

A Plan for
**SIMPLIFYING THE
OHIO REVISED CODE**
FELONY SENTENCING STATUTES

Number Eight
May 2008

by
David J. Diroll, Executive Director

OHIO CRIMINAL SENTENCING COMMISSION
Chief Justice Thomas J. Moyer, Chairman

OHIO CRIMINAL SENTENCING COMMISSION

65 South Front Street · First Floor · Columbus · 43215 · Telephone: (614) 387-9305 · Fax: (614) 387-9309

Chief Justice Thomas J. Moyer
Chairman

David J. Diroll
Executive Director

CONTENTS

COMMISSION MEMBERS	p. 2
THE GOALS OF THIS REPORT	p. 3
THE SENTENCING COMMISSION’S APPROACH	p. 4
NEW GENERAL RULES	p. 4
Simple Rules for the Entire Code	p. 4
Applying the Simple Rules	p. 6
One Bill at a Time	p. 6
Editorial Changes	p. 7
SIMPLIFYING FELONY SENTENCING	p. 8
Shrinkage Table	p. 8
A Note on <i>State v. Foster</i>	p. 8
THE STREAMLINED DRAFT	p. 9
Sentencing Law Definitions—§2929.01	p. 9
Purposes and Principles—§2929.11	p. 18
Sentencing Factors—§2929.12	p. 19
Prison v. Community Control—§2929.13	p. 22
Prison Terms—§2929.14	p. 29
New Felony Committed on PRC, <i>etc.</i> —§2929.141	p. 45
Vehicular Homicide Surpenalties—§2929.142	p. 46
Felony OVI Sentencing—§2929.143	p. 48
Community Control Generally—§2929.15	p. 52
Residential Sanctions—§2929.16	p. 56
Non-Residential Sanctions—§2929.17	p. 58
Financial Sanctions—§2929.18	p. 60
Sentencing Hearing—§2929.19	p. 67
Correcting Failure to Notify of PRC—§2929.191	p. 73
Judicial Release—§2929.20	p. 74
Concurrent & Consecutive Sentences—§2929.41	p. 80
Appellate Review of Sentencing—§2953.08	p. 81

OHIO CRIMINAL SENTENCING COMMISSION

Chief Justice Thomas J. Moyer, Chairman
Common Pleas Judge Reginald Routson, Hancock County, Vice Chairman
Major John Born, representing Highway Patrol Supt. Col. Richard H. Collins
Ohio State Bar Association Representative Paula Brown, Columbus
Director of Rehabilitation and Correction Terry Collins
Common Pleas Judge W. Jhan Corzine, Ross County
Juvenile Court Judge Robert C. DeLamatre, Erie County
Police Chief Michael Epperson, Dublin
Defense Attorney William R. Gallagher, Cincinnati
Senator Timothy J. Grendell, Chesterland
Municipal Court Judge Frederick "Fritz" Hany, II, Ottawa County
Victims' Representative Staci Kitchen, Reynoldsburg
Bob Lane, representing State Public Defender Timothy Young
Senator Lance Mason, Cleveland
Common Pleas Judge Andrew Nastoff, Butler County
Mayor Michael O'Brien, Warren
Appellate Judge Colleen Mary O'Toole, 11th Appellate District
Jason Pappas, FOP Executive Vice President, New Albany
County Commissioner Bob Proud, Clermont County
Municipal Court Judge Kenneth Spanagel, Parma
Director of Youth Services Thomas Stickrath
Public Defender Yeura Rommel Venters, Franklin County
Prosecutor David Warren, Athens County
Sheriff David J. Westrick, Defiance County
Prosecutor Donald A. White, Clermont County
Representative John J. White, Kettering
Juvenile Court Judge Stephanie Wyler, Clermont County

Other Designees

Steve Van Dine & Jim Guy, DRC; David Schroot & Kim Kehl, DYS

Criminal Sentencing Advisory Committee

Monda DeWeese, Executive Director, SEPTA Correctional Facility, Nelsonville
Eugene Gallo, Executive Director, Eastern Ohio Correction Center, Wintersville
Common Pleas Judge Burt W. Griffin, Retired, Shaker Heights
Lynn Grimshaw, Attorney & Former Prosecutor, Wheelersburg
John R. Guldin, Chief Counsel, Bureau of Motor Vehicles, Columbus
James Lawrence, representing the Ohio Community Corrections Organization, Akron
John Leutz, County Commissioners Association, Columbus
John Madigan, Senior Attorney, Toledo
Cynthia Mausser, Chair, Ohio Parole Board
Common Pleas Judge Steve McIntosh, Franklin County
Karhlton Moore, Director, Office of Criminal Justice Services
Gary Yates, Director, Butler County Court Services, Chief Probation Officers' Assn.

