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MISDEMEANOR SENTENCING PRIMER **H.B. 490, Plus S.B. 57, H.B. 52, & H.B. 163**

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WHAT'S NEW?

Here's what you will find in this version:

- 1. H.B. 490.** As before, it outlines misdemeanor sentencing changes under H.B. 490, which took effect January 1, 2004.
- 2. S.B. 57.** As in versions after November 2003, it covers the subtle refinements made by S.B. 57, also effective January 1, 2004. Those changes are marked by "**S.B. 57**" in bold.
- 3. H.B. 52 (Restitution, Etc.).** This Primer describes the substantive changes in restitution law *etc.* under H.B. 52, effective June 1, 2004. They're noted by "**H.B. 52**" in bold and described in *italics*.

WHERE TO FIND KEY H.B. 52 CHANGES: Restitution (pp. 4, 6, 8, & 19-22) & Mandatory Jail Terms for Vehicular Homicide, etc. (pp. 9-10).

- 4. H.B. 163 (OVI, Record Keeping, Etc.).** The Primer outlines the misdemeanor aspects of H.B. 163, which modifies OVI penalties and requires lengthy record keeping on offenses. They're marked by "**H.B. 163**" in bold and described in *italics*.

WHERE TO FIND KEY H.B. 163 CHANGES: "Mandatory" OVI Spec. for 5 priors in 20 years (pp. 10-11); Continuous Alcohol Monitoring (pp. 14-15); & Record Keeping (p. 34).

- 5. Commercial for Traffic Primer.** For more comprehensive coverage of the traffic aspects of H.B. 52 & 163, see our updated Traffic Primer.

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I. BACKGROUND AND APPLICATION

A. H.B. 490 BACKGROUND

Amended Substitute House Bill 490 was:

- Sponsored by Representative Bob Latta (Bowling Green);
- Based on Sentencing Commission proposals;
- Unanimously approved by the Senate, with unanimous concurrence by the House, in December 2002;
- Signed by Governor Bob Taft on January 2, 2003.

B. WHAT'S NOT HERE

H.B. 490 did not enact all of the Sentencing Commission's misdemeanor proposals. H.B. 490 does not:

- Allow courts to impose misdemeanor sentences consecutive to felony sentences;
- Change the distribution of revenue from costs and fines;
- Classify remaining unclassified crimes as regulatory offenses.

C. EFFECTIVE DATES

1. **1-1-04.** As noted earlier, **H.B. 490** took effect January 1, 2004 (§4), as did **S.B. 57** and **S.B. 123's** traffic law revisions (also based on Sentencing Commission proposals).

2. **Exceptions:**

a. **Juvenile Driving Privileges.** Consistent with S.B. 123, H.B. 490 expands juvenile driving privileges during driver's license or permit suspensions (see **Part IX**). Those changes took effect before S.B. 123, in April 2003 (§§6-8).

b. **Restitution Refinements.** *H.B. 52 modified H.B. 490's restitution language and added mandatory terms for vehicular homicides & assaults, and refines some aspects of S.B. 123, effective June 1, 2004.*

c. **OVI Mandatories, etc.** *H.B. 163 includes additional mandatory prison and jail terms for OVI, requires 50 year record keeping, and refines some aspects of S.B. 123, effective 9.23.04.*

3. **Traffic Aspects.** *Separately, the latest Traffic Primer covers the traffic-specific aspects of H.B. 52 & H.B. 163 in detail.*

D. NOT RETROACTIVE

Other than the juvenile provision just mentioned, H.B. 490 draws a clean line between old and new law.

1. Pre 1-1-04 Conduct. Conduct occurring before 1-1-04, including cases pending on that date, must be sentenced under former law (§3 generally and §2951.011(B)(1)).

- **S.B. 57** eliminated an erroneous reference to 7-1-03 in §2951.011(B)(2).

2. No Benefit Rule. §1.58(B) addresses how changes in the law affect pending cases. It instructs judges to impose new penalties if they benefit the defendant.

- H.B. 490 exempts its changes from §1.58(B) (§3).

E. SHORTHANDS

- **Offense Levels.** The primer often uses “MM” for a minor misdemeanor, “M-1” for first degree misdemeanor, “M-2” for second degree misdemeanor, etc.

II. PURPOSES AND JUDICIAL DISCRETION

A. PURPOSE CLAUSE

1. Purposes. To guide courts generally in sentencing misdemeanants, H.B. 490 says that the “overriding purposes” of misdemeanor sentencing are to (§2929.21(A), 1st sentence):

- Protect the public from future crime by the offender and others; and
- Punish the offender.

There was no comparable provision in former misdemeanor law.

2. Principles. Sentences should be (§2929.21(B) & (C)):

- Reasonably calculated to achieve these purposes;
- Commensurate with the offender's conduct and its impact on the victim;
- Consistent with sentences for similar offenses & offenders; &
- Not based on race, ethnicity, gender, or religion.

3. Exception for MMs & Certain Traffic Cases. *In an odd provision, H.B. 52 provides that the purposes and principles (except*

the last bullet in 2 above) do not apply to MMs or to traffic cases that do not require a court appearance (e.g., under Traffic Rule 13) (§2929.21(A), (B), & (D)).

- This was done to deemphasize restitution for minor offenses and to eliminate the perceived need for a court appearance.
- Aside from its awkward phrasing, the language may sweep too far. It seems to eliminate the need to consult basic principles (such as proportionality and fairness) in sentencing MMs and in setting payment schedules for Rule 13 cases.

B. JUDICIAL DISCRETION

1. General Rule. The judge has discretion to determine the most effective way to achieve the purposes and principles, unless the offender faces a mandatory term (§2929.22(A), 1st ¶).

- The offender may receive any lawful sanction or combination of sanctions (with exceptions re MMs) (§2929.22(A), 2nd ¶).

2. Guidance. However, H.B. 490 guides the court's discretion.

a. Consider Certain Goals. Courts must *consider* the impact on the victim & the need for (§2929.21(A), 2nd sent.):

- Changing the offender's behavior;
- Rehabilitating the offender; and
- Making restitution to the victim, public, or both.

b. Consider the Offense.

i. Generally. Courts must consider (§2929.21(A), 2nd sentence & §2929.22(B)):

- The impact of the offense on the victim;
- The offender's character, violence, history, and risk; and
- Other circumstances of the offense and offender.

ii. Specifically. Rather than the long lists of factors in felony courts, misdemeanor courts must instead consider (§2929.22(B)(2)(a)-(e) & (B)(3)):

- The nature and circumstances of the offense;
- Whether there is a history of persistent criminal

activity and a substantial risk the offender will commit another offense;

- Whether there is a substantial risk the offender will endanger others and that the offender's conduct reflects a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences;
- The offender's criminal history and character;
- The likelihood of recidivism by the offender; and
- Any other factors relevant to achieving the purposes and principles of sentencing.

Note: The 2nd & 3rd bullets replace the nonprobationability of repeat and dangerous offenders in former law.

iii. Regarding Victims. Former law told courts to determine whether the victim is 65 or older, under 18, or “permanently and totally disabled” (§2929.22(B)(1)).

- While well intended, the language arbitrarily prioritized victims. **S.B. 57** eliminated the age and disability language and instead focused on the victim's vulnerability to crime, irrespective of age or infirmity (§2929.22(B)(1)(d) & streamlined new §2929.22).
- A vulnerability finding does not control the court's discretion, but the court must consider it in favor of imposing a jail term or restitution (§2929.22(B)(1)(a) & (b)).

c. Consider Resources. The sentence should not impose an unnecessary burden on local resources (§2929.22(A), ¶ 2).

- Before imposing a jail term, the judge must consider if community control is appropriate (§2929.22(C)).

