

# OHIO CRIMINAL SENTENCING COMMISSION

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## **Am. Sub. H.B. 327**

(Felony Sentencing Refinements)

**As Passed by the General Assembly**

4-8-02

The Sentencing Commission has an ongoing statutory duty to monitor any of its proposals that become law. Sponsored by Rep. Bob Latta, this bill refines the felony sentencing law enacted as S.B. 2 (1996) and earlier refined by S.B. 269 (1996) and S.B. 107 (2000).

Page number references are to the bill in Act form.

### **KEY POINTS**

- Clarifies that drug traffickers, cultivators, manufacturers, and those charged with corrupting and steroid offenses are *not* eligible for intervention in lieu of conviction (§2951.041).
- Clarifies that a court may make a recommendation on placing an offender in a prison boot camp without making a formal finding on the offender's eligibility for the camp (§§2929.14(K), 2929.19(D), 5120.031, & 5120.032).
- Specifies a penalty for making a false statement in a drug prescription, order, report, or record (§2925.23).
- To better deal with offenders on post-release control (PRC) after serving a prison term, the bill:
  - Makes more prominent in the sentencing law the additional penalties faced for felony PRC violations (§§2929.141 & 2967.28);
  - At final release from PRC, allows the Adult Parole Authority to classify the release as "favorable" or "unfavorable" and gives DRC 6 months to adopt rules setting criteria (§2967.14);
  - Instructs courts to consider unfavorable termination as a factor indicating likely recidivism in future sentencing (§2929.12(D)(1)).
- Gives the Sentencing Commission until 7/1/02 to report to the General Assembly on forfeiture statutes (§181.25).
- Makes clear that persons currently in prison can be charged as repeat violent offenders, making them eligible for additional penalties (§2929.01).
- More clearly guides judges toward imposing a prison term on offenders who commit crimes while in prison (§§2929.13(B)(1)(g) & 2929.14(B)(1)).
- Clarifies that a prison term can be imposed consecutively to another prison term for a single offense committed while awaiting trial or sentencing or while under community supervision for an offense. Also makes clear that consecutive terms can be imposed for acts arising out of multiple courses of conduct (§2929.14(E)(4)).

- Clarifies judicial release eligibility for persons serving exactly 10 years (§2929.20). As now, judicial release is not available for sentences longer than 10 years.
- Clarifies that domestic violence committed under Federal law, another state's law, or another state's municipal ordinance counts as priors to enhance the penalty for the offense in Ohio (§2919.25).
- The bill contains some other provisions that were not generated by the Sentencing Commission:
  - At DRC's request, specifies that members of the Ohio Council for Interstate Offender Supervision are to be reimbursed for actual and necessary expenses incurred in their official duties (§5149.22).
  - At the behest of the Board of Nursing, makes applicants ineligible for nursing licenses or dialysis technicians' certificates for certain violent offenses discovered in a BCI&I criminal records check. Grandfathers in current practitioners (§§4723.09, 4723.28, 4723.72, 4723.74, 4723.75, & 4723.77).
  - At the behest of the cable industry, makes clearer that the unauthorized use of property offense covers any cable service or system (§2914.04). Similarly, clarifies the civil actions that may be brought by any cable service or system as a result of the unauthorized use of its property (§2307.62).
- The bill takes effect July 8, 2002.

## **SECTION-BY-SECTION SUMMARY**

**§181.25                      P.2                      Sentencing Commission Duties**

Gives the Commission until July 1, 2002, rather than July 1, 2001, to complete its review of forfeiture statutes under Titles 29 and 45. (The Commission submitted a preliminary report by the 7/1/01 deadline.)

**§2307.62                      P.4                      Cable Company Civil Actions**

Currently, a cable TV system or similar closed circuit coaxial system may bring a civil action if harmed by a violation of §2913.041 (possession or sale of an unauthorized device for gaining access to cable TV service). At the behest of the cable industry, the bill clarifies that this authorizes a civil action by any "cable service" and "cable system" and covers harm from §2913.04 (unauthorized use of property) as well.

**§2913.01                      P.6                      Theft Law Definitions**

Makes clear that the theft of "services" includes cable services for purposes of the unauthorized use statute (div.(E)). Similarly, expands the definition of "gains access" to include access to any cable service or system (div.(T)).

