

# FELONY SENTENCING

Ohio Criminal Sentencing Commission – Chief Justice Sharon L. Kennedy, Chair – Melissa A. Knopp, Esq., Director

## PURPOSES AND PRINCIPLES.

### Overriding Purposes:

To protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender while “using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.” (R.C. 2929.11(A))

### Principles:

Always consider the need for incapacitation, deterrence, rehabilitation of the offender, and restitution to the victim and/or the public. (R.C. 2929.11(A))

Sentences should be commensurate with, and not demeaning to, the seriousness of offender’s conduct and its impact on the victim, and consistent with sentences for similar crimes by similar offenders. (R.C. 2929.11(B))

Courts shall not sentence based on the offender’s race, ethnicity, gender or religion. (R.C. 2929.11(C))

## FACTORS TO CONSIDER IN EVERY CASE.

The court must weigh these, if present, and other relevant factor(s):

### Offender’s Conduct Is More Serious (2929.12(B)):

Injury exacerbated by victim's physical or mental condition or age

Victim suffered serious physical, psychological, or economic harm

Offender held public office or position of trust and the offense related to the office or position

Offender's occupation obliged the offender to prevent the offense or to bring those committing it to justice

Offender's reputation, occupation, or office facilitated the offense or is likely to influence others’ conduct

Offender's relationship with the victim facilitated the offense

Offender acted for hire or as part of organized criminal activity

Offender was motivated by prejudice based on race, ethnicity, gender, sexual orientation, or religion

In a domestic violence or assault case, offender is a parent or other custodian, victim was a family or household member, & offense was committed in the vicinity of one or more children other than the victim

### Offender’s Conduct Is Less Serious (R.C. 2929.12(C)):

Victim induced or facilitated the offense

Offender acted under strong provocation

Offender did not cause or expect to cause physical harm to person or property

Substantial grounds exist to mitigate the offender's conduct, even if they don’t constitute a defense

### Offender’s Recidivism Is More Likely

(R.C. 2929.12(D)):

Offense while on bail, awaiting sentencing, on community control or PRC, or after PRC unfavorably terminated

Offender has a history of criminal convictions or juvenile delinquency adjudications

Offender has not responded favorably to sanctions previously imposed in adult or juvenile court

Offender shows pattern of alcohol/drug use related to offense & doesn’t acknowledge it or refuses treatment

Offender shows no genuine remorse

### Offender’s Recidivism Is Less Likely

(R.C. 2929.12(E)):

Offender has no prior juvenile delinquency adjudication

Offender has no prior adult conviction

Offender led a law-abiding life for a significant number of years

Offense was committed under circumstances unlikely to recur

Offender shows genuine remorse

### Offender’s Veteran Status

(R.C. 2929.12(F))

## CONSIDERATIONS AND ADVISEMENTS Presentence Investigation (R.C. 2951.03(A)(1))

Must be done prior to placing defendant on community control, unless waived by defendant and state.

### Merger (Allied Offenses of Similar Import)

(RC 2941.25)

Allied offenses of similar import must be merged

In determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must evaluate three separate factors—the conduct, the animus, and the import. Two or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant’s conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable. Under R.C. 2941.25(B), a defendant whose conduct supports multiple offenses may be convicted of all the offenses if any one of the following is true: (1) the conduct constitutes offenses of dissimilar import, (2) the conduct shows that the offenses were committed separately, or (3) the conduct shows that the offenses were committed with separate animus

### Consecutive Sentences

(R.C. 2929.14(C)(4))

Presumption for concurrent sentences unless the court finds:

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Consecutive sentences are necessary to protect the public or to punish the offender  
Are not disproportionate to the seriousness of the offenders conduct and the danger posed to the public  
The Court must also find any of the following:  
Crimes were committed while awaiting trial/sentencing, under sanction, or under post-release control  
Two or more of the multiple offenses committed as a single course of conduct; and harm so great or unusual that a single term does not adequately reflect seriousness of the conduct

Offender's criminal history shows that consecutive terms are needed to protect the public

### **Consecutive Sentences required (R.C.**

#### **2929.14(C)(1-3):**

Specifications: sentence for gun and other specifications served before underlying offense (RC 2929.14(C)(1)(a-c)