3. Repeals. The provisions in 1 & 2 above, allowed repeal of the former §2929.22 factors and parts of §2929.51 & §2951.02.

- On balance, the new guiding principles are simpler and more centralized than those in the repealed statutes.

III. MINOR MISDEMEANOR CHANGES

A. HISTORIC PERSPECTIVE

- 1. Least Serious & Most Common.** Historically, minor misdemeanors (MMs) are the least serious category of crime in Ohio, the most common class of offenses in the Revised Code and municipal codes, and by far the class with the most offenders.
- 2. Narrow Penalty.** The penalty hadn't changed since the category was created in 1974: A fine not exceeding \$100; no jail term or other sanctions (except costs) (§2929.26(D)).

B. SIGNIFICANT CHANGES

H.B. 490 changes the nature of minor misdemeanors as follows:

- 1. Fine Increase.** Increases the maximum fine from \$100 to \$150 (§2929.28(A)(2)(b));
- 2. Broader Penalties.** Jail terms, other residential sanctions, and most nonresidential sanctions remain unavailable. However:
 - **Community Service.** H.B. 490 specifically allows up to 30 hours community service for minor misdemeanors in lieu of all or part of a fine (§2929.27(C)).
 - **Financial Sanctions.** H.B. 490 extended MM penalties beyond fines to include financial sanctions such as restitution and reimbursements (§2929.28(B) & §2901.02).
 - **Limitations:** *However, to avoid unneeded hearings, H.B. 52 specifies that restitution is not available in:*
 - *Minor misdemeanor (MM) cases, or in other cases subject to Traffic Rule 13 (most 1st and 2nd moving violations) in adult courts (§2929.28(A)(1)); or*
 - *MM level cases in juvenile court (§2952.20(A)(3) & §2152.21(A)(4)).*
 - *For more on restitution under H.B. 52, see Part V D 2.*
- 3. Violators.** H.B. 490 does not specifically address MMs who violate community service or other sanctions.

- A jail term is not available for an MM. But sanctions may be available under the court’s contempt power.

IV. JAIL TERMS

A. NO CHANGE IN LENGTH

Jail terms available for various misdemeanors move from former §2929.21 to new §2929.24, but otherwise remain the same.

MISDEMEANOR JAIL TERMS - §2929.24(A)

Offense Level	Maximum Jail
M-1	180 days
M-2	90 days
M-3	60 days
M-4	30 days
MM	None

B. MANDATORY JAIL TERMS

H.B. 490 did not change the offenses carrying mandatory terms. *However, H.B. 52 added two and H.B. 163 added a third. Each is complicated.* A “mandatory jail term” now must be imposed (§2929.01(U)):

1. **OVI-Related.** For these offenses carried over from prior law:
 - OVI (under §4511.19 & equivalent ordinances);
 - Driving under an OVI suspension (under §4510.14(B) *etc.*);
 - Boating OVI (under §1547.99(G) *etc.*);
 - Any other statute requiring a jail term.

2. **VH & VA by Speeding in Construction Zone.** *For these offenses added by H.B. 52:*
 - a. **Vehicular homicide** *when the death proximately resulted from a “speeding offense” in a clearly-marked construction zone (§2903.06(A)(3)(b) & (C));*
 - **15 Day Jail Term.** *The offense generally carries the same penalties as negligent VH. However, unlike negligent violations, construction zone speeding VH carries a mandatory jail term of at least 15 days for*

misdemeanants (§2903.06(A)(3) & (E)).

b. Vehicular assault *when the injury proximately resulted from a “speeding offense” in a clearly-marked construction zone (§2903.08(A)(3) & (C)(3));*

- *Unlike VH, construction zone speeding VA carries different penalties than negligent VA. It is an M-1 with a Class 4 suspension (F-4 & Class 3 if DUS or with related prior(s)). (§2903.08(C)(3)).*
- **7 Day Jail Term.** *Also, misdemeanor violations carry a mandatory jail term of at least 7 days (§2903.08(D)).*

c. Related Details.

- **Signage Required.** *The new construction zone penalties apply only if there is appropriate signage at the site (§§2903.06(F), 2903.08(E), 2903.081(B), 4511.98, & 5501.27)).*
 - *The lack of signage does not limit the application of other aspects AVH, VH, VM, AVA, or VA law (§2903.081(B)).*
- **“Speeding offense”** *means violations of §4511.21 or similar municipal ordinances (§2903.06(G)(1)-(e)).*
 - *It does not cover speeding on private ways and other “speeding” like offenses, probably because construction zones tend to be public land.*
 - *Also, oddly, the definition is referenced in VH law, but not in the VA statute.*
- **“Construction Zone”** *Carries over the definition from prior law (§2903.06(G)(1) & §2903.08(F)).*

3. Over 5 Prior OVIs In 20 Years. H.B. 163 *adds a mandatory jail term of sorts.*

- *In addition to imposing a jail term for the underlying OVI, the court shall impose:*
 - **Up to 6 Months Mandatory.** *A mandatory, consecutive, definite term of “up to 6 months” if the offender is found guilty of a specification that, within 20 years of the offense, the offender has 5 or more prior “equivalent offenses” (§2929.24(E) & §2941.1414), as*

defined in §4511.181.

- *The specification must appear at the end of the information or indictment and be proved beyond a reasonable doubt (§2941.1414).*
- **Confusion:** *While their effective dates differ, the General Assembly considered **H.B. 163** & **H.B. 52** at the same time and approved them within days of one another. Unfortunately, each bill used the same section number to create a new spec—§2941.1414.*
 - **H.B. 163** *used the number for the 5 in 20 spec.*
 - **H.B. 52** *used the number for the 3 or more prior OVI spec in aggravated vehicular assault cases.*

4. Same: Underage Offenders. *Similarly, if the court elects to impose a jail term for underage OVI, the court must add the “up to 30 days” “mandatory” if the 5 or more prior OVIs in 20 years spec were proved (§4511.19(H)(3) & **H.B. 163**’s §2941.1414).*

- **Upshot.** *As a practical matter, this 20 year look back may not mean much in underage cases.*

C. GUIDANCE ON DISCRETIONARY JAIL TERMS

H.B. 490 provides more guidance than former law in selecting a jail term:

- 1. Economy Principle.** *As noted earlier, before imposing a jail term, the judge is first to consider the appropriateness of community control sanctions (§2929.22(C)).*
- 2. Longest Term.** *The longest term is for (§2929.22(C)):*
 - *The worst forms of the offense; or*
 - *Offenders whose conduct or response to prior sanctions indicates a need for a long jail term to protect the public.*

D. JAIL PLUS OTHER SANCTIONS

In imposing a jail term, the court may impose any community control sanction(s) in addition to the jail term (§2929.25(A)(1)(a)).

- *The extra sanctions appear in new §§2929.26, 2929.27, & 2929.28, discussed below in **Part V**.*

E. LIMITED RELEASES

H.B. 490 gives courts flexibility to release inmates from jail or other residential sanctions during non-mandatory terms:

1. Intermittent Confinement. As before, the court may allow the offender to serve the sentence in intermittent confinement, overnight, on weekends or at any other time(s) that allow him or her to keep a job or care for family (§2929.24(B) & §2929.26(B)(1)).

2. Work Plus. Former law authorized “work” release. H.B. 490 allows courts to authorize limited releases for offenders to (§2929.24(B) & §2929.26(B)(2)):

- Seek or maintain employment;
- Receive education or training;
- Receive treatment;
- Perform community service; or
- Otherwise fulfill an obligation imposed by law or a court.

Note: The release is only for the time needed, including the travel reasonably necessary to fill the release’s purpose (§2929.26(B)(2)).

3. Broader Application. H.B. 490 gives these options to judges imposing jail terms, as under former law, and for halfway house terms and other residential options.