And

Department of Alcohol and Drug Addiction Services representative Jim Gorman
Congressman Bob Latta, former member of the Ohio House of Representatives
John Murphy, Executive Director, Ohio Prosecuting Attorneys Association
Phil Nunes, Ohio Justice Alliance for Community Corrections, Struthers
Erin Rosen, Ohio Attorney General's Office

Staff

David Diroll, Executive Director
Cynthia Ward, Administrative Assistant
Shawn Welch, Legal Extern

THE GOALS OF THIS REPORT

Citizens, practitioners, and even legislators often grumble about the readability of the Revised Code. The Code will never read like a novel since it covers some complex concepts. Yet certain drafting conventions make the Code unnecessarily cumbersome. Disruptions for cross-references and legalistic transitions (“pursuant to” and its kin) turn many otherwise clean concepts into sloughs.

The report suggests some new general rules to shorten the entire Revised Code without changing its scope or meaning. It then shows how to apply the rules, using the felony sentencing statutes as an example.

This is in no way an attack on the skilled people at the Legislative Service Commission (LSC) who have the difficult job of accurately translating legislators’ sentiments, often under great time pressure. In fact, it is designed to make drafters’ jobs easier.

Revised Code §181.24(A) instructs the Ohio Criminal Sentencing Commission to try to simplify Ohio’s Criminal Code with an eye toward making it more readily understood and easier to use. Former Representative (now Congressman) Bob Latta embraced this duty and asked the Commission to make specific suggestions.

The Commission initially worked to meet this goal with Senate Bill 2, effective July 1, 1996, sponsored by former Senator Tim Greenwood. That bill stripped down the felony sentencing statutes, using a “truth-in-sentencing” model with definite prison sentences, simpler sentence ranges, and few administrative modifications. However, those statutes grew more complicated as the General Assembly targeted certain problem offenders and offenses for enhanced sanctions. For instance, remarkably complex provisions now govern sexual offenders and operating a vehicle under the influence of alcohol or other drugs.

The Commission’s goal is not to second guess the General Assembly. Rather, we believe it is time to step back and assess whether we can say the same things in simpler language. Thus, the enclosed draft does not attempt to make policy changes. Instead it works to streamline the felony sentencing statutes to make them easier to use for judges, prosecuting and defense attorneys, state and community corrections personnel, offenders, victims, and others.

The General Assembly took a step toward streamlining when it adopted the Commission's asset forfeiture proposals in H.B. 241, effective July 1, 2007. The measure reduced the cumulative size of Ohio's forfeiture statutes by two-thirds without a whisper of controversy in the 10 months since they took effect. That is when the sponsor, Rep. Latta, asked the Commission to broaden its approach to the entire Criminal Code, since relatively few cases involve forfeitures. The statutes in this initial proposal are used in *every* felony case.

THE SENTENCING COMMISSION'S APPROACH

In short, this report:

- Suggests basic rules that LSC could apply throughout the Revised Code to shorten provisions (and future bills) without losing any meaning and without necessitating a vast clean-up bill;
- Begins the process by streamlining the felony sentencing statutes that grew directly out of the Commission's S.B. 2 recommendations (§§2929.01, 2929.11-2929.20, 2929.41, & 2953.08);
- Logically reorganizes various sections;
- Recognizes changes called for by the Ohio Supreme Court in *State v. Foster*, which found that certain sentencing findings were unconstitutional in light of recent U.S. Supreme Court decisions;
- Shows all changes, first in bill draft form, then as they would look if the revisions were adopted.

The latter approach makes this report long, but shows exactly how each statute could say the same things in fewer words. It should also help to allay any fears that the draft is designed to push a substantive agenda.

NEW GENERAL RULES

Simple Rules for the Entire Code

1. Replace references to "section XXXX.XX of the Revised Code" with references to "RC XXXX.XX".

§1.01 already allows "R.C." in lieu of "Revised Code," but the shorthand isn't used. The Commission suggests further shortening the reference by eliminating the periods, as follows:

§1.01(A) All statutes of a permanent and general nature of the state as revised and consolidated into general provisions, titles, chapters, and sections shall be known and designated as the "Revised Code", for which designation "R.C." "RC" may be substituted.

Currently, “Revised Code” appears in 20,026 sections, often multiple times in each, according to the *Lawriter* website. In the 10.5 point Courier New font used for bills, the proposal would save over two inches for each reference. Conservatively estimating that the phrase appears an average of twice in each of the 20,026 sections, the 40,052 mentions comprise over 80,000 inches (over 6,600 feet). The effortless change would eliminate well over a mile of unnecessary reading.