**§2913.04                      P.11                      Unauthorized Use of Property**

At the behest of the cable industry, clarifies that unauthorized use may be of any "cable service" or "cable system" (divs.(B)&(E)). Defines the quoted terms as well as "cable operator" (div.(F)).

**§2919.25                      P.13                      Domestic Violence**

Domestic violence penalties increase if the offender has a prior DV conviction. The bill clarifies that this means both a prior conviction

and a prior guilty plea. If further clarifies that priors include a substantially similar violation of Federal law, any other state's law, or an out of state municipal ordinance (div.(D)).

**§2925.23                    P.14                    Illegal Processing Drug Documents**

Div.(A) outlaws making a false statement in any drug prescription, order, report, or record. But current law does not specify a penalty for this. The bill makes the offense an F-4 if the drug involved is in Schedule I or II (other than marijuana), and an F-5 if the drug is in Schedule III, IV, or V or marijuana.

**§2929.01                    P.16                    Criminal Code Definitions**

The definition of "repeat violent offender" in div.(DD) includes a person who "served a prison term" for certain serious offenses. This can be read to exclude persons currently in prison. The bill fills the gap by making clear that the definition applies to those serving "previously" or "at the time of the offense". Also, corrects a typographical error in (TT).

**§2929.12                    P.22                    Felony Sentencing Factors**

In sentencing felons, courts must weigh certain factors regarding the severity of the offense and the offender's likely recidivism. The bill makes clear that the unfavorable termination of post-release control must be weighed as a factor indicating the offender is likely to commit future crimes (div.(D)(1)). Technical. Reflects the effective date of an earlier enactment and corrects a misspelling (divs.(D)(2)&(3)).

**§2929.13                    P.24                    General Felony Sentencing Guidance**

The guidance against imposing a prison term for F-4s and F-5s is negated (making a prison term more likely) when the defendant "previously" served a prison term. This has been read to exclude those currently in prison. The bill fills the gap by making clear this factor applies to those who serve "previous" prison terms and those in prison "at the time of the offense" (div.(B)(1)(g)).

**§2929.14                    P.32                    Guidance on Sentencing to Prison**

As noted in the prior section, the guidance against prison for F-4s and F-5s is negated (making a prison term more likely) when the defendant "previously" served a prison term. This has been read to exclude those "currently" in prison. The bill fills the gap by making clear this factor applies to those who serve "previous" prison terms and those in prison "at the time of the offense" (div.(B)(1)).

Also, the bill changes the guidance on consecutive prison sentences:

- Literally read, current law allows consecutive terms for "multiple offenses" committed while awaiting trial, on community control, or on post-release control. The statute seems to preclude consecutive terms if only one offense is committed in these circumstances. The bill makes clear that "one or more of the multiple offenses" under these circumstances can lead to consecutive sentences (div.(E)(4)(a)).
- Consecutive sentences are authorized then the court finds that no single prison term suffices for offenses committed "as part of a single course of conduct". The quoted phrase seems to preclude consecutive terms arising out of *multiple* courses of conduct. The bill makes clear that consecutive sentences are appropriate when two

or more offenses are committed as part of "one or more courses of conduct" (div.(E)(4)(b)).

Current law lets a court prospectively veto placing an inmate in a prison boot camp. However, it says that court must first find that the offender is "eligible" for placement. The bill makes clear that the court can recommend against a boot camp placement at sentencing without determining the defendant's eligibility for the camp (div.(K)).

Also, makes a technical correction (div.(D)(1)(d)) and reflects the MDO change in §2925.36, above (div.(D)(3)(a)).

**§2929.141 P.41 Felony Post-Release Control Violators**

Currently, when someone on post-release commits a new felony, the judge--in addition to sentencing for the new offense--can sentence the offender to prison for the violation for one year or the remaining PRC period, whichever is longer. The tool is underused, perhaps because it is buried in §2967.28(F)(4). The bill moves this language into the sentencing chapter of the Revised Code. It also makes clear that the court can terminate the PRC period for the prior offense.

**§2929.19 P.42 Felony Sentencing Hearing**

Tracks the change on boot camp recommendations discussed under §2929.14, above (div.(D)).

**§2929.20 P.46 Judicial Release**

The judicial release statute applies to persons serving "10 years or less" in prison. However, in setting out the time to file, the law addresses serving "more than 5 years and less than 10 years". Literally read, there is no provision for a person serving exactly 10 years. The bill corrects the error by changing "less than 10" to "not more than 10" (div.(B)(1)(c) & (B)(4)).