4. Apply to Financial Sanction. A court may order a released person to apply a reasonable portion of any income earned to any financial sanction imposed on the person (§2929.26(C)).

F. PAY-FOR-STAY

Based on Sentencing Commission proposals, a separate bill (H.B. 170) streamlined the jail pay-for-stay law and made it more consistent. The options carry over in §2929.24(D).

- If the jurisdiction uses an itemized billing method, the court’s sentencing entry must specify that (§2929.24(D)(1) & (2)):
 - The person must pay the bill or be subjected to a judgment;
 - If the person does not duly dispute the bill and does not pay (as specified in §2929.37, not changed by H.B. 490), the clerk may issue a certificate of judgment.
 - The judgment automatically becomes part of the sentence.

G. JAIL MISCELLANY

- 1. Infectious Disease Testing.** Any person sentenced to jail (as before) or to another residential sanction may be tested for TB, HIV, hepatitis, and other contagious diseases (§2929.26(E)).
- 2. Jail Industry Programs.** Move from former §2929.11 to new §2929.24(C) without changes (see §5147.30 for details).

H. KEY SECTION REPEALED

In relocating jail terms to §2929.24 and gathering other sanctions in new §§2929.25 to 2929.28 (see **Part V**), H.B. 490 repealed law that used to govern most misdemeanor sentences (former §2929.21). New §2929.21 covers purposes and principles (see **Part II**).

V. CONTINUUM OF SANCTIONS

A. REORGANIZING THE CODE

H.B. 490 gathers and standardizes other sanctions, including:

- **Residential** options other than jail in new §2929.26;
- **Nonresidential** options in new §2929.27; and
- **Financial** options in new §2929.28.

H.B. 490 also allows for direct sentencing to sanctions as an alternative to suspended sentences (see **F** below).

B. RESIDENTIAL SANCTIONS OTHER THAN JAIL

Unless the offender faces a mandatory jail term, the judge may sentence M-1s through M-4s to a residential term including, but not limited to, a halfway house or an alternative facility (§2929.26(A)).

1. Halfway House - §2929.26(A)(1)

a. Defined. “Halfway house” means a facility licensed by DRC (under §2967.14) as suitable for the care and treatment of adult offenders (§2929.01(P)).

- **S.B. 57** amended the definition of “halfway house” to clarify that it includes facilities licensed for prison releaseses and for misdemeanants (§2929.01(P)).

b. Contract Required. The option is available only if the subdivision that pays jail costs enters a contract with a halfway house for misdemeanants (§2929.26(F)).

2. Alternative Residential Facility - §2929.26(A)(2)

a. Defined. “Alternative residential facility” means a place in which an offender is assigned to live, other than a jail, prison, CBCF, or the offender’s home, that (§2929.01(A)):

- Provides employment, education, training, treatment, or habilitation programs; and
- Is licensed by the appropriate governmental agency.

b. Security Level. The court may specify the security level needed.

3. Time Limit. The nonresidential term cannot exceed the maximum jail term allowed for the offense (§2929.26(A)(1) & (2)).

4. Work and Other Limited Releases. As noted under jail terms, other residential sentences may be served intermittently and may be subject to release for work, training, treatment, *etc.* (see §2929.26(B), discussed in **Part IV C**).

5. No Prison Term. Consistent with S.B. 2, the court cannot sentence a misdemeanor to prison (§2929.26(D)).

C. NONRESIDENTIAL SANCTIONS

Unless the offender faces a mandatory jail term, the court may sentence a misdemeanor, other than an MM, to any nonresidential sanction or sanctions, including, but not limited to (§2929.27(A)):

1. Day Reporting. Defined to mean a sanction under which the offender must report to and leave a specified location at specified times to participate in work, education or training, treatment, and other approved programs (§2929.01(I) & §2929.27(A)(1)).

2. House Arrest &/or Electronic or Continuous Alcohol Monitoring. A term of house arrest with or without electronic monitoring or a term of electronic monitoring without house arrest (§2929.27(A)(2)).

a. Greater Flexibility. In former law, electronic monitoring had to accompany any house arrest. H.B. 490:

- Allows house arrest and electronic monitoring to be used separately or together.
- Eliminates the definition of “electronically monitored house arrest” and the related term “eligible” offender (former §2929.01(O) & (P)).
- Replaces those terms with a broad definition of “electronic monitoring” and “electronic monitoring device” (§2929.01(UU) & (VV), see **b** below).

b. New Devices. “Electronic monitoring devices” may include any of the following (§2929.01(VV)):

- Radio transmitter devices including the familiar bracelets and anklets;
- Any other technology that “can adequately track or determine the location of a subject person,” provided the technology is approved by DRC.
- This includes, but is not limited to, satellite technology, voice tracking, or retinal scanning.

c. Continuous Alcohol Monitoring. H.B. 163 adds that “continuous alcohol monitoring” also can be used with or without house arrest (§2929.27(A)(2)).

- **Definition.** *The bill defines the term to mean the ability to automatically test and periodically transmit alcohol consumption levels—and tamper attempts—at least every hour, regardless of the location of the monitored person (§2929.01(WW)).*
- **OVI Cases.** *Further, the bill authorizes the use of this monitoring in addition to, or in lieu of, electronic monitoring when an alternative to jail space is needed for 2nd and 3rd OVIs in 6 years (§4511.19(G)(1)(b)(i)&(ii), (G)(1)(c)(i)&(ii), & (G)(3)).*

d. Felons & Juveniles. H.B. 490 also changes felony (§2929.17(B); §2929.01(VV)) & juvenile electronic monitoring laws (§2152.02; §2152.19) along the lines just described.

- **H.B. 163** makes parallel changes to authorize continuous alcohol monitoring in felony (§2929.17(B)) & juvenile delinquency laws (§2152.19(A)(4)(j) & (k)).

3. Community Service. Other residential & non-residential sanctions do not apply to MMs. However, under H.B. 490, a court may order community service in MM cases (§2929.27(C)).

a. Maximum Hours Change. The court may order community service up to these limits (§2929.27(A)(3) & (C)):

MISDEMEANOR COMMUNITY SERVICE - §2929.27(A)(3) & (C)

Offense Level	Old Maximum	New Maximum
M-1	200 hours	500 hours - new
M-2	200 hours	200 hours
M-3	200 hours	200 hours
M-4	200 hours	200 hours
MM	Not Available	30 hours - new

b. For Non-Indigents. As before, community service can be ordered in lieu of a financial sanction for an indigent offender (see **D** below).

- If the offender is not indigent, H.B. 490 makes clear that the court may order community service in lieu of or in addition to court costs or another financial sanction (§2929.28(B) read with §2929.27(A)).

c. Conditions. Where, and under which conditions, community service may be performed did not change (other than to move from old §2951.02(F) to §2951.02(B)).

d. Offender's Consent. The child endangering law required the offender's agreement as a condition for requiring community service (§2919.22(F)(1)(a)).

- H.B. 490 removed the restriction.

4. Drug Treatment. With a level of security for the offender deemed necessary by the court (§2929.27(A)(4)).

- **Conditional Probation.** Former §2933.16, authorizing “probation” specifically conditioned on psychiatric or psychological treatment was repealed as unnecessary.

5. Intensive Probation Supervision. Defined as “frequent contact” with the person appointed by the court (probation officer) to supervise the offender in seeking or maintaining employment and participating in training, education, and treatment programs under court orders (§2929.01(R) & §2929.27(A)(5)).

6. Basic Probation Supervision. Defined as maintaining contact with the probation officer in accordance with sanctions imposed by the court (§2929.01(C) & §2929.27(A)(6)).

7. Monitored Time. Defined as a period in which an offender is under the court's authority, but subject to no sanction other than leading a law-abiding life (§2929.01(Z) & §2929.27(A)(7)).