Certain crimes committed by an inmate or escapee from a detention facility (e.g. riot, many escapes, etc.) (RC 2929.14(C)(2)

Aggravated robbery of a deadly weapon from a law enforcement officer (RC 2911.01(B)/RC 2929.14(C)(3)

Theft of a firearm (grand theft) where a prison term is imposed (RC 2913.02(B)(4)/RC 2929.13(C)(3)

Sexually violent predators (RC 2971.03(E)

Felony failure to comply, fleeing in a vehicle from an officer, causing substantial injury or risk of injury (RC 2921.33(C-D)/RC 2929.14(C)(3))

### **COMMUNITY CONTROL**

(R.C. 2929.15)

Find the defendant amenable to community control  
Indicate the range from which the prison term may be imposed as a sanction for the violation  
Notify defendant that if any conditions are violated or if the defendant leaves the state without permission, the court may impose a longer time under the same sanctions, may impose a more restrictive sanction or may impose a prison term.

Notify the defendant that the court may impose consecutive sentences at a future revocation hearing

**Residential Community Sanctions.** Include, but not limited to (R.C. 2929.16; see R.C. 2929.01 for definitions):

Community-based correctional facility (CBCF) for up to 6 months

Jail or minimum-security jail for up to 6 months (or up to 1 year for certain F-4 OVI's)

Halfway house: no stated time limit

Alternative residential facility: another place for employment, training, education, treatment, *etc.*

**Non-Residential Sanctions.** Include, but not limited to (R.C. 2929.17; see R.C. 2929.01 for definitions):

Day reporting: report to an approved location to participate in work, training, treatment, *etc.*

House arrest and/or electronic monitoring and/or continuous alcohol monitoring

Community service for up to 500 hours, which may be imposed on indigent & non-indigent persons

Drug treatment: inpatient, outpatient, or both; court determines level of security

Drug and alcohol use monitoring, including random drug testing

Intensive probation supervision: frequent contact with supervising officer, *etc.*

Basic probation supervision: contact with a supervising officer subject to conditions set by the court

Monitored time: under court control subject to no conditions other than leading a law-abiding life

Curfew: be at a designated place at a specific time

Employment: obtain or retain a job

Education or training

Victim-defendant mediation, with the victim's prior consent

License violation report: inform an agency granting a business or professional license of the violation

Counseling generally. In particular, if a parent or custodian sentenced for domestic violence or assault involving a family or household member committed in the vicinity of a child other than the victim

Sex defendant treatment program (for a defendant convicted of unlawful sexual conduct with a minor committed while the defendant is <21 (R.C. 2929.17(O)).

### **MANDATORY COMMUNITY CONTROL**

**F-4s, F-5s, and "Division B" drug offenses** (R.C. 2929.13(B)(1)(a)):

The Court shall sentence the offender to community control, subject to R.C. 2929.13(B)(1)(b) below, if the most serious charge is an F-4 or F-5 that is not an offense of violence (R.C. 2901.01(A)(9) or qualifying assault offense (R.C. 2929.13(K)(4) and the defendant: Previously has not been convicted of or pled to a Felony

The most serious charge against the defendant at the time of sentencing is an F-4 or F-5

Previously not convicted of a misdemeanor offense of violence within 2 years prior to the offense for which sentence is being imposed.

### **Discretionary Prison Term:** [If not mandatory CC]

Under (R.C. 2929.13(B)(1)(b) the sentencing court has discretion to impose a prison term if it finds any of the following:

Physical harm to a person

Attempt or actual threat of physical harm to a person with a deadly weapon

Attempt or actual threat of physical harm to a

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person and prior conviction for causing such harm  
Offense related to public office/position held;  
position obligated offender to prevent it or to bring  
others to justice; or offender's reputation/position  
facilitated the crime or likely to influence others  
Offense was for hire or part of organized criminal  
activity  
Offense was a sex offense  
Offender served a prior prison term or was in  
prison at time of offense  
Offense was committed while offender was under  
community control or on bail or bond  
Offender committed the offense while possessing a  
firearm

### NO PRESUMPTIVE SENTENCE

#### F-3s generally or “Division C” drug offenses:

Courts are directed to fashion an appropriate sentence  
based on the purposes and principles of sentencing.  
(R.C. 2929.13(C)).

