, the defendant in *Lane* contended that disparate treatment based on age

was not supported by scientific evidence. *Lane* at ¶ 66. However, the court of appeals rejected that argument because the defendant had failed to meet his burden of proving beyond doubt that the statutes were unconstitutional. *Id.*

{¶ 75} The same observation may be made in the case before us. Although Anderson contends that there is little difference between children who are younger than 16 and those who are older than 16, he does not support this contention with any type of empirical evidence. In the absence of such evidence, we cannot find that the distinction the legislature made is unconnected to its aims. As the court in *Lane* observed, “the purpose of this legislation is to protect society and reduce violent crime by juveniles. * * * Contrary to appellant's argument, juveniles who are 14 or 15 are markedly different from those who are 16 or 17 in many ways, *e.g.*, in terms of physical development and maturity. * * * Thus, the legislature's decision to single out older juvenile homicide offenders, who are potentially more street-wise, hardened, dangerous, and violent, is rationally related to this legitimate governmental purpose.” (Citation omitted.) (Italics added.) *Id.* at ¶ 67.

{¶ 76} Based on the preceding discussion, Anderson's equal protection argument is without merit.

C. Cruel and Unusual Punishment

{¶ 77} Anderson's final argument in this context is that Ohio's mandatory bindover statutes violate state and federal prohibitions against cruel and unusual punishment. According to Anderson, evolving standards in the past decade militate against prosecuting youthful offenders in adult court.

{¶ 78} Recently, the Supreme Court of Ohio observed that “this court has recognized that cases involving cruel and unusual punishments are rare, ‘limited to those involving sanctions which under the circumstances would be considered shocking to any reasonable person.’ ” *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 60, quoting *McDougle v. Maxwell*, 1 Ohio St.2d 68, 70, 203 N.E.2d 334 (1964). The court further emphasized that “[a] punishment does not violate the constitutional prohibition against cruel and unusual punishments, if it be not so greatly disproportionate to the offense as to shock the sense of justice of the community.” *Id.*, quoting *State v. Chaffin*, 30 Ohio St.2d 13, 282 N.E.2d 46 (1972), paragraph three of the syllabus.

{¶ 79} When presented with this issue, the Eleventh District Court of Appeals concluded in *Lane* that mandatory bindover does not fit within the definition of a “punishment,” and that the prohibition against cruel and unusual punishment would not apply. *Lane*, 11th Dist. Geauga No. 2013-G-3144, 2014-Ohio-2010, at ¶ 73. In this regard, the court of appeals also noted that “[m]andatory bindover does not equate to punishment any more than the mere prosecution of an adult in the common pleas court constitutes punishment.” *Id.*, quoting *State v. Quarterman*, 9th Dist. Summit No. 26400, 2013-Ohio-3606, ¶ 16 (Carr, J., concurring).⁴

{¶ 80} We agree with these comments, and hold that R.C. 2152.10 and R.C. 2152.12 do not violate prohibitions against cruel and unusual punishment.

⁴ The Supreme Court of Ohio recently issued a decision in *Quarterman*. See *State v. Quarterman*, Slip Opinion No. 2014-Ohio-4034. After accepting the case for review, the court declined to reach the merits of Quarterman’s constitutional claim pertaining to mandatory bindover. The court held that Quarterman had forfeited all but plain error by failing to assert his constitutional challenge in either juvenile or common pleas court, and had also failed to properly address the application of the plain error rule during his appeal to the Supreme Court of Ohio. *Id.* at ¶ 2. Accordingly, the court affirmed the judgment of the court of appeals. *Id.* at ¶ 3.

{¶ 81} Based on the preceding discussion, Anderson's Fifth, Sixth, and Seventh Assignments of Error are overruled.