8. Drug And Alcohol Use Monitoring. Including random drug testing (§2929.27(A)(8)).

- Language on drug testing by probation departments for persons under nonresidential sanctions remains, nearly verbatim, as §2951.05.

9. Curfew. A requirement that the offender be at a designated place at a specified time (§2929.01(H) & §2929.27(A)(9)).

10. Obtain Employment. (§2929.27(A)(10)).

11. Obtain Education Or Training. (§2929.27(A)(11)).

12. Victim-Offender Mediation. Order participation by the offender, but only with the victim's prior consent (§2929.27(A)(12)).

13. License Suspension, Etc. If authorized by law, suspend the offender's driver's license and/or immobilize or forfeit the offender's motor vehicle, require the offender to obtain a valid driver's license, or impose any other related sanction (§2929.27(A)(13)).

14. Counseling. Require the offender to seek counseling generally. In particular, require counseling for domestic violence or assault if the offender or victim was a family or household member and the offense occurred near a child other than the victim (§2929.27(14)).

15. Other Unique Sanctions. H.B. 490 also specifically enables courts to sentence M-1s through M-4s to unique sanction(s) that are both (§2929.27(B)):

- Intended to discourage the offender or others from committing a similar offense; and
- Reasonably related to the purposes and principles in §2929.21.

D. FINANCIAL SANCTIONS

In addition to court costs, the court may sentence any misdemeanant, including an MM, to any financial sanction or sanctions, including, but not limited to (§2929.28(A)):

- 1. **Fines.** §2929.28(A)(2).
 - a. **What’s Unchanged.** H.B. 490 does *not* change:
 - i. **Most Fines.** The maximum fine available for an M-1, M-2, M-3, or M-4;
 - ii. **Distribution.** The distribution of revenue from fines and court costs.
 - b. **What Changed.** H.B. 490 changes:
 - i. **MMs.** The cap for minor misdemeanors increases to \$150 (§2929.28(A)(2)(a)(v));
 - ii. **New Section.** The fine schedule moves from former §2929.21 to new §2929.28.

MISDEMEANOR FINE TABLE
(§2929.28(A)(2)(a))

Offense Level	Maximum Fine
M-1	\$1,000
M-2	\$750
M-3	\$500
M-4	\$250
MM	\$150 - new

- iii. **“State” Fines & Costs.** Certain assessments are broken into "State" fines or costs, versus local ones (§2929.28(A)(2)(b) & §2949.111).
 - **"Court costs"**. Defined as any assessment that the court requires an offender to pay to defray costs of operating the court (§2949.111(A)(1)).
 - **"State fines or costs"**. Defined as costs imposed, or forfeited bail collected, by the court for (§2949.111(A)(2)):

- Crime victims' reparations under §2743.70 (currently \$30 for felonies and \$9 for misdemeanors);
- Indigent defense under §2949.091 (currently \$11);
- Law library associations under §§3375.50 to 3375.53.

- **Relevance.** See priorities below.
- **Felony Aspect.** For consistency, the new term also was added to felony law (§2929.18(A)(4)).

2. Restitution. In gathering restitution law into new §2929.28(A)(1), H.B. 490 steers courts to consider restitution to crime victims in its general guidance provisions (§2929.21(A)).

a. Perceived Scope of H.B. 490. *H.B. 490 expanded victims' losses that may be recompensed by restitution, but left confusion as to its scope:*

- *Some argued that H.B. 490 permitted courts to circumvent the civil justice system by allowing pain and suffering and other non-economic damages;*
- *Some mistakenly believed H.B. 490 made restitution mandatory; and*
- *Some contended that one or more court hearings are needed in all minor misdemeanor cases.*

b. Refined Scope Under H.B. 52: Economic Loss.

- **More Losses Covered Generally.** Restitution is based on the victim's "economic loss". H.B. 490 carries over S.B. 2's broader definition of that term, which allows repayment of loss of income, medical costs, funeral expenses, *etc.* (§2929.28(A)(1) 1st ¶ & §2929.01(M)).
- **But Not Non-Economic Losses.** *So that restitution isn't read to preempt either party's rights under civil law, H.B. 52 made clearer that the sanction doesn't include "non-economic" losses (§§ 2929.01(M), 2929.28(A)(1), 2929.18(A)(1), & 2152.20(A)(3)).*

- *“Non-economic loss” means non-pecuniary harm suffered by a crime victim, including, but not limited to (§2929.01(WW)):*
 - *Pain and suffering;*
 - *Loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education;*
 - *Mental anguish;*
 - *Punitive or Exemplary Damages; and*
 - *Any other intangible loss.*
- **Felons & Juveniles Too. S.B. 57** clarified that “economic loss” applies in both misdemeanor and felony cases.
 - *H.B. 52 assures that these changes—and others mentioned below—also apply in juvenile cases (§§2152.02(L) & (DD), 2152.20, & §2152.21).*
 - *For simplicity, H.B. 52 blends restitution under juvenile traffic offender law (§2152.21) into the broader restitution provisions of §2152.20.*

c. Refined Scope Under H.B. 52: Minor Offenses. *To avoid unnecessary court hearings, H.B. 52 specifies that restitution is not available in:*

- *MM cases, or other cases subject to Traffic Rule 13 (most 1st and 2nd moving violations) in adult courts (§2929.28(A)(1)); or*
- *MM level cases in juvenile court (§2952.20(A)(3) & §2152.21(A)(4)).*

d. Restitution Is Optional. *H.B. 52 makes pellucid that restitution is an option for the court, not a mandate (§§2929.28(A), §2929.18(A)(1), 2152.20(A)(3)).*

e. The Court’s Job. *If a court decides to order the offender to make restitution, it then must determine, or order to be determined, the amount of restitution to be paid by the offender (§2929.28(A)(1) 2nd ¶).*

- **Basis.** *The court may base restitution on an amount recommended by the victim, the offender, or a PSI, on*

estimates or receipts indicating the cost of repairing or replacing property, and on other information (§2929.28(A)(1) 2nd ¶).

f. Hearing. A hearing is not needed unless the offender or victim disputes the amount (§2929.28(A)(1) 2nd ¶).

- **H.B. 52** says it must be an “evidentiary hearing” in which the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender (§2929.28(A)(1)).
 - Oddly, similar language was not added to the law on hearings for felony and juvenile restitution.

g. How Paid. Restitution may be paid directly to the victim in open court, if desired (§2929.28(A)(1), 1st ¶). Otherwise it is paid through the clerk, as before.

h. 3rd Party Payments. Payments may be made to a 3rd party, other than the offender’s insurer.

- H.B. 490 provided that, if 3rd party reimbursements were ordered, they first went to any governmental agency that reimbursed the victim or survivor (e.g., the Crime Victims Reparations Fund) (§2929.28(A)(1)).
- **H.B. 52** struck this provision based on judges’ anxieties about opening restitution hearings to 3rd parties (§2929.28(A)(1) & §2929.18(A)(1)).

i. Enforcing Restitution Orders. H.B. 490 made restitution a “judgment” in favor of the victim. *Because of the potential to foreclose remedies and defenses in civil cases arising out of the same incident, H.B. 52* instead characterizes restitution as an “order” (§2929.28(D) & §2929.18(D)).

- *However, the statute specifies that the order is similar to a judgment in that it can be used to facilitate collection through garnishment, wage assignment, and other remedies (§2929.28(D) & §2929.28(D)).*

j. Credit against Civil Award. Payments are credited against any recovery by the victim in a civil suit (§2929.28(A)(1), 3rd ¶).

k. Collection Fee. The court may impose a surcharge on the offender of up to 5% to cover collection and processing costs (§2929.28(A)(1), 4th ¶).

l. Modify. The victim, survivor, or offender may seek to modify restitution on terms the court considers appropriate (§2929.28(A)(1), 5th ¶).