Put another way, the typical bill contains about 275 words per page. If the entire Revised Code were put in bill form, this painless change would make the bill over 80,000 words—nearly 300 pages—shorter without changing a wisp of meaning. Again, that’s a conservative estimate.

Also, cross-references to Revised Code chapters appear as “Chapter xxxx. of the Revised Code” The convention could be changed to not only eliminate “of the Revised Code” but also to remove the mid-sentence period after the chapter number. The unnecessary punctuation invariably foils amateur bill drafters and computer grammar checks.

2. Remove “of this section” from internal cross-references. Instead of “division (X) of this section” say “division (X)”.

In bill form (10.5 point Courier New font), this would save about 1½ inches each time the phrase appears.

3. Rework cross-references to divisions in other sections. A reference to “division (X) of section XXXX.XX” simply becomes “XXXX.XX(X)”.

In bill form, the change would save almost two inches each time.

#2 and #3 could be facilitated by a simple addition to §1.01:

§1.01(B) As used in the Revised Code, any reference to another division is an internal reference within the section containing the reference. Any reference to a division in another section of the Revised Code shall state the section referenced.

Looking at #2 and #3 together, we know that the word “section” appears in 19,393 sections, usually multiple times. The word “division” shows up in 14,506 sections, often repeated. Of course, the words aren’t always used to refer to an internal division or to another section. But that still leaves thousands of times when the phrases in #2 and #3 could be shortened, sparing our eyes miles of unneeded reading.

4. Shorten stock phrases and use more common words.

The Revised Code contains many stock phrases. Some are defined, some aren't. Many could be shortened. For example:

- “pursuant to” can become “under” (shortening 7,801 sections);
- “upon” can become “on” (in 8,873 sections);
- “xx years of age” can become “age xx” (in 537 sections);
- “felony of the xxxx degree” can become “xxxx degree felony” and “misdemeanor of the xxxx degree” can become “xxxx degree misdemeanor” (in 1,566 sections).

Again, these phrases typically occur more than once in these statutes.

Also, criminal provisions often refer to an offender who is “convicted of or pleaded guilty to” an offense. While the distinction is important in certain statutes (pre-trial diversion, intervention-in-lieu of conviction, and others), it is cumbersome and redundant in many sentencing statutes. The draft takes some fitful stabs at streamlining the phrase.

Applying the Simple Rules

Here's an example of how these four points would work in bill font:

“pursuant to division (A) (4) of section 2907.05 of the Revised Code”
becomes
“under RC 2907.05 (A) (4)”

Tastes great; less filling. The cumulative impact of these four simple changes would reduce the size of the Revised Code by more than a half million words—roughly the size of Tolstoy's *War and Peace*—without losing any meaning. In short, the Code would leave a much lighter carbon footprint.

Note, this isn't brilliant stuff. Other attentive readers may have ideas on streamlining the Code in general or particular chapters.

One Bill at a Time

The Commission is not calling for a mega-bill to make these changes at once. Rather, the refinements could be made when a bill amends a section for other purposes. Something similar to this was done in recent decades with the old “section xxx to yyy, inclusive” phrase. The word “inclusive” has been gradually eliminated. The gradual move toward gender neutrality is another example.

Editorial Changes

The Commission also suggests policy-neutral editorial revisions:

1. Reduce Redundancies and Preambles.

LSC drafters often work under great strains. They produce bills that reflect the sponsor's intent with remarkable accuracy. But LSC doesn't have the time to step back and review each bill or amendment for brevity. In reviewing the felony sentencing statutes, we had that luxury, as you will see.

2. Enhance clarity.

A few simple ideas could make the Code easier on our eyes:

- Use succinct captions to help readers find their way through statutory forests;
- Use more paragraph breaks to give eyes a break;
- Add short descriptions of statutes mentioned only by cross-references (*e.g.*, “If the offense is a ~~violation of~~ domestic violence under section 2919.25 or a ~~violation of~~ an assault under section 2903.11, 2903.12, or 2903.13 ...”).

While these will make the Code slightly longer, they greatly enhance readability. The added length will be more than offset by the suggestions above and below.

3. Redo Definitional Sections.

When first enacted, definitions appear in alphabetical order. However, terms added later tend to appear at the end of these sections, making terms harder to find or easier to overlook. The Commission proposes two simple changes:

- Rearrange definitions so they always appear in alphabetical order;
- Convert division references to bullets to reduce need to cross-reference divisions and to make it easier to add new definitions in alphabetical order without renumbering.