#### MANDATORY PRISON TERMS (RC 2929.13(F))

**Note:** The General Assembly frequently changes this  
list and doesn't always include changes in 2929.13(F):

#### AGGRAVATED MURDER OR MURDER

The court must impose a prison term specified by R.C.  
2929.02 - 03. [R.C. 2929.13(F)(1)].

#### F-1 OR F-2 WITH SPECIFIED PRIOR CONVICTIONS

A prison sentence is mandatory when offender has a  
prior conviction for aggravated murder, murder, or any  
F-1 or F-2 offense [R.C. 2929.13(F)(6)].

#### ASSAULT ON POLICE OFFICERS

Felonious, aggravated, or simple assault when victim is  
a peace officer or BCI investigator who suffered  
serious physical harm [R.C. 2929.13(F)(4) and (13)].

Seven-year specification if offender shot at  
peace or corrections officer while committing  
or attempting a homicide or assault offense  
[R.C. 2941.1412]; [R.C. 2929.14(B)(1)(f)(i)];  
and

Five-year specification for aggravated  
vehicular homicide (AVH) with peace-officer  
victim [R.C. 2941.1414]; [R.C. 2929.14(B)(5)].

#### ASSAULT ON PREGNANT WOMAN

Mandatory, within felony range, for felonious,  
aggravated, or simple assault if offender knew of the  
pregnancy, with specification in [R.C. 2941.1423]; [R.C.  
2929.13(F)(18)]; [R.C. 2929.14(B)(8)].

Mandatory 30-day jail term for misdemeanor  
violation with specification [R.C. 2929.24(G)].

#### REPEAT VIOLENT OFFENDER SPECIFICATION (RVO)

Defined as person who commits aggravated murder,  
murder, a violent F-1 or F-2, or an F-1 or F-2 attempt  
of violence, with a prior conviction for one or more of  
the same [R.C. 2929.01(CC)]; [R.C. 2941.149].

Discretionary RVO time: if court elects the maximum  
from range for underlying offense and LWOP is not  
imposed, it may add one to 10 more years if the court  
finds under R.C. 2929.14(B)(2)(a)(i-v) that the prison  
term for the underlying offense is:

Inadequate to punish the offender and protect  
the public (see recidivism factors in [R.C.  
2929.12(D) - (E)]); and

Demeaning to seriousness of offense (see  
seriousness factors in [R.C. 2929.12(B-C)]).

For F-2 offenses, the court also must find  
serious physical harm or attempt or threat to  
do so.

Under R.C. 2929.14(B)(2)(b), the court must impose  
the maximum prison term authorized for the offense,  
plus an additional one to 10 years for RVO with three  
or more RVO offenses in 20 years, including current, if  
LWOP not required or imposed.

#### VIOLENT F-3 OFFENSES WITH PRIOR CONVICTIONS

A prison term is mandatory for F-3 involuntary  
manslaughter or an attempt to commit a violent F-2  
offense involving attempted or actual serious physical  
harm when offender has a prior conviction for  
aggravated murder, murder, involuntary manslaughter,  
rape, or other F-1 or F-2 that involved causing or  
attempting to cause serious physical harm [R.C.  
2929.13(F)(4) and (7)].

#### CERTAIN SEX OFFENSES

Any offense with a sexually violent predator (SVP)  
specification: under R.C. 2929.13(F) (2), (11), and (15)  
and R.C. 2971.03, at least two years to life for  
specification, consecutive to underlying offense.

Any rape: see R.C. 2929.13(F)(2)

Attempted rape, if victim <13 and, if completed,  
defendant would be classified as a sexual predator [R.C.  
2929.13(F)(2)];

Five to 25 years for attempted statutory rape if  
offender ≥16 and victim <13 [R.C. 2941.1418,  
R.C. 2971.03(A)(3)(e)(ii) or (B)(2)(a), R.C. 2929.14(E)]

Ten years to life for attempted statutory rape if  
offender ≥16 and victim <10 [R.C. 2941.1419 [R.C.  
2971.03(A)(3)(e)(iii) or (B)(2)(b)]

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Fifteen years to life for attempted rape, if offender has prior attempted statutory rape [R.C. 2941.1420], [R.C. 2971.03(A)(3)(e)(iv) or (B)(2)(c)].