- H.B. 490 makes juvenile law consistent with this language (§2152.20).
- *H.B. 52 further clarifies that the “prosecutor” authorized to file on behalf of the victim includes the city attorney, law director, and other local prosecuting authorities (§2929.28(A)(1)).*
- **Note:** A court may reward success on community control by shortening the time on a sanction or by shifting to a lesser sanction, but it cannot relieve a duty to pay restitution (§2929.25(D)).

m. Felony Restitution Law. Generally, the changes just described track S.B. 2. However, a few are new and were added to felony law (§2929.18).

n. Arson. Restitution in these cases moves from former §2929.28 to new §2929.71, without changes.

3. Reimbursements. As before, able offenders may be ordered to reimburse counties, municipalities, and others for the costs of sanctions, supervision fees, and jail or other confinement (§2929.28(A)(3) & §2929.29).

a. For Cost of Sanctions. A court may order the offender to reimburse costs of implementing any community control sanction, including supervision fees (§2929.28(A)(3)(a)(i)).

b. For Jail Pay-For-Stay. The court may order the repayment of all or part of the costs of confinement in a jail or other residential setting.

i. Items Covered. Includes, but is not limited to (§2929.28(A)(3)(a)(ii)):

- A daily fee for room and board;

- Medical and dental treatment costs; and
- Cost to repair property damaged by the offender.

ii. Maximum. The maximum pay-for-stay reimbursement is the actual cost or what the offender is able to pay, whichever is less (§2929.28(A)(3)(b)).

iii. Competing Methods. H.B. 490 clarifies that the county still may collect reimbursements if the court does not order them at sentencing. (§2929.28(A)(3)(b)).

c. Distribution.

i. Supervision Fees. As before, supervision fees (up to \$50 per month) must be paid to the probation department or clerk (§2951.021).

ii. Other Sanctions. Reimbursements for non-jail residential sanctions and nonresidential sanctions must be paid to the appropriate treasurer for deposit in the General Fund of the subdivision incurring the cost (§2929.28(C)(1) & (2) & (H)).

- **S.B. 57** repealed division (H) as redundant to §2929.28(C).

iii. Private Providers. Reimbursements for costs incurred by a private provider are to be paid directly to the provider (§2929.28(C)(3)).

d. Felony Aspects. For consistency, H.B. 490 also made minor changes to felony reimbursement law (§2929.18(A)(5)).

e. Definitions. Pay-for-stay law definitions move from former §2929.35 to new §2929.36 without changes.

4. Community Service, Indigency, Etc. As before, financial sanctions can be ordered only if the offender is able to pay them.

a. Hearing Option. If the court decides that a hearing is necessary, it can hold one to determine the offender's current *or future* ability to pay (§2929.28(B), 1st ¶).

b. Community Service Options. §2929.28(B), 2nd ¶, referencing §2929.27(A).

- **Indigent.** If the offender is indigent, the court may instead impose community service, as before.
- **Not Indigent.** If the offender is *not* indigent, the court may order community service in lieu of *or in addition to* costs or another financial sanction.
- **Failure to Pay.** If a person fails to pay a financial sanction, the court may order community service in lieu of the sanction.
- **Court Costs.** It also allows community service in lieu of court costs (§2929.28(B)).

5. Priorities. As in former law, H.B. 490 sets priorities for allocating any payments made by misdemeanants for court costs and financial sanctions (§2949.111(B)).

Unless the court specifies a different order (§2929.111(B) & (C)), payments are allocated:

- First, to satisfy any local court costs (which pay to operate the court);
- Second, to satisfy any State costs (*e.g.*, for victims' reparations and public defenders);
- Third, to pay victims' restitution;
- Fourth, to satisfy any fine;
- Fifth, to pay reimbursements (for costs of confinement, supervision fees, *etc.*).

This parallels former law, except the State costs are inserted below local costs (previously, all costs had the same rank).

6. Improving Collections. H.B. 490 helps governmental entities and victims to collect financial sanctions in various ways.

a. Sanction = Civil Judgment. H.B. 490 says any financial sanction under §2929.28(A)—*other than restitution per H.B. 52*—is a civil judgment (§2929.28(D)).

i. Beneficiaries. Specifically (§2929.28(D)):

- Reimbursement for the cost of sanctions (including supervision fees) is a judgment in favor of the entity administering the sanction;
- Pay-for-stay reimbursement is a judgment in

favor of the entity operating the jail or other residential facility.

- The offender is the judgment debtor.

ii. Significance. Once the sanction is imposed as a judgment, the victim, private provider, state, or political subdivision may bring an action to do any of the following (§2929.28(D)(1)-(3)):

- Obtain execution of the judgment through any available procedure, including any of the procedures listed in the related felony provision (§2929.18(D)(1)(a) to (e)).
- These include: attachment, wage garnishment or assignment, etc.

iii. Relevance to Other Proceedings.

- A financial sanction under §2929.28 does not preclude a victim from bringing a civil action against the offender (§2929.28(G)).
- The civil remedies supplement—rather than preclude—enforcement of the criminal sentence (§2929.28(E)).

b. Collection Contracts. H.B. 490 allows the clerk (or other person authorized to collect) to contract with a public agency or private vendor for collection (2929.28(F)(1)).

- **Felony Aspect.** The change also was made to felony law (§2929.18(F)).

c. Payment Options. H.B. 490 gives the clerk (or other collecting person) more options, including the ability to receive payment of all or any portion by (§2929.28(F)(2)):

i. Installments & Fee. To defray administrative costs, an offender who elects a payment plan may be charged a reasonable fee (§2929.28(F)(3)).

ii. Credit Cards, etc. By credit cards, debit cards, and other electronic means (or, in the case of a county-run court, by a “financial transaction device”).

- **The Fee.** The clerk may pay any processing fee out of public money or may charge the fee to the offender (§2929.28(F)(2)).

iii. Other Options. “By any other reasonable method, in any time, and on any terms that the court considers just.”

- **5 Year Limit.** The time for payment cannot exceed 5 years, which ties to the maximum community control (*né* probation) period.

E. IMPOSING COMMUNITY CONTROL

1. Community Control Vs. Probation. H.B. 490 refers to the continuum of non-jail sanctions as “community control”.

a. More Accurate. This broader term replaces the less-accurate “probation” to describe the range of options.

- **Probation.** Basic probation and intensive probation remain as two types of community control.

b. Definitions. Specifically, H.B. 490:

- Adds misdemeanor sanctions to the definition of “community control sanction” etc. while making clear the term covers “probation” for sentences imposed before H.B. 490 takes effect (§2901.01(F), (EE), & (FF));
- Consolidates key existing definitions in §2951.01, making sure they apply to misdemeanors;
- Defines “probation agency” to allow short references throughout the chapter governing supervision of community control (§2951.01).

c. Supervision. Probation officers supervise many community control sanctions.

- Probation officers have the same powers and duties as in former law (§2929.25(B)(1) & (C)(1) & §2951.02, with former §2951.09 repealed).
- Probation officers are to receive actual and necessary expenses for performing their duties (§2951.08(D)).
- As before, if an offender resides elsewhere, the court

may request that another municipal or county court supervise the offender (§2929.25(B)(1)).

- As before, the sentencing court retains jurisdiction for the duration of community control (§2929.25(B)(1)).

2. Standard Conditions. Anyone placed on community control must abide by the law and not leave the State without permission (§2929.25(B)(2)).

- To foster rehabilitation and good behavior, the court may impose additional requirements.
- Compliance is a condition of community control.

3. 5 Year Limit. As before with probation, the duration of all community control sanctions imposed on an offender and in effect at any time cannot exceed 5 years (§2929.25(A)(2)).