VII. Was Anderson's Trial Counsel Ineffective?

{¶ 82} Anderson's Eighth Assignment of Error states that:

Rickym Anderson Was Denied the Effective Assistance of Counsel. Sixth and Fourteenth Amendments to the United States Constitution; Section 10, Article I of the Ohio Constitution. (June [1]8, 2012 Entry and Order Finding Probable Cause and Granting Motion to Relinquish Jurisdiction and Transfer to General Division, pp. 1-2).

{¶ 83} Under this assignment of error, Anderson contends that his trial counsel was ineffective in several ways: (1) by failing to object to the constitutionality of his transfer to adult court; (2) by failing to object to the trial court's imposition of a "trial tax"; (3) by failing to object to the court's imposition of consecutive sentences without proper findings; and (4) by failing to object to the trial court's grant of jail-time credit.

{¶ 84} "In order to prevail on a claim of ineffective assistance of counsel, the defendant must show both deficient performance and resulting prejudice. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. Trial counsel is entitled to a strong presumption that his conduct falls within the wide range of effective assistance, and to show deficiency, the defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness." *State v. Matthews*, 189 Ohio App.3d 446, 2010-Ohio-4153, 938 N.E.2d 1099, ¶ 39 (2d Dist.).

{¶ 85} After reviewing the record, we conclude that even if trial counsel was ineffective, Anderson has not been prejudiced. Although trial counsel failed to raise the above issues with the trial court, we have considered all the arguments raised by Anderson on appeal, other than the issue of the “trial tax,” which is moot due to the vacation of Anderson’s sentence. Anderson will be able to raise the “trial tax” issue in a subsequent appeal, should the trial court again impose a sentence that Anderson deems disproportionate.

{¶ 86} In light of the preceding discussion, the Eighth Assignment of Error is overruled.

VIII. Conclusion

{¶ 87} The First, Fifth, Sixth, Seventh, and Eighth Assignments of Error are overruled; the Second Assignment of Error is overruled as moot, and the Third and Fourth Assignments of Error are sustained. Accordingly, the judgment of the trial court is affirmed in part and reversed in part. The sentence of Defendant-Appellant, Rickym Anderson, is vacated, and this matter is remanded for a new sentencing hearing.

.....
FROELICH, P.J., and HALL, J., concur.

Copies mailed to:

Mathias H. Heck
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Stephen A. Goldmeier
Charlyn Bohland
Hon. Barbara P. Gorman

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim or the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I. BILL OF RIGHTS

§ 9 BAIL; CRUEL AND UNUSUAL PUNISHMENTS

All persons shall be bailable by sufficient sureties, except for capital offences where the proof is evident, or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 10 [Trial of accused persons and their rights; depositions by state and comment on failure to testify in criminal cases.]

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense. (As amended September 3, 1912.)

ORC Ann. 2152.10

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Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile > Chapter 2152: Delinquent Children; Juvenile Traffic Offenders

§ 2152.10 Children eligible for mandatory or discretionary transfer; order of disposition when child not transferred.

- (A) A child who is alleged to be a delinquent child is eligible for mandatory transfer and shall be transferred as provided in section 2152.12 of the Revised Code in any of the following circumstances:
- (1) The child is charged with a category one offense and either of the following apply:
 - (a) The child was sixteen years of age or older at the time of the act charged.
 - (b) The child was fourteen or fifteen years of age at the time of the act charged and previously was adjudicated a delinquent child for committing an act that is a category one or category two offense and was committed to the legal custody of the department of youth services upon the basis of that adjudication.
 - (2) The child is charged with a category two offense, other than a violation of section 2905.01 of the Revised Code, the child was sixteen years of age or older at the time of the commission of the act charged, and either or both of the following apply:
 - (a) The child previously was adjudicated a delinquent child for committing an act that is a category one or a category two offense and was committed to the legal custody of the department of youth services on the basis of that adjudication.
 - (b) The child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.
 - (3) Division (A)(2) of section 2152.12 of the Revised Code applies.
- (B) Unless the child is subject to mandatory transfer, if a child is fourteen years of age or older at the time of the act charged and if the child is charged with an act that would be a felony if committed by an adult, the child is eligible for discretionary transfer to the appropriate court for criminal prosecution. In determining whether to transfer the child for criminal prosecution, the juvenile court shall follow the procedures in section 2152.12 of the Revised Code. If the court does not transfer the child and if the court adjudicates the child to be a delinquent child for the act charged, the court shall issue an order of disposition in accordance with section 2152.11 of the Revised Code.