Our suggested changes to §2929.01 below provide an example.

SIMPLIFYING FELONY SENTENCING

The Commission applied the rules noted above to the key statutes governing criminal sentencing for adult felons. Again, there is no intent to change policy, although some statutes would be clarified.

Adopting the proposals in this report would make the felony sentencing statutes cover the same substance in half as many words. Specifically, the table on the next page shows how much the proposals would shrink each relevant section.

SHRINKAGE TABLE			
Statute	Current Words	Proposed Words	Shrinkage
§2929.01	3,504	2,164	38%
§2929.11	170	141	17%
§2929.12	888	551	38%
§2929.13	3,915	843	78%
§2929.14	5,993	2,752	54%
§2929.141	357	195	45%
§2929.142	342	313	8%
§2929.15	1,800	855	52%
§2929.16	838	309	63%
§2929.17	543	239	56%
§2929.18	3,133	1,802	42%
§2929.19	2,457	1,343	45%
§2929.191	1,186	388	62%
§2929.20	1,919	1,294	33%
§2929.41	429	222	48%
§2953.08	2,737	1,157	58%
All	30,211	14,568	52%

A Note on *State v. Foster*

Some provisions in the sentencing chapter no longer apply. The U.S. and Ohio Supreme Courts recently gave judges broader discretion by eliminating certain findings that were prerequisite to imposing particular sentences. In *State v. Foster*, 109 Ohio St. 3rd 1 (2006), the Ohio Supreme Court struck down S.B. 2's guidance in three key areas. S.B. 2 had instructed judges to:

- Consider the shortest prison sentence in the range for offenders who had not been to prison before;
- Reserve the maximum sentence in the range for the worst forms of the offense and for the worst offenders;
- Consider concurrent rather than consecutive sentences for multiple counts unless they demean the seriousness of the offense or don't adequately punish the offender.

The General Assembly has not formally repealed the provisions that the Court found to be unconstitutional. In working to streamline the felony sentencing statutes, the Commission felt that the statutes should be amended to reflect the current state of the law. Thus, this draft neutrally tries to honor the spirit of the case.

In several situations, the literal language of *Foster* calls for severing certain provisions entirely. In some cases, this would have unintended consequences beyond addressing the issues otherwise targeted by the Court. To take one example, *Foster* calls for severing the statutes that authorize concurrent and consecutive sentences. Yet no one sincerely believes that the Court intended to remove authority to deal with multiple offenses. Rather, the problem in the Court's eyes was that these statutes compel judges to make certain findings. Thus, for example, this draft amends the consecutive/concurrent sentencing statute (§2929.41) to strike the presumption of concurrent sentences and related judicial fact finding, rather than sever the section "in its entirety" *per Foster*. The changes are consistent with the spirit, if not the letter, of *Foster*.

Separately, the Department of Rehabilitation and Correction reports that the prison population has increased as a direct result of *Foster*. However, this report does not attempt to revive or modify the stricken provisions—saving that discussion for another time.

THE STREAMLINED DRAFT

The following draft walks through the adult felony sentencing statutes. Sections first appear in "bill" form, with all amendments shown. Then each statute is presented as it would appear if the amendments were made. [*The draft includes explanatory notes in brackets like this.*]

Sentencing Law Definitions—§2929.01

§2929.01. Criminal Sentencing Definitions—Showing Amendments

As used in this Chapter:

- ~~(ZZ) A person is "adjudicated~~ Adjudicated a sexually violent predator" if ~~the means a person is convicted of or pleads guilty to~~ of a violent sex offense and ~~also is convicted of or pleads guilty to~~ a sexually violent predator specification ~~that was included in the indictment, count in the indictment, or information charging that violent sex offense~~ or if the person is convicted of ~~or pleads guilty to~~ of a designated homicide, assault, or kidnapping offense and ~~also is convicted of or pleads guilty to~~ both a sexual motivation specification and a sexually violent predator specification ~~that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.~~
- ~~(A)(4)~~ "Alternative residential facility" means, ~~subject to division (A)(2) of this section,~~ any facility ~~other than an offender's home or residence~~ in which an offender is assigned to live, other than the offender's home or residence, a community-based correctional facility, jail, halfway house, or prison, and that satisfies all of the following criteria:

- (a)(1) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.
- (b)(2) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.
- (2) "Alternative residential facility" does not include a community based correctional facility, jail, halfway house, or prison.
- (B) "Bad time" means the time by which the parole board administratively extends an offender's stated prison term or terms pursuant to section 2967.11 of the Revised Code because the parole board finds by clear and convincing evidence that the offender, while serving the prison term or terms, committed an act that is a criminal offense under the law of this state or the United States, whether or not the offender is prosecuted for the commission of that act. [*Removal reflects case law*]
- (C) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court, or imposed by the parole board pursuant to under section RC 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.
 - (FF) "Body armor" has the same meaning as in section RC 2941.1411 of the Revised Code.
 - (D) "Cocaine," "crack cocaine," "hashish," "L.S.D.," and "unit dose" have has the same meanings meaning as in section RC 2925.01 of the Revised Code.
 - (MM) An offense is "committed Committed in the vicinity of a child" if the means the offender commits the offense within thirty feet of, or within the same residential unit as, a child who is under age eighteen years of age, regardless of whether the offender knows the age of the child or whether, the offender knows the offense is being committed within thirty feet of or within the same residential unit as in the vicinity of the child and regardless of whether, or the child actually views the commission of the offense.
 - (E) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to under sections RC 2301.51 to 2301.58 of the Revised Code.
 - (F) "Community control sanction" means a sanction that is not a prison term and that is described in section RC 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code or a sanction that is not a jail term and that is described in section RC 2929.26, 2929.27, or 2929.28 of the Revised Code. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 4, 2004 [*no longer necessary given the 5 year maximum*].
 - (YY) "Continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.
 - (G) "Controlled substance," "marihuana," "schedule I," and "schedule II" have has the same meanings meaning as in section RC 3719.01 of the Revised Code.
 - "Crack cocaine" has the same meaning as in RC 2925.01. [*Was part of (D).*]
 - (H) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.
 - (I) "Day reporting" means a sanction pursuant to under which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.
 - (J) "Deadly weapon" has the same meaning as in section RC 2923.11 of the Revised Code.
 - (V) "Delinquent child" has the same meaning as in section RC 2152.02 of the Revised Code.
 - (KK) "Designated homicide, assault, or kidnapping offense," "violent sex offense," "sexual motivation specification," "sexually violent offense," "sexually violent predator," and "sexually

violent predator specification” have has the same meanings meaning as in section RC 2971.01 of the Revised Code.

- ~~(PP)~~ “Detention” and “detention facility” have the same meanings as in section RC 2921.01 of the Revised Code.
- ~~(K)~~ “Drug and alcohol use monitoring” means a program under which an offender agrees to submit to random chemical analysis of the offender’s blood, breath, or urine to determine whether the offender has ingested ~~any~~ alcohol or other drugs.
- ~~(L)~~ “Drug treatment program” means any program under which a person undergoes assessment and treatment designed to reduce or ~~completely~~ eliminate the person’s physical or emotional reliance ~~upon~~ on alcohol, another drug, or ~~alcohol and another drug both~~, and under which the person may be required to receive assessment and outpatient treatment ~~on an outpatient basis~~ or may be required to reside at a facility other than the person’s home or residence while undergoing assessment and treatment.
- ~~(M)~~ “Economic loss” means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury ~~caused to the victim~~, and any property loss, medical cost, or funeral expense incurred as a result of the ~~commission of the offense~~. “Economic loss” does not include non-economic loss or any punitive or exemplary damages.
- ~~(N)~~ “Education or training” includes study at, ~~or in conjunction with a program offered by,~~ a university, college, or technical college ~~or, vocational study program, and also includes the completion of primary and secondary school, secondary school, and literacy curricula, or their equivalent.~~
- ~~(UU)~~ “Electronic monitoring” means monitoring through the use of an electronic monitoring device.
- ~~(VV)~~ “Electronic monitoring device” means any of the following [~~removes unnecessary details~~]:
 - (1) Any device that can be operated by electrical or battery power and that conforms with all of the following:
 - ~~(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (VV)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously or periodically signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.~~
 - ~~(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (VV)(1)(a) of this section, can transmit continuously those signals by telephone to a central monitoring computer of the type described in division (VV)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the receiver is turned off or altered without prior court approval or otherwise tampered with.~~
 - ~~(c) The device has a central monitoring computer that can receive continuously the signals transmitted by telephone by a receiver of the type described in division (VV)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (VV)(1)(a) of this section is attached.~~
 - (2) Any device that is not a device of the type described in division (VV)(1) of this section and that conforms with all of the following:
 - ~~(a) The Any device includes with a transmitter and receiver that can monitor and determine or restrict the location of a subject person at any time, or at a designated point in time, and can determine whether the device is removed, turned off, or otherwise tampered with without approval, through the use of a central monitoring computer or through other electronic means.~~