F. DIRECT VS. SUSPENDED SENTENCING

1. Suspended Sentencing. To sentence a misdemeanor to something other than jail and a fine, the court:

- Imposes a jail term from the authorized range;
- Suspends the jail term;
- Places the person on “probation”;
- Makes the probation subject to various conditions.
- Does not invoke the jail term if the offender satisfies the conditions;
- Invokes all or part of the suspended jail term if the offender fails to satisfy conditions.

H.B. 490 retains the suspended sentence for misdemeanor courts in new §2929.25(A)(1)(b) (it repeals former §2929.51). However, it adds the following option.

2. Direct Sentencing. Following S.B. 2 for felonies, H.B. 490 makes direct sentencing available in misdemeanor courts. At sentencing, the judge must (§2929.25(A)(1)(a)):

- Directly impose the sanction or combination of sanctions;
- Specify the duration of the sanction(s);
- Warn the offender that, if he or she violates the sanction(s), the court may (§2929.25(A)(3)(a), (b), & (c)):
 - Impose a longer time under the sanction(s), up to the 5

- year limit;
 - Impose a more restrictive sanction (the court need not specify the particular option(s) it may consider);
 - Impose a definite jail term from the range.
 - Exercise one or more of these options if the offender violates (§2929.25(C)(2)).
 - The total time spent in jail for a violation cannot exceed the jail term available for the initial offense.
 - The court *may* reduce the time under the longer or more restrictive sanction by all or part of the time successfully spent under the initial sanction.
 - **S.B. 57** streamlined §2929.25(A)(1)(a) by eliminating language that mentioned drug abstinence and testing in favor of the more generic wording of §2929.27(A)(8).
- 3. Reporting Violations.** As before, the supervising probation officer must report a violation to the court.
- H.B. 490 adds, if the offender is put in a private program (*e.g.*, halfway house), the program must report a violation directly to the court or to the probation officer (§2929.25(C)(1)).
- 4. Rewarding Success.** If an offender, for a significant time, meets the conditions of a community control sanction in an exemplary manner, the court may reduce the time under the sanction or impose a less restrictive one (§2929.25(D)).
- However, fulfilling the conditions of another sanction cannot relieve the offender’s duty to make restitution.

VI. VICTIMS’ RIGHTS

A. RECAP OF VICTIMS’ PROVISIONS

H.B. 490 makes several changes with crime victims in mind. Many were discussed in context above. They include:

- Courts must *consider* the impact on the victim and the need for making restitution (§2929.21(A) & §2929.22(A) & (B)).
- Using victim-offender mediation programs only with the prior consent of the victim (§2929.27(A)(12));

- Improving restitution by using a broader definition of “economic loss” and by making a restitution order a civil judgment in favor of the victim against the offender (§2929.28(A)(1)).
 - **H.B. 52 Note:** *Restitution for misdemeanor victims remains broader than under pre-2004 law, but it is no longer available in MM & Traffic Rule 13 cases. See **Part V D 2**, above.*

B. NEW RIGHTS

Under S.B. 2, the new victims’ rights chapter (Ch. 2930) also applied to victims of assaultive and threatening misdemeanors.

1. Statement at Sentencing. H.B. 490 adds, for *any* misdemeanor, the judge must consider any relevant oral or written statement by the victim regarding sentencing (§2929.22(D)(1)).

- The prosecutor or the prosecutor’s designee must notify any identifiable victim of this right (§2930.06(E)).

2. Notice of Reparations. The court also has a duty at, or soon after, sentencing, to inform the victim of the right to seek an award under the Crime Victims’ Reparations Law (§2929.22(D)(2)).

- The Crime Victims’ Recovery Fund moved from former §2929.25 to new §2929.32 without substantive changes.

VII. RIGHT TO A JURY TRIAL

A. FORMER LAW

Former law authorized a jury trial anytime the penalty exceeded \$100.

- Jury trials were available for fine-only cases where the possible fine exceeded \$100.

B. NEW LAW

Reflecting concern about efficient use of court resources, H.B. 490 instead provides (§2945.17):

- 1. Minor Misdemeanors.** As before, the defendant does not have the right to a jury trial for a minor misdemeanor (§2945.17)(B)(1));
- 2. \$1,000+ Fine.** Nor, is the right available for any other offense that does not carry a prison or jail term, when the fine does not exceed \$1,000 (§2945.17(B)(2)).

VIII. MAYOR'S COURTS

A. GAP IN FORMER LAW

Unlike other courts, before H.B. 490, there was no statewide record of the number of cases filed, dismissed, and processed by mayor's courts. In fact, it was unclear how many mayor's courts existed.

B. REGISTRATION

As a condition of holding court, the mayor of a municipality who conducts a mayor's court must register annually with the Supreme Court on a form prescribed by the Court.

- 1. Deadline.** The mayor must register by January 15 or at least 15 days before first conducting a mayor's court in any year, whichever is later (§1905.033(A)).
- 2. Contents.** The registration must include (§1905.033(A)):
 - The mayor's name;

- The name of any magistrate appointed by the mayor; and
- The dates on which the mayor and magistrate last received training required by §1905.031. (**S.B. 57** corrected an erroneous reference to §1901.031.)

C. REPORTS

As a condition of holding court, the mayor must report (§1905.033(B)):

1. To the Supreme Court. Quarterly (by January 15, April 15, July 15, & October 15), on a form prescribed by the Supreme Court (§1905.033(B)(1)):

a. Case Management. All cases filed, pending, or terminated in the mayor's court during the period.

- Thus mayor's courts now must file reports similar to those made by municipal and county courts.

b. Other Data. Report any financial, dispositional, and other information that the Supreme Court prescribes by rule.

2. To BCI & I. As with courts of record, report to the Bureau of Criminal Identification and Investigation every conviction for an offense that is a misdemeanor on a first offense and a felony on a subsequent offense (§1905.033(B)(1)).

- The most common examples are drinking and driving and domestic violence.
- The mayor must make the report when it makes a judgment entry of a conviction.

D. MUST COMPLY TO HOLD COURT

A mayor who does not comply with the registering and reporting provisions cannot conduct a mayor's court (§1905.033(C)).

- Legislators made clear that—given testimony as to the large number of cases disposed by mayor's courts—registration and reporting are “general law” requirements (relative to Home Rule).

E. REPORT TO REGISTRAR

1. Former Law. A municipal or county court may send a report to the Registrar naming any person subject to an outstanding arrest warrant issued by the court.

- In turn, neither the Registrar nor any deputy registrar can issue a vehicle registration (under §4503.13) to the person or renew his or her temporary instruction permit or driver's license (under §4507.091).

2. Mayor's Courts Added. H.B. 490 adds mayor's courts to the courts allowed to report persons with outstanding warrants to the Registrar (§4503.13 & 4507.091).

IX. CHANGES AFFECTING JUVENILES

As noted earlier, the refinements to restitution and electronic monitoring law also apply to juvenile courts. H.B. 490 also made other changes relevant to juveniles.

A. RESTITUTION AND RELATED CHANGES

H.B. 52 changed aspects of restitution law relevant to juvenile courts. See Part V D 2, above.

B. DRIVING PRIVILEGES DURING JUVENILE SUSPENSIONS

S.B. 123 expands driving privileges beyond "occupational" purposes and permits greater judicial control over licenses suspended by the BMV.

1. New Purposes. Privileges may be granted for work, school, vocational and medical purposes, taking a driver's license exam, court-ordered treatment (§4510.021(A)(1)-(3)), and to allow juveniles to practice driving with a parent, guardian, or custodian, provided that the adult is licensed and sits up front with the young driver (§4510.021(D) & §4510.31(C)(2)).