History

148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393. Eff 7-5-2002.

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Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile > Chapter 2152: Delinquent Children; Juvenile Traffic Offenders

Notice

P This section has more than one version with varying effective dates.
Second of two versions of this section.

**§ 2152.17 Commitment for specification; consecutive periods of commitment.
[Effective September 14, 2016]**

- (A) Subject to division (D) of this section, if a child is adjudicated a delinquent child for committing an act, other than a violation of section 2923.12 of the Revised Code, that would be a felony if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of a specification of the type set forth in section 2941.141, 2941.144, 2941.145, 2941.146, 2941.1412, 2941.1414, or 2941.1415 of the Revised Code, in addition to any commitment or other disposition the court imposes for the underlying delinquent act, all of the following apply:
- (1) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.141 of the Revised Code, the court may commit the child to the department of youth services for the specification for a definite period of up to one year.
 - (2) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.145 of the Revised Code or if the delinquent act is a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and the court determines that the child would be guilty of a specification of the type set forth in section 2941.1415 of the Revised Code, the court shall commit the child to the department of youth services for the specification for a definite period of not less than one and not more than three years, and the court also shall commit the child to the department for the underlying delinquent act under sections 2152.11 to 2152.16 of the Revised Code.
 - (3) If the court determines that the child would be guilty of a specification of the type set forth in section 2941.144, 2941.146, or 2941.1412 of the Revised Code or if the delinquent act is a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and the court determines that the child would be guilty of a specification of the type set forth in section 2941.1414 of the Revised Code, the court shall commit the child to the department of youth services for the specification for a definite period of not less than one and not more than five years, and the court also shall commit the child to the department for the underlying delinquent act under sections 2152.11 to 2152.16 of the Revised Code.
- (B)
- (1) If a child is adjudicated a delinquent child for committing an act, other than a violation of section 2923.12 of the Revised Code, that would be a felony if committed by an adult, if the court determines that the child is complicit in another person's conduct that is of such a nature that the other person would be guilty of a specification of the type set forth in section 2941.141, 2941.144, 2941.145, or 2941.146 of the Revised Code if the other person was an adult, if the other person's conduct relates to the child's underlying delinquent act, and if the child did not furnish, use, or dispose of any firearm that was involved with the underlying delinquent act or with the other person's specification-related conduct, in addition to any other disposition the court imposes for the underlying delinquent act, the court may commit the child to the department of youth services for the specification for a definite period of not more than one year, subject to division (D)(2) of this section.