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

~~(3)(2) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.~~

- ~~(NN) "Family or household member" has the same meaning as in section RC 2919.25 of the Revised Code.~~
- ~~(SS) "Felony sex offense" has the same meaning as in section 2967.28 of the Revised Code. [Since the definition is self-explanatory, it's unnecessary here and in §2967.28.]~~
- ~~(O) "Firearm" has the same meaning as in section RC 2923.11 of the Revised Code.~~
- ~~(II) "Fourth degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree. [Seems obvious and, as such, unneeded.]~~
- ~~(P) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to under section RC 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.~~
- ~~"Hashish" has the same meaning as in RC 2925.01. [Was part of (D).]~~
- ~~(Q) "House arrest" means a period of confinement of an offender that is in the an offender's home or in other premises specified by the sentencing court, or by the parole board pursuant to under section RC 2967.28 of the Revised Code, and during which all of the following apply:
 - (1) The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.
 - (2) The offender is required to report periodically to a person designated by the court or parole board.
 - (3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.~~
- ~~(R) "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to under section RC 2967.28 of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.~~
- ~~(S) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted [pre-trial detainees aren't relevant to the sentencing statutes] offenders that is operated by a political subdivision or a combination of one or more political subdivisions of this state.~~
- ~~(T) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to under section RC 2929.24 or 2929.25 of the Revised Code or pursuant to under any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.~~
- ~~(W) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to under section RC 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's~~

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

- "L.S.D." has the same meaning as in RC 2925.01. [Was part of (D).]
- ~~(X) "Major drug offender" means an offender who is convicted of or pleads guilty to of the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of crack cocaine; at least one thousand grams of cocaine that is not crack cocaine; at least two thousand five hundred unit doses or two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to felony under section RC 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.~~
- ~~(U) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (E) of section 2929.24 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to for a misdemeanor under any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction. Once imposed, the court shall not reduce the term. [The specific offenses would be listed in §2929.24, where more practitioners will find them.]~~
- ~~(Y) "Mandatory prison term" means any of the following: a prison term that a sentencing court is required to impose for a felony. Once imposed, the court shall not reduce the term under RC 2929.20 judicial release, RC 2967.193 earned credit, or any other provision in Chapter 2967 or 5120 [The sentence added here allows its removal from several other sections. The specific offenses would be moved from §2929.13(F) to §2929.14.]~~
 - ~~(1) Subject to division (Y)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (14) of section 2929.13 and division (D) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.~~
 - ~~(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code.~~
 - ~~(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code, pursuant to division (B)(1)(a), (b), or (c) of section 2971.03 of the Revised Code for the offense of rape committed on or after the effective date of this amendment in violation of division (A)(1)(b) of section 2907.02 of the Revised Code, pursuant to division (B)(2)(a) of section 2971.03 of the Revised Code for the offense of attempted rape committed on or after the effective date of this amendment and a specification of the type described in section 2941.1418 of the Revised Code, pursuant to division (B)(2)(b) of section 2971.03 of the Revised Code for the offense of attempted rape committed on or after the effective date of this amendment and a specification of the type described in section 2941.1419 of the Revised Code, or pursuant to division (B)(2)(c) of section 2971.03 of the Revised Code for the offense of attempted rape committed on or after the effective date of this amendment and a specification of the type described in section 2941.1420 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.~~