Sexual battery after Aug. 3, 2006, if victim <13 [R.C. 2929.13(F)(3)(c)(ii)]; or  
Before Aug. 3, 2006, if victim <13, with prior rape, FSP, GSI, or sexual battery [R.C. 2929.13(F)(3)(c)(i)]

Gross Sexual Imposition if victim <13 [R.C. 2929.13(F)(3)(a-b)]:

Importuning, with victim <13, if offender has prior sex offense or child-victim- oriented offense [R.C. 2929.13(F)(4)]; [R.C. 2907.07(A), (C), and (F)];

Sex Offender Registration and Notification (SORN): repeat failure to register [R.C. 2950.99(A)(2)(b)] – mandatory sentence of at least three years.

### CERTAIN DRUG OFFENSES

F-1, F-2, and F-3 Drug Offenses: Generally mandatory from range when required by statute [R.C. 2929.13(F)(5)] and [R.C. Chapter 2925].

F-2 Marijuana/Hashish Trafficking, Possession, or Cultivation [R.C. 2925.03 - .04 and .11].

20 to <40k. marijuana, 1 to <2 k. solid hashish, or 200 to <400 g. liquid hashish: five, six, seven, or eight years;

≥40 k. marijuana, ≥2 k. solid hashish, or ≥400 g. liquid hashish: eight years; and

If in vicinity of school/juvenile: F-1 maximum.

Major Drug Offenders (MDO): Defined in [R.C. 2929.01(W)].

F-1 maximum for specified, high-quantity amounts [R.C. 2941.1410(A)].

Additional three- to eight-year specification when drug involved is a fentanyl- related compound [R.C. 2941.1410(B)].

### CORRUPT ACTIVITY

Engaging in a pattern of corrupt activity in violation of [R.C. 2923.32] when the most serious predicate offense is an F-1 [R.C. 2929.13(F)(10)].

### CERTAIN TRAFFIC OFFENSES

Felony OVI when local incarceration is not imposed and for five priors in 20 years specified [R.C. 4511.19]; [R.C. 2941.1413].

At least 60 days or at least 120 days, as specified for felony OVI [R.C. 4511.19(G)], [R.C. 2929.13(G)(1-2)];

Six months or one, two, three, four, or five years on 6th OVI in 20 years

[R.C. 2929.13(G)(1-2)], plus [R.C. 2941.1413]; [R.C. 2929.24(E)], plus [R.C. 2941.1416].

Any OVI-related aggravated vehicular homicide (AVH) and aggravated vehicular assault (AVA) [R.C. 2903.06 and .08].

Certain other involuntary manslaughters, AVHs, vehicular homicides, AVAs when specified [R.C. 2929.13(F)(14)]; [R.C. 2903.04, .06, and .08].

3 years for AVH with three or more prior OVIs or equivalent offenses [R.C. 2941.1415]; [R.C. 2929.14(B)(6)].

### HUMAN TRAFFICKING

Violations of [R.C. 2905.32(E)] punishable by 10, 11, 12, 13, 14, or 15 years.

Specification for offenses committed in furtherance of human trafficking [see [R.C. 2941.1422] and penalties in [R.C. 2929.14(B)(7)]].

### FELONY DOMESTIC VIOLENCE

When offender knew the victim was pregnant and/or caused serious physical harm to unborn child [R.C. 2929.13(F)(17)]; [R.C. 2919.25(D)(3-6)].

### ILLEGAL CONVEYANCE

When prison or detention employee takes weapons, ammunition, or drugs into the facility [R.C. 2929.13(F)(12)]; [R.C. 2921.36].

### SPECIFICATIONS IN R.C. 2941

See [R.C. 2929.13(F)(8-9)] and [R.C. 2929.14(B)(1)(5-7), (E), (G-H)].