- (2) Except as provided in division (B)(1) of this section, division (A) of this section also applies to a child who is an accomplice regarding a specification of the type set forth in section 2941.1412, 2941.1414, or 2941.1415 of the Revised Code to the same extent the specifications would apply to an adult accomplice in a criminal proceeding.
- (C) If a child is adjudicated a delinquent child for committing an act that would be aggravated murder, murder, or a first, second, or third degree felony offense of violence if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of a specification of the type set forth in section 2941.142 of the Revised Code in relation to the act for which the child was adjudicated a delinquent child, the court shall commit the child for the specification to the legal custody of the department of youth services for institutionalization in a secure facility for a definite period of not less than one and not more than three years, subject to division (D)(2) of this section, and the court also shall commit the child to the department for the underlying delinquent act.
- (D)
- (1) If the child is adjudicated a delinquent child for committing an act that would be an offense of violence that is a felony if committed by an adult and is committed to the legal custody of the department of youth services pursuant to division (A)(1) of section 2152.16 of the Revised Code and if the court determines that the child, if the child was an adult, would be guilty of a specification of the type set forth in section 2941.1411 of the Revised Code in relation to the act for which the child was adjudicated a delinquent child, the court may commit the child to the custody of the department of youth services for institutionalization in a secure facility for up to two years, subject to division (D)(2) of this section.
- (2) A court that imposes a period of commitment under division (A) of this section is not precluded from imposing an additional period of commitment under division (C) or (D)(1) of this section, a court that imposes a period of commitment under division (C) of this section is not precluded from imposing an additional period of commitment under division (A) or (D)(1) of this section, and a court that imposes a period of commitment under division (D)(1) of this section is not precluded from imposing an additional period of commitment under division (A) or (C) of this section.
- (E) The court shall not commit a child to the legal custody of the department of youth services for a specification pursuant to this section for a period that exceeds five years for any one delinquent act. Any commitment imposed pursuant to division (A), (B), (C), or (D)(1) of this section shall be in addition to, and shall be served consecutively with and prior to, a period of commitment ordered under this chapter for the underlying delinquent act, and each commitment imposed pursuant to division (A), (B), (C), or (D)(1) of this section shall be in addition to, and shall be served consecutively with, any other period of commitment imposed under those divisions. If a commitment is imposed under division (A) or (B) of this section and a commitment also is imposed under division (C) of this section, the period imposed under division (A) or (B) of this section shall be served prior to the period imposed under division (C) of this section.

In each case in which a court makes a disposition under this section, the court retains control over the commitment for the entire period of the commitment.

The total of all the periods of commitment imposed for any specification under this section and for the underlying offense shall not exceed the child's attainment of twenty-one years of age.

- (F) If a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the court entering the delinquent child adjudication orders the commitment of the child for two or more of those acts to the legal custody of the department of youth services for institutionalization in a secure facility pursuant to section 2152.13 or 2152.16 of the Revised Code, the court may order that all of the periods of commitment imposed under those sections for those acts be served consecutively in the legal custody of the department of youth services, provided that those periods of commitment shall be in addition to and commence immediately following the expiration of a period of commitment that the court imposes pursuant to division (A), (B), (C), or (D)(1) of this section. A court shall not commit a delinquent child to the legal custody of the department of youth services under this division for a period that exceeds the child's attainment of twenty-one years of age.

History

148 v S 179, § 3 (Eff 1-1-2002); 149 v H 393 (Eff 7-5-2002); 149 v H 130, Eff 4-7-2003.†; 150 v H 52, § 1, eff. 6-1-04; 151 v H 95, § 1, eff. 8-3-06; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2016 SB 97, § 1, effective Sep 14, 2016.

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Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile > Chapter 2152: Delinquent Children; Juvenile Traffic Offenders

§ 2152.121 Jurisdiction retained by juvenile court; determination of sentence or disposition.