- ~~(JJ)~~ “Mandatory term of local incarceration” means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon on a person who is ~~convicted of or pleads guilty to~~ of a fourth degree felony OVI offense pursuant to ~~division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.~~
- “Manufactured home” has the same meaning as in RC 4501.01. [*Was part of (OO).*]
- “Marihuana” has the same meaning as in RC 3719.01. [*Was part of (G).*]
- ~~(Z)~~ “Monitored time” means a period ~~of time~~ during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.
- ~~(OO)~~ “Motor vehicle” ~~and “manufactured home” have~~ has the same meanings ~~meaning~~ as in ~~section RC 4501.01 of the Revised Code.~~
- ~~(WWW)~~ “Non-economic loss” means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to; pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.
- ~~(AA)~~ “Offender” means a person who, ~~in this state,~~ is ~~convicted of or pleads guilty to~~ of a felony or a misdemeanor ~~in this state.~~
- ~~(BB)~~ “Prison” means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction ~~but~~. Prison does not include a violation sanction center operated under ~~authority of section RC 2967.141 of the Revised Code.~~
- ~~(CC)~~ “Prison term” includes ~~any of the following sanctions for an offender:~~ (1) A ~~a~~ stated prison term; ~~(2) A and any~~ term in a prison shortened by, or with the approval of, the sentencing court ~~pursuant to under section RC 2929.20 judicial release, 2967.26 transitional control, or shock incarceration or intensive programming under 5120.031, 5120.032, or 5120.073 of the Revised Code;~~ (3) A term in prison ~~extended by bad time imposed pursuant to section 2967.11 of the Revised Code or imposed for a violation of post-release control pursuant to section 2967.28 of the Revised Code.~~ [*Removes bad time in light of case law.*]
- ~~(XX)~~ “Prosecutor” has the same meaning as in ~~section RC 2935.01 of the Revised Code.~~
- ~~(RR)~~ “Random drug testing” has the same meaning as in ~~section RC 5120.63 of the Revised Code.~~
- ~~(DD)~~ “Repeat violent offender” means a person about whom both of the following apply:
 - (1) The person is being sentenced for committing or for complicity in committing any of the following:
 - (a) Aggravated murder, murder, any ~~felony of the~~ first or second degree felony that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a ~~felony of the~~ first or second degree felony;
 - (b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (1)(a) ~~of this section.~~
 - (2) The person ~~previously was convicted of or pleaded guilty to~~ has a prior conviction for an offense described in division (1)(a) or (b) ~~of this section.~~
- ~~(EE)~~ “Sanction” means any penalty imposed ~~upon on~~ an offender who ~~is convicted of or pleads guilty to~~ commits an offense, as punishment for the offense. “Sanction” includes including any sanction imposed ~~pursuant to any provision of under~~ RC 2929.14 to 2929.18 or 2929.24 to 2929.28 ~~of the Revised Code.~~
- “Schedule I” and “schedule II” have the same meanings as in RC 3719.01. [*Was in (G).*]
- ~~(FF)~~ “Sentence” means the sanction or combination of sanctions imposed by the sentencing court on an offender who ~~is convicted of or pleads guilty to~~ commits an offense.
- “Sexual motivation specification” has the same meaning as in RC 2971.01. [*Was part of (KK).*]

- ~~(LL)~~ “Sexually oriented offense” and tier III sex offender/child-victim offender have has the same ~~meanings~~ meaning as in section RC 2950.01 of the Revised Code.
- “Sexually violent offense” has the same meaning as in section RC 2971.01. [Was part of (KK).]
- “Sexually violent predator” and “sexually violent predator specification” have the same meaning as in RC 2971.01. [Was part of (KK).]
- ~~(GG)~~ “Stated prison term” means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court ~~pursuant to~~ under section RC 2929.14, 2929.142, or 2971.03 of the Revised Code. “Stated prison term” includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits ~~pursuant to~~ under section RC 2967.193 of the Revised Code.
- ~~(QQ)~~ “Third degree felony OVI offense” means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree. *[Seems obvious and, as such, unneeded.]*
- “Tier III sex offender/child-victim offender” has the same meaning as in RC 2950.01. [Was part of (LL).]
- “Unit dose” has the same meaning as in RC 2925.01. [Was part of (D).]
- ~~(HH)~~ “Victim-offender mediation” means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.
- “Violent sex offense” has the same meaning as in RC 2971.01. [Was part of (KK).]

Here’s how §2929.01 would read if the amendments were made.

§2929.01. Criminal Sentencing Definitions—As Amended

As used in this Chapter:

- “Adjudicated a sexually violent predator” means a person is guilty of a violent sex offense and a sexually violent predator specification or guilty of a designated homicide, assault, or kidnapping offense and both a sexual motivation specification and a sexually violent predator specification.
- “Alternative residential facility” means any facility in which an offender is assigned to live, other than the offender’s home or residence, a community-based correctional facility, jail, halfway house, or prison, that satisfies all of the following criteria:
 - (1) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.
 - (2) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service from the government agency that is responsible for licensing or certifying that type of service.
- “Basic probation supervision” means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court, or by the parole board under RC 2967.28. “Basic probation supervision” includes basic parole supervision and basic post-release control supervision.
- “Body armor” has the same meaning as in RC 2941.1411.
- “Cocaine” has the same meaning as in RC 2925.01.
- “Committed in the vicinity of a child” means the offender commits the offense within thirty feet of, or within the same residential unit as, a child who is under age eighteen, regardless of whether the offender knows the age of the child, the offender knows the offense is being committed in the vicinity of the child, or the child actually views the offense.
- “Community-based correctional facility” means a community-based or district community-based correctional facility and program developed under RC 2301.51 to 2301.58.