*Note: Time for specification is mandatory; term for the underlying offense may or may not be.*

Six years for automatic or muffled/silenced firearm [R.C. 2941.144] (nine years with prior, cannot combine with three- or one-year gun specification);

Three years, if firearm used, displayed, brandished, or otherwise indicated [R.C. 2941.145] (54 months with prior);

One year, if firearm possessed, but not used, displayed, brandished, or otherwise indicated [R.C. 2941.141] (18 months with prior);

Five years, if a drive-by shooting, in addition to gun specification above [R.C. 2941.146];

Two years, if wearing or carrying body armor [R.C. 2941.1411];

One, two, or three years for participating in a criminal gang [R.C. 2941.142]; [R.C. 2929.14(G)];

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Two years for aggravated murder, murder, or a violent F-1, F-2, or F-3 in a school zone [R.C. 2941.143]; [R.C. 2929.14(H)(1)];

Six years for causing permanent, serious disfigurement or permanent, substantial incapacity when using an accelerant to commit felonious assault [R.C. 2941.1425], [R.C. 2929.14(B)(9)]; and

Six years for causing permanent, disabling harm to a victim under 10 years old [R.C. 2941.1426]; [R.C. 2929.14(B)(10)].

## INDEFINITE AND DEFINITE SENTENCES

### Life-Sentence Offenses

Defendant is sentenced to a term of years up to life with release determinations by the parole board if applicable.

Aggravated murder (if death sentence is not imposed) can be a sentence of 20-life, 25-life, 30-life, or life without parole. (R.C. 2929.03)

Murder carries a sentence of 15-life. (R.C. 2929.02)

Rape (victim 10 or under) – see RC 2907.02/2971.03

Agg Murder, Murder, Inv Manslaughter as a Felony, Felonious Assault, and Kidnapping with Sexually Violent Predator(SVP) and Sexual Motivation (SM) specs (LWOP for murders, 2 years to life for others) (RC 2971.03(A)/RC 2941.147 SM/RC 2941.148 SVP)

### Indefinite Sentence

(R.C. 2929.144)

F1 and F2 offenses committed on or after March 22, 2019. Court will impose a minimum and maximum prison term.

### Minimum Prison Term

Selected from RC 2929.14(A) ranges

F1: 3,4,5,6,7,8,9,10 or 11 years

F2: 2,3,4,5,6,7 or 8 years

If offense specifies a different prison term, then that is considered the minimum term

For offenses that carry a mandatory prison term, the minimum term is a mandatory prison term

### Maximum Prison Term

Minimum term plus 50%

Concurrent sentences: The maximum term is equal to the longest minimum term imposed, plus 50% of the longest minimum term for the most serious qualifying felony being sentenced (RC 2929.144(B)(3))

Consecutive Sentences: The maximum term is the sum of all consecutive indefinite minimum prison terms, plus any consecutive definite prison terms, plus an additional 50% of the longest minimum prison term, or definite term for the most serious felony being sentenced (RC 2929.144(B)(2))

### Definite Sentence

(R.C. 2929.14)

F-3, F-4, and F-5 offenses as well as non-life F-1 and F-2 offenses committed before March 22, 2019 are subject to a definite prison term under R.C. 2929.14(A)

### POST RELEASE CONTROL

(RC 2967.28)

Notify the defendant that upon release from any prison term, the defendant will be subject to supervision by the Adult Parole Authority for a period determined by the type and nature of the conviction(s) and the Parole Board:

ANY Felony sex offense = Mandatory 5 year term

F1 offenses = Mandatory 2-5 years

F2 Offense = Mandatory 18 months – 3 years

F3 Offense of Violence = 1 year – 3 years

All other F3, F4 and F5 = up to 2 years at discretion of parole board

### REGISTRATION REQUIREMENTS

Sex Offender Registration Notice (RC 2950)

For offenses prior to January 1, 2008 classify under Megan's Law

Arson Registry Notice (RC 2909.15)

Violent Offender Database (VOD) (RC 2903.41-44)

### FINES, RESTITUTION AND COURT COSTS

Present and future ability to pay must be considered when imposing fines, restitution, and many types of costs, the costs of supervision, confinement costs, the costs of an immobilizing or disabling device, and reimbursement for controlled substance tests or arson investigation costs.