- (A) 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 section 2152.12 of the Revised Code, the juvenile court that transferred the case shall retain jurisdiction for purposes of making disposition of the child when required under division (B) of this section.
- (B) If a complaint is filed against a child alleging that the child is a delinquent child, if the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of section 2152.12 of the Revised Code, 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 as follows:
- (1) The court in which the child is convicted of or pleads guilty to the offense shall determine whether, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would have required mandatory transfer of the case or division (B) of that section would have allowed discretionary transfer of the case. The court shall not consider the factor specified in division (B)(3) of section 2152.12 of the Revised Code in making its determination under this division.
 - (2) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case, and division (B) of that section would not have allowed discretionary transfer of the case, the court shall transfer jurisdiction of the case back to the juvenile court that initially transferred the case, the court and all other agencies that have any record of the conviction of the child or the child's guilty plea shall expunge the conviction or guilty plea and all records of it, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have never occurred, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have been a delinquent child adjudication of the child, and the juvenile court shall impose one or more traditional juvenile dispositions upon the child under sections 2152.19 and 2152.20 of the Revised Code.
 - (3) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case but division (B) of that section would have allowed discretionary transfer of the case, the court shall determine the sentence it believes should be imposed upon the child under Chapter 2929. of the Revised Code, shall impose that sentence upon the child, and shall stay that sentence pending completion of the procedures specified in this division. Upon imposition and staying of the sentence, the court shall transfer jurisdiction of the case back to the juvenile court that initially transferred the case and the juvenile court shall proceed in accordance with this division. In no case may the child waive a right to a hearing of the type described in division (B)(3)(b) of this section, regarding a motion filed as described in that division by the prosecuting attorney in the case. Upon transfer of jurisdiction of the case back to the juvenile court, both of the following apply:
 - (a) Except as otherwise provided in division (B)(3)(b) of this section, the juvenile court shall impose a serious youthful offender dispositional sentence upon the child under division (D)(1) of section 2152.13 of the

Revised Code. In imposing the adult portion of that sentence, the juvenile court shall consider and give preference to the sentence imposed upon the child by the court in which the child was convicted of or pleaded guilty to the offense. Upon imposing a serious youthful offender dispositional sentence upon the child as described in this division, the juvenile court shall notify the court in which the child was convicted of or pleaded guilty to the offense, the sentence imposed upon the child by that court shall terminate, the court and all other agencies that have any record of the conviction of the child or the child's guilty plea shall expunge the conviction or guilty plea and all records of it, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have never occurred, and the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have been a delinquent child adjudication of the child.

- (b) Within fourteen days after the filing of the journal entry regarding the transfer, the prosecuting attorney in the case may file a motion in the juvenile court that objects to the imposition of a serious youthful offender dispositional sentence upon the child and requests that the sentence imposed upon the child by the court in which the child was convicted of or pleaded guilty to the offense be invoked. Upon the filing of a motion under this division, the juvenile court shall hold a hearing to determine whether the child is not amenable to care or rehabilitation within the juvenile system and whether the safety of the community may require that the child be subject solely to adult sanctions. If the juvenile court at the hearing finds that the child is not amenable to care or rehabilitation within the juvenile system or that the safety of the community may require that the child be subject solely to adult sanctions, the court shall grant the motion. Absent such a finding, the juvenile court shall deny the motion. In making its decision under this division, the juvenile court shall consider the factors listed in division (D) of section 2152.12 of the Revised Code as factors indicating that the motion should be granted, shall consider the factors listed in division (E) of that section as factors indicating that the motion should not be granted, and shall consider whether the applicable factors listed in division (D) of that section outweigh the applicable factors listed in division (E) of that section.

If the juvenile court grants the motion of the prosecuting attorney under this division, the juvenile court shall transfer jurisdiction of the case back to the court in which the child was convicted of or pleaded guilty to the offense, and the sentence imposed by that court shall be invoked. If the juvenile court denies the motion of the prosecuting attorney under this section, the juvenile court shall impose a serious youthful offender dispositional sentence upon the child in accordance with division (B)(3)(a) of this section.

- (4) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would have required mandatory transfer of the case, the court shall impose sentence upon the child under Chapter 2929. of the Revised Code.

History

2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 HB 487, § 101.01, eff. Sept. 10, 2012; 2012 SB 337, § 1, eff. Sept. 28, 2012.

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Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile > Chapter 2152: Delinquent Children; Juvenile Traffic Offenders > Juvenile Sex Offender Registration and Notification Law

§ 2152.86 Court's duty on or after January 1, 2008 to classify child as juvenile offender registrant, specify compliance with SORN law, and additionally classify child as public registry-qualified juvenile offender registrant; reclassification.