2. During Repeat Offender Suspensions. Oddly, for most moving violations, former law seemed to allow driving privileges on certain 3rd offenses, but not on 2nd offenses. H.B. 490 gives juvenile courts clear authority to grant limited driving privileges during BMV suspensions for most 2nd and 3rd traffic offenses (§4507.162(C)(1) until 1-1-04, §4510.31(C)(1) thereafter).

3. Earlier Effective Date. Rather than wait until January 2004, the juvenile driving privileges changes took effect April 3, 2003, under H.B. 490 (§§6, 7, & 8).

C. FAILURE TO SEND TO SCHOOL

Parents and guardians have a duty to see that children attend school. Violators may be required to post a bond designed to assure that they fulfill the duty. H.B. 490 more clearly states that failing to file the bond when ordered by a court is an offense (§3321.38(D)).

- The offense carries no classification or specific penalty, but is punishable under the court's contempt powers.

D. COMPUTER IMAGES HARMFUL TO JUVENILES

1. Background. With H.B. 9 in 2001, the General Assembly further attempted to regulate material in cyberspace that is "harmful to juveniles."

- Legislators used H.B. 490 to address constitutional concerns raised by the courts about H.B. 8.

2. New Definitions. H.B. 490 redefines several key terms.

a. "Material". Rather than cover material on a computer connected to an internet website accessible to a juvenile, H.B. 490 uses more generic language in both adult and juvenile cases (§2907.01(J)).

b. "Harmful to Juveniles". Rather than define the term as material offensive to prevailing adult standards of what is suitable for juveniles as tied to various offenses, H.B. 490:

- Rewrites the term to mean "that quality of any material or performance describing nudity, sexual content, sexual excitement, or sado-masochistic abuse" to which all of the following apply:
 - "Considered as a whole," it "appeals to the prurient interest in sex of juveniles";
 - It is "patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles"; and
 - "Considered as a whole," it "lacks serious literary, artistic, political, and scientific value for juveniles" (§2907.01(E)(1)-(3)).

c. "Sado-Masochistic Abuse". Defined by H.B. 490 to mean "flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained" (§2907.01(P)).

3. Disseminating Matter Harmful to Juveniles. H.B. 490 makes clear that, for a violation, the selling, offering, or allowing material that is harmful to a juvenile must be done (§2907.31(A) & (D)):

- "Directly" to the child in the case of selling or offering.

- A person “directly” engages in electronic misconduct if the person knows or has reason to believe that the recipient is a juvenile or group of juveniles.
 - A person does not “directly” present the material if:
 - The person has inadequate information to know or have reason to believe the recipient is a juvenile; or
 - The distribution method does not give the ability to prevent a particular person from receiving it.
 - Or by allowing it to be seen in the physical proximity of the juvenile.
- Further, it makes clear that the offense:
- Applies to individual juveniles, groups of children, and law enforcement officers posing as juveniles (§2907.31(A)).
 - Does not apply to a person who only provides access to “an electronic method of remotely transferring information” (§2907.35(D)).
- 4. Severability.** H.B. 490 adds severability clauses designed to save the rest of H.B. 490 if any part is found unconstitutional (§2907.31(E) & §2907.35(G)).

X. MISCELLANY

A. 50-YEAR RECORD KEEPING

1. The Basic Requirements. *Under H.B. 163, the clerks of municipal, county, and common pleas courts must retain documentation on each criminal conviction and guilty plea “that is or was before the court” for 50 years after the judgment entry (§§ 1901.41(E) for municipal courts, 1907.231 for county courts, & 2301.141 for common pleas clerks).*

2. Format. *The record must be in a form that is “admissible as evidence of a prior conviction in a criminal case.” Retention is governed by § 9.01 (including photographic and electronic data).*

3. Scope.

i. All Offenses. *The provision facilitates prosecution of multiple OVI offenders. It also applies to all other offenses.*

ii. Current & Future. *The new requirement applies to records currently retained and to those created in the future.*

- *The language notwithstanding § 149.38 (public records law).*

4. Conflict with Rules? *It is unclear how the longer record keeping period under H.B. 163 relates to periods required by the Supreme Court's Rules for Superintendence of the Courts.*

B. DRUG OFFENSES NEAR SCHOOLS

1. Former Law was silent as to an offender's knowledge that an offense occurred in the "vicinity of a school". The term means on school grounds or within 1,000 feet of a school.

2. School Vicinity Knowledge. *H.B. 163 amended the definition of "committed in the vicinity of a school" to keep the former geography, but to add that it applies "regardless of whether the offender knows" where the offense is committed (§2929.25.01(P)).*

C. RESTORING FELONS' RIGHTS

1. Losing & Regaining Rights. A convicted felon loses certain civil rights while in prison (notably the right to vote and serve on juries). However, the felon regains the rights when placed on "probation" or when released from prison on "parole" (§2961.01).

2. Two Problems. The statute was unclear regarding:

- The rights of felons sentenced to jail or a CBCF, rather than prison; and
- Its application to "community control" and "post-release control".

3. Filling Gaps. H.B. 490 amended §2961.01 to:

- Make clear that a felon's civil rights are not restored until release to a "non-jail" sanction (defined to exclude jail and CBCF terms);
- Substitute "community control" for "probation" and "post-release control" for "parole", with cross-references to relevant definitions.

D. PENALTY CHANGES

H.B. 490 changed very few penalties. Here are two minor ones.

1. Property Room Penalties. Former law made it a crime for a municipal police officer to neglect or refuse to deposit an arrested person's property (former §737.30). The penalty was up to \$3,000 in fines, 30 days in jail, or both (former §737.99).

- H.B. 490 repealed these provisions in light of the more generic dereliction of duty (an M-2 under §2921.44) and property room (§2933.43) statutes.

2. "Segway" Devices. Consistent with S.B. 123, H.B. 490 moved the penalty for "electric personal assistive mobility device" violations from §4511.99 into the section describing the offenses (§4511.512).

- Currently, these are the gyroscopic scooters marketed under the "Segway" brand name.

E. “IMPRISONED”

H.B. 490 streamlines the definition of “imprisoned” and “imprisonment”.

1. Former Law. The Revised Code often uses “imprisoned” to mean both a prison sentence and a sentence to jail. Here is a *summary* of former §1.05, which said “imprisoned” included:

- A county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, if the offense is a misdemeanor;
- A state correctional institution, if the offense is a felony;
- A jail or workhouse, if the offense is a felony when sentenced under §2929.16;
- A jail or workhouse designated by DRC under §5120.161, if the offense is a nonviolent F-4 or F-5 committed by a person with no prior felony conviction;
- A term in a community-based correctional facility (CBCF) pursuant to §2929.16, if an eligible felon;
- A term in a halfway house or an alternative facility under §2929.16, if the offense is a felony.

2. Streamlined. While still wordy, H.B. 490 defines “imprisoned” or “imprisonment” to mean (§1.05(A)):

- Serving a sentence in a prison, a jail or workhouse, a CBCF, a halfway house, or an alternative facility.

3. Upshot. Initially, the Commission proposed the change to avoid using “imprisoned” altogether, since being imprisoned in a jail confused people.

- In so doing, the Commission sought to classify all remaining unclassified offenses.
- But the General Assembly did not embrace this proposal, since it involved reducing the jail or fine available for some offenses.
- The combination makes the Code wordy, since it mentions “jail term” (defined in §2901.01(T)) when appropriate, but adds “imprisoned” to cover unclassified offenses, which include a few felonies.

4. Place of Incarceration. In sentencing law, another provision sets out the place of incarceration for various offenders. H.B. 490 moves the language from former §2929.221, with no substantive changes, to new §2929.34.

F. MISDEMEANOR SEXUAL OFFENDER REGISTRATION

Misdemeanor sex offender registration provisions move from former §2929.21(G), (H), & (I) to new §2929.23 without substantive changes.