Prior to or at sentencing courts may hold a hearing on present and future ability to pay, if necessary (R.C. 2929.18(E))

### Fines, generally:

(R.C. 2929.18)

F1 not more than \$20,000

F2 not more than \$15,000

F3 not more than \$10,000

F4 not more than \$5,000

F5 not more than \$2500

### Restitution (RC 2929.18(A)(1):

Economic loss suffered by the victim as a direct and proximate result of the commission of the offense

### Costs of Prosecution and jury fees (RC 2947.23)

Appointed Counsel Fees (RC 2941.51(D)) Civil Assessment (should be noted in entry if not done separately)

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### CRIME-SPECIFIC FINES

#### Drug offense fines [R.C. Chapter 2925 and R.C. 2929.18(B)]:

**F-1, F-2, F-3 drug offenses:** mandatory fine at least 50-percent of the maximum conventional fine [R.C. 2929.18(B)(1)]. F-1, F-2, F-3 drug trafficking: “additional” fine equals value of offender’s property involved in or realized from the offense, or, if no property or undetermined value, additional fine under the R.C. 2929.18(A)(3) ranges; capped at conventional fine maximum [R.C. 2929.18(B)(4-7)], (also see million-dollar fine below).

**Up to \$1 million** for aggravated murder, murder, or F-1, or for F-1, F-2, or F-3 drug offense, if three or more victims in instant or all such past crimes [R.C. 2929.32].

**Felony OVI:** mandatory fine specified by offense level (R.C. 2929.18(B)(3)/(R.C. 4511.19(G)(1)(d) or (e))

**Arson:** mandatory investigation and prosecution costs reimbursement [R.C. 2929.71].

### FORFEITURES

#### [R.C. Chapter 2981] and Title 45:

Asset forfeiture, particularly in corrupt activity, drug, gang, and Medicaid fraud cases (R.C. Chapter 2981) Motor vehicle forfeiture for certain OVIs, DUSs, and wrongful entrustments (R.C. 4510.11, R.C. 4511.19, and 4511.203)

### JAIL TIME CREDIT (RC 2929.19(B)(2)(g))

Determine and notify the defendant of the number of days the defendant has been confined  
Include the sentencing date but exclude conveyance time  
Consider the arguments and other evidence of the parties  
Include the determination in the sentencing entry

### TECHNICAL VIOLATION COMMUNITY CONTROL VIOLATOR CAPS

A “Technical violation” is a violation of the conditions of a community control sanction imposed for an F-5, or for an F-4 that is not an offense of violence, is not a sexually oriented offense, and to which neither of the following applies [R.C. 2929.15(E)]:

The violation consists of a new criminal offense that is a felony or that is a misdemeanor other than a minor misdemeanor, and the violation is committed while under the community control sanction;

or

The violation consists of or includes the offender’s articulated or demonstrated refusal to participate in the community control sanction imposed on the offender or any of its conditions, and the refusal demonstrates

to the court that the offender has abandoned the objects of the community control sanction or condition.

The 90- or 180-day prison term imposed for a F-5 or F-4 technical violation cannot exceed the time remaining on the defendant’s community control sanction or the reserved prison term for the charge. Time served for the technical violation must be credited against the defendant’s remaining time on community control. If the defendant was serving a residential sanction of community control pursuant to R.C. 2929.16 at the time of the technical violation, the time served for the technical violation must be credited against their remaining time on community control, their remaining time on the residential sanction, and the reserved prison term in the case [R.C. 2929.15(B)(2)(b)(ii)].

Defendants sent to prison for a technical violation sentence on an F-4 or F-5 shall be returned to community control in the sentencing court at the completion of the sentence if there is any remaining time to be served on the community control sanction. This return to community control will be at the discretion of the sentencing court.

### TARGETED COMMUNITY ALTERNATIVES TO PRISON (TCAP)

TCAP is a voluntary program statewide following the passage of 133 GA HB 166. More information on TCAP is available at DRC’s [website](#). In participating counties, F-4 and F-5 offenders who are sentenced to a prison term ≤12 months cannot be sent to prison and instead must serve their sentence locally, unless [R.C. 2929.34(B)(3)]:

The offense was an offense of violence, a sex offense, a trafficking offense, or other mandatory prison term; or

The offender has a prior conviction for a sex offense or felony offense of violence; or

The sentence is to be served concurrently to a prison-eligible felony offense