(A)

- (1) The court that, on or after January 1, 2008, adjudicates a child a delinquent child for committing an act shall issue as part of the dispositional order an order that classifies the child a juvenile offender registrant, specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, and additionally classifies the child a public registry-qualified juvenile offender registrant if the child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act, the court imposed on the child a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code, and the child is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing any of the following acts:
 - (a) A violation of section 2907.02 of the Revised Code, division (B) of section 2907.05 of the Revised Code, or section 2907.03 of the Revised Code if the victim of the violation was less than twelve years of age;
 - (b) A violation of section 2903.01, 2903.02, or 2905.01 of the Revised Code that was committed with a purpose to gratify the sexual needs or desires of the child;
 - (c) A violation of division (B) of section 2903.03 of the Revised Code.
- (2) Upon a child's release, on or after January 1, 2008, from the department of youth services, the court shall issue an order that classifies the child a juvenile offender registrant, specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:
 - (a) The child was adjudicated a delinquent child, and a juvenile court imposed on the child a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code for committing one of the acts described in division (A)(1)(a) or (b) of this section or for committing on or after the effective date of this amendment a violation of division (B) of section 2903.03 of the Revised Code.
 - (b) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.
 - (c) The court did not issue an order classifying the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant pursuant to division (A)(1) of this section.
- (3) If a court issued an order classifying a child a juvenile offender registrant pursuant to section 2152.82 or 2152.83 of the Revised Code prior to January 1, 2008, not later than February 1, 2008, the court shall issue a new order that reclassifies the child as a juvenile offender registrant, specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code, and additionally classifies the child a public registry-qualified juvenile offender registrant if all of the following apply:
 - (a) The sexually oriented offense that was the basis of the previous order that classified the child a juvenile offender registrant was an act described in division (A)(1)(a) or (b) of this section.
 - (b) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the act.

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- (c) The court imposed on the child a serious youthful offender dispositional sentence under section 2152.13 of the Revised Code for the act described in division (A)(1)(a) or (b) of this section.

(B)

- (1) If an order is issued under division (A)(1), (2), or (3) of this section, the classification of tier III sex offender/child-victim offender automatically applies to the delinquent child based on the sexually oriented offense the child committed, subject to a possible reclassification pursuant to division (D) of this section for a child whose delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(2) of this section regarding a child whose delinquent act described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, the order shall inform the child and the child's parent, guardian, or custodian, that the child has a right to a hearing as described in division (D) of this section and inform the child and the child's parent, guardian, or custodian of the procedures for requesting the hearing and the period of time within which the request for the hearing must be made. Section 2152.831 of the Revised Code does not apply regarding an order issued under division (A)(1), (2), or (3) of this section.
- (2) The judge that issues an order under division (A)(1), (2), or (3) of this section shall provide to the delinquent child who is the subject of the order and to the delinquent child's parent, guardian, or custodian the notice required under divisions (A) and (B) of section 2950.03 of the Revised Code and shall provide as part of that notice a copy of the order required under division (A)(1), (2), or (3) of this section. The judge shall include the order in the delinquent child's dispositional order and shall specify in the dispositional order that the order issued under division (A)(1), (2), or (3) of this section was made pursuant to this section.

- (C) An order issued under division (A)(1), (2), or (3) of this section shall remain in effect for the period of time specified in section 2950.07 of the Revised Code as it exists on and after January 1, 2008, subject to a judicial termination of that period of time as provided in section 2950.15 of the Revised Code, subject to a possible reclassification of the child pursuant to division (D) of this section if the child's delinquent act was committed prior to January 1, 2008. If an order is issued under division (A)(1), (2), or (3) of this section, the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division. If an order is issued under division (A)(3) of this section, the duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code based upon that order shall be considered, for purposes of section 2950.07 of the Revised Code and for all other purposes, to be a continuation of the duty to comply with those sections imposed upon the child prior to January 1, 2008, under the order issued under section 2152.82, 2152.83, 2152.84, or 2152.85 and Chapter 2950. of the Revised Code.