XI. RELOCATED SECTIONS & TECHNICAL CHANGES

A. REPEALED & RENUMBERED SECTIONS

These sections were repealed or relocated by H.B. 490:

Key: **R** = repealed; * = substantive change

OLD SECTION	NEW SECTION	TOPIC
§2929.11	§2929.24(C)	Jail Industry Program
§2929.21(A)-(F) R	Replaced by new §2929.24 to §2929.28 *	Misdemeanor Penalties
§2929.21(G)-(I)	§2929.23	Misd. Sex Offender Registration
§2929.22 R	Replaced by new §2929.22 *	Misdemeanor Sentencing Factors
§2929.221	§2929.34	Places of “Imprisonment”
§2929.23 R	Replaced by §2929.27 *	Electronic-Monitored House Arrest
§2929.24	§2929.42	Reports to Licensing Boards
§2929.25	§2929.32	Crime Victims’ Recovery Fund
§2929.28	§2929.71	Arsonist Restitution
§2929.29	§2929.43	Guilty Pleas
§2929.35	§2929.36	Pay-for-Stay Definitions
§2929.42	§2929.24	Reports to Licensing Boards
§2929.43	§2929.29	Guilty Pleas
§2933.16 R	Replaced by general community control law *	Probation Conditioned on Treatment
§2951.09 R	Replaced by new §2929.25	Bringing Violator before Judge

B. SECTIONS WITH TECHNICAL AMENDMENTS

As with any large bill, H.B. 490 makes many non-substantive changes to:

- Update cross-references;
- Specify dates of earlier amendments;
- Fix grammar and spelling;
- Eliminate gender-specific language; and
- For reasons peculiar to H.B. 490, such as:
 - Changing from “probation” to “community control”; and
 - Harmonizing with the traffic bill (S.B. 123)

This list shows sections included in H.B. 490 solely for conforming and other technical purposes. (Most substantive sections discussed in the body of this primer also contain these types of technical changes.) The list helps explain why H.B. 490 was so long.

SECTION	TOPIC
§109.42	Victim’s Rights Pamphlet
§109.511	Offenses Affecting Employment Eligibility
§109.77	Peace Officer Training Certificate
§120.06	State Public Defender
§120.16	County Public Defenders
§120.26	Joint County Public Defenders
§149.43	Availability of Public Records
§306.352	Regional Transit Authority Offenses

§307.93	Multicounty Correctional Centers
§311.04	Deputy Sheriffs
SECTION	TOPIC
§321.44	County Treasurer-Surplus Funds Investment
§341.14	Sheriff Receiving Other County's Prisoners
§341.19	County Jail Pay-for-Stay
§341.21	Federal Prisoners in County Jail Contracts
§341.23	Jail Contracts with Other Subdivisions
§505.49	Appointment of Township Police Officers
§509.01	Township Constables
§511.232	Township Parks-Law Enforcement
§737.052	Offenses Affecting Police Chief Hiring
§737.162	Offenses Affecting the Hiring of Marshals
§737.41	Municipal Probation Services Fund
§753.02	Providing for Municipal Inmates
§753.04	Workhouse Inmates
§753.16	Receiving Inmates from Other Counties
§1501.013	Natural Resources Law Enforcement Officers
§1503.29	Division of Forestry Peace Officers
§1517.10	Natural Areas and Preserve Officers
§1531.132	Game Protectors
§1541.11	Park Officers
§1545.13	Park District Police Powers
§1547.523	Watercraft Officers
§1547.99	Watercraft Law Penalties
§1702.80	Nonprofit Corporation Police Departments
§1713.50	Campus Police Departments
§2301.03	Domestic Relations Judges
§2301.27	Probation Departments
§2301.28	Supervision of Probationers
§2301.30	Conditions of Probation on Parole
§2301.32	Agreement for Supervision
§2301.56	Joint CBCF Funding
§2305.234	Common Pleas Court Jurisdiction
§2903.13	Assault
§2905.12	Coercion
§2907.15	Sex Offender's Deferred Comp
§2907.27	Sex Offenses-Examination for STDs and AIDS
§2923.14	Relief from Disability
§2925.11	Drug Possession Offenses
§2929.19	Felony Sentencing Hearing
§2929.31	Organizational Penalties
§2929.34	Places of Imprisonment
§2929.37	Pay-for-Stay
§2929.38	Pay-for-Stay Continued
§2929.41	Concurrent Sentences
§2935.33	Commitment of Intoxicated Persons
§2937.07	Pleas in Misdemeanor Cases
§2947.06	Mitigation Testimony after Verdict
§2947.19	City Inmates at County Expense
§2947.21	Commitment to Workhouse
§2950.01	Sex Offenders Definitions
§2950.99	Sex Offenders Penalties
§2951.021	Supervision Fees

§2951.041	Intervention in Lieu of Conviction
§2951.06	Release from Community Control
§2951.07	Period of Community Control
SECTION	TOPIC
§2951.08	Arresting Community Control Violators
§2951.10	Suspended Sentence as Final Order
§2953.31	Appeals-Definitions
§2953.32	Sealing of Record
§2953.33	Restoration of Rights upon Sealing
§2963.01	Extradition-Definitions
§2963.11	Fugitive from Justice
§2963.20	Governor's Demand for Fugitive
§2963.21	Application for Return of Fugitive
§2967.02	Pardon, Parole, & Probation Administration
§2967.22	Possibly Mentally Ill Person's Supervision
§2967.26	Transitional Control
§2969.11	Recovery of Offender's Profits-Definition
§2969.12	Administration of Fund
§2969.13	Crime Victims Recovery Fund
§2969.14	Covering Cost of Incarceration
§3313.65	Definitions Boards of Education
§3345.04	State University Enforcement Officers
§3719.12	Procedure upon Conviction
§3719.121	Suspension of Addicts Licenses
§3719.70	Immunity - Controlled Substances
§3734.44	Solid and Hazardous Wastes Licenses
§3735.311	Metropolitan Housing Authority Police
§3748.99	Chapter 3748 Penalties
§3793.13	Drug Treatment Confidential Records
§3937.43	Premium Reductions for Prevention Course
§3959.13	Third Party Administrators Conviction
§4510.037	Points Against a Driver's License
§4510.14	Driving Under Suspension
§4511.181	OVI Definitions
§4511.19	Operating a Vehicle Under the Influence
§4511.213	Safety Vehicles
§4511.99	DUI and Other Motor Vehicle Law Penalties
§4717.05	Embalmers/Funeral Directors - Licensing
§4734.35	Prosecutor's Notice to Chiropractic Board
§4761.13	Respiratory Care Violations
§4973.171	Railroad Police
§5101.28	Sharing Information with Law Enforcement
§5101.45	Payment of Conference Expenses
§5119.14	Special Police
§5120.10	Minimum Standards for Jails
§5120.102	Halfway House Law Definitions
§5120.103	Application for Construction
§5120.56	Recovering Costs from Offenders in Custody
§5122.01	Involuntary Hospitalization Definitions
§5122.10	Emergency Hospitalization, Examination
§5122.21	MH Hospitalization - Examination
§5122.26	MH Hospitalization - Absent Without Leave
§5123.13	Mental Health Special Police
§5147.12	Jail Labor

§5147.30	Jail Industry Programs
§5149.03	Adult Parole Authority Duties
§5149.18	Interstate Compact-Adult Parole Authority
§5149.31	Community Correction Subsidies
§5321.01	Landlord/Tenant Law Definitions
§5502.14	Food Stamp Trafficking Agents
§5743.45	Cigarette Tax Enforcement Agents
§5907.021	Ohio Veteran's Home Police Chief
§6101.75	Conservancy Districts Law Enforcement