**§2951.041 P.50 Intervention in Lieu of Conviction**

In defining who is eligible for intervention in lieu of conviction in drug law, current law eliminates persons charged with a violation of section 2925.02 (corrupting with drugs), 2925.03 (trafficking), 2925.04 (manufacture/cultivation), 2925.06 (steroids), or 2925.11 "that is a felony of the first, second, or third degree". The quoted phrase is meant only to modify 2925.11 (drug possession). However, it appears to make F-4 and F-5 violators of the other sections eligible for intervention in lieu. This was not intended. The bill makes clear that persons charged with corrupting, trafficking, manufacture/cultivation, and steroids offenses are ineligible, regardless of degree. Only possessors would be eligible and only if the offense is an F-4 or F-5 (div.(B)(3)). Also, updates terminology and reletters divisions.

**§2967.16 P.53 Final Release from Post-Release Control**

In granting an offender final release from PRC supervision, the bill would allow the Adult Parole Authority to classify the release as "favorable" or "unfavorable" (div.(B)(1)). The bill gives DRC 6 months to adopt rules under Ch. 119 setting the criteria for these classifications (div.(B)(2)).

**§2967.28 P.55 Post-Release Control**

Technical. Reflects the change discussed under §2929.141, above.

**§3719.21 P.61 Drug Offense Fine Distribution**  
Technical. Clarifies a cross-reference.

**§4723.09 P.61 Nursing Licenses**  
At the behest of the Board of Nursing, automatically disqualifies applicants for a nursing license (divs.(A)(2) & (B)(3)) for failing to submit a BCI&I criminal record check (including FBI records), if the record check reveals that the person was found guilty of agg. murder, murder, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, agg. arson, agg. robbery, or agg. burglary. Requires the applicant to request BCI&I to conduct the records check and requires BCI&I to send the results to the Board (div.(C)). Makes clear that the results are not public records, but are available to the subject and to the Board. Applies to applicants who enter a prelicensure nursing program on or after June 1, 2003. Renumbers divisions.

**§4723.28 P.64 Nursing License Revocation or Refusal**  
Forbids the Board of Nursing from granting a nursing license or a dialysis technician certificate to an applicant whose criminal record check reveals one of the offenses listed in §4723.09, above (div.(N)). Applies to persons who enter a prelicensing nursing program on or after June 1, 2003. Technical. Corrects a misspelled word (div.(B)(8)).

**§4723.72 P.73 Scope of Dialysis Technician's Duties**  
Adds the ability to administer oxygen to a patient, when delegated by a registered nurse.

**§4723.74 P.74 Dialysis Training Programs**  
Makes a person under 18 who has not graduated from high school or received an equivalence diploma ineligible to enroll in a dialysis training program.

**§4723.75 P.74 Dialysis Technician Certificates**  
Echoes §4723.09, above, dialysis technician certificate applicants (divs.(A)(5)&(6) & (C)). Also echoes the grandfather clause, making the change only apply to those who enter a training program on or after June 1, 2003. Technical. Specifies the effective date of an earlier amendment (div.(2)(a)).

**§4723.77 P.76 Nursing & Dialysis Tech. Continuing Ed.**  
Adds to the continuing education requirements at least one hour directly related to the statutes and rules governing the practice of nursing or as a dialysis technician.

**§5120.031 P.77 "Boot Camp" Prisons**

**§5120.032 P.83 Intensive Program Prisons**  
Consistent with the change in §2929.14(K), clarifies that DRC determines eligibility for shock incarceration ("boot camp") and intensive program prisons. The judge need not determine eligibility. The judge retains the ability to veto placement in these programs, irrespective of eligibility. Technical. Corrects misspellings.

**§5120.033 P.86 Intensive Program Prisons Cont.**

**§5145.01 P.87 Maximum Prison Terms**  
Technical. Updates a cross-reference to new §2929.141, above.

**§5149.22**            **P.88**            **Interstate Adult Offender Supervision**  
Current law is silent as to the compensation of members of the Ohio Council for Interstate Offender Supervision. At DRC's request, the bill says the members serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in their official duties.

**Section 2.**            **P.89**            **Repeals Clause**

**Section 3.**            **P.89**            **Harmonizations**  
Harmonizes various sections amended simultaneously by various bills.