(D)

- (1) If an order is issued under division (A)(2) of this section regarding a delinquent child whose delinquent act described in division (A)(1)(a) or (b) of this section was committed prior to January 1, 2008, or if an order is issued under division (A)(3) of this section regarding a delinquent child, except as otherwise provided in this division, the child may request as a matter of right a court hearing to contest the court's classification in the order of the child as a public registry-qualified juvenile offender registrant. To request the hearing, not later than the date that is sixty days after the delinquent child is provided with the copy of the order, the delinquent child shall file a petition with the juvenile court that issued the order.

If the delinquent child requests a hearing by timely filing a petition with the juvenile court, the delinquent child shall serve a copy of the petition on the prosecutor who handled the case in which the delinquent child was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the delinquent child's registration duty under section 2950.04 or 2950.041 of the Revised Code. The prosecutor shall represent the interest of the state in the hearing. In any hearing under this division, the Rules of Juvenile Procedure apply except to the extent that those Rules would by their nature be clearly inapplicable. The court shall schedule a hearing and shall provide notice to the delinquent child and the delinquent child's parent, guardian, or custodian and to the prosecutor of the date, time, and place of the hearing.

If the delinquent child requests a hearing in accordance with this division, until the court issues its decision at or subsequent to the hearing, the delinquent child shall comply with Chapter 2950. of the Revised Code as it exists on

and after January 1, 2008. If a delinquent child requests a hearing in accordance with this division, at the hearing, all parties are entitled to be heard, and the court shall consider all relevant information and testimony presented relative to the issue of whether the child should be classified a public registry-qualified juvenile offender registrant. Notwithstanding the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court may terminate that classification if it determines by clear and convincing evidence that the classification is in error.

If the court decides to terminate the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant, the court shall issue an order that specifies that it has determined that the child is not a public registry-qualified juvenile offender registrant and that it has terminated the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant. The court promptly shall serve a copy of the order upon the sheriff with whom the delinquent child most recently registered under section 2950.04 or 2950.041 of the Revised Code and upon the bureau of criminal identification and investigation. The delinquent child and the prosecutor have the right to appeal the decision of the court issued under this division.

If the delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the delinquent child of the delinquent child's right to a hearing under this division, and the delinquent child is bound by the court's classification of the delinquent child as a public registry-qualified juvenile offender registrant.

- (2) An order issued under division (D)(1) of this section is independent of any order of a type described in division (F) of section 2950.031 of the Revised Code or division (E) of section 2950.032 of the Revised Code, and the court may issue an order under both division (D)(1) of this section and an order of a type described in division (F) of section 2950.031 of the Revised Code or division (E) of section 2950.032 of the Revised Code. A court that conducts a hearing under division (D)(1) of this section may consolidate that hearing with a hearing conducted for the same delinquent child under division (F) of section 2950.031 of the Revised Code or division (E) of section 2950.032 of the Revised Code.

History

152 v S 10, § 1, eff. 1-1-08; 2012 SB 160, § 1, eff. Mar. 22, 2013.

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Notice

🚩 This section has more than one version with varying effective dates.
First of two versions of this section.

§ 2929.14 Basic prison terms. [Effective until September 14, 2016]

- (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

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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.

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- (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;

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- (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

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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 2929.02, 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-

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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 121 (HB 466) with the exception of file 90 (SB 129), file 108 (SB 321), file 113 (HB 317), and file 117 (HB 390).

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§ 2929.14 Basic prison terms. [Effective until September 14, 2016]

- (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.

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- (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

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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

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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

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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.

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- (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-

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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 121 (HB 466) with the exception of file 90 (SB 129), file 108 (SB 321), file 113 (HB 317), and file 117 (HB 390).

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§ 2929.14 Basic prison terms. [Effective until September 14, 2016]

- (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.

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- (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

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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.

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- (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

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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

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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-

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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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