- “Community control sanction” means a sanction that is not a prison term and that is described in RC 2929.15, 2929.16, 2929.17, or 2929.18 or a sanction that is not a jail term and that is described in RC 2929.26, 2929.27, or 2929.28.
- “Continuous alcohol monitoring” means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.
- “Controlled substance” has the same meaning as in RC 3719.01.
- “Crack cocaine” has the same meaning as in RC 2925.01.
- “Curfew” means a requirement that an offender during a specified period be at a designated place.
- “Day reporting” means a sanction under which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.
- “Deadly weapon” has the same meaning as in RC 2923.11.
- “Delinquent child” has the same meaning as in RC 2152.02.
- “Designated homicide, assault, or kidnapping offense” has the same meaning as in RC 2971.01.
- “Detention” and “detention facility” have the same meanings as in RC 2921.01.
- “Drug and alcohol use monitoring” means a program under which an offender agrees to submit to random chemical analysis of the offender’s blood, breath, or urine to determine whether the offender has ingested alcohol or other drugs.
- “Drug treatment program” means any program under which a person undergoes assessment and treatment designed to reduce or eliminate the person’s physical or emotional reliance on alcohol, another drug, or both, and under which the person may be required to receive assessment and outpatient treatment or may be required to reside at a facility other than the person’s home or residence while undergoing assessment and treatment.
- “Economic loss” means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury, and any property loss, medical cost, or funeral expense incurred as a result of the offense. “Economic loss” does not include non-economic loss or any punitive or exemplary damages.
- “Education or training” includes study at a university, college, or technical college, vocational program, primary and secondary school, literacy curricula, or their equivalent.
- “Electronic monitoring” means monitoring through the use of an electronic monitoring device.
- “Electronic monitoring device” means any of the following:
 - (1) Any device with a transmitter and receiver that can determine or restrict the location of a subject person at any designated time, and can determine whether the device is removed, turned off, or otherwise tampered with without approval, through the use of a central monitoring computer or other electronic means.
 - (2) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system.
- “Family or household member” has the same meaning as in RC 2919.25.
- “Firearm” has the same meaning as in RC 2923.11.
- “Halfway house” means a facility licensed by the division of parole and community services of the department of rehabilitation and correction under RC 2967.14 as a suitable facility for the care and treatment of adult offenders.
- “Hashish” has the same meaning as in RC 2925.01.
- “House arrest” means a period of confinement in an offender’s home or in other premises specified by the sentencing court, or by the parole board under RC 2967.28, during which all of the following apply:

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

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

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

- "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board under RC 2967.28, to supervise the offender while the offender is seeking or maintaining employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.
- "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of offenders that is operated by one or more political subdivisions of this state.
- "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose under RC 2929.24 or 2929.25 or under any other provision that authorizes a term in a jail for a misdemeanor conviction.
- "License violation report" means a report that is made by a sentencing court, or by the parole board under RC 2967.28, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of an offense that may violate the conditions under which the license or permit was granted or an offense for which the license or permit may be revoked or suspended.
- "L.S.D." has the same meaning as in RC 2925.01.
- "Major drug offender" means an offender who is guilty of the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least: one thousand grams of hashish; at least one hundred grams of crack cocaine; at least one thousand grams of cocaine that is not crack cocaine; at least two thousand five hundred unit doses or two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; or at least one hundred times the amount of any other schedule I or II controlled substance other than marijuana that is necessary to commit a third degree felony under RC 2925.03, 2925.04, 2925.05, or 2925.11 that is based on the possession of, sale of, or offer to sell the controlled substance.
- "Mandatory jail term" means the term in a jail that a sentencing court is required to impose for a misdemeanor under any provision of the Revised Code. Once imposed, the court shall not reduce the term.
- "Mandatory prison term" means a prison term that a sentencing court is required to impose for a felony. Once imposed, the court shall not reduce the term under RC 2929.20 judicial release, RC 2967.193 earned credit, or any other provision in Chapter 2967 or 5120.
- "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, community-based correctional facility, halfway house, or alternative residential facility that a sentencing court may impose on a person who is guilty of a fourth degree felony OVI.
- "Manufactured home" has the same meaning as in RC 4501.01.
- "Marihuana" has the same meaning as in RC 3719.01.
- "Monitored time" means a period during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.
- "Motor vehicle" has the same meaning as in RC 4501.01.
- "Non-economic loss" means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to: pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

- “Offender” means a person who is guilty of a felony or a misdemeanor in this state.
- “Prison” means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction. “Prison” does not include a violation sanction center operated under RC 2967.141.
- “Prison term” includes a stated prison term and any term in a prison shortened by, or with the approval of, the sentencing court under RC 2929.20 judicial release, 2967.26 transitional control, or shock incarceration or intensive programming under 5120.031, 5120.032, or 5120.073.
- “Prosecutor” has the same meaning as in RC 2935.01.
- “Random drug testing” has the same meaning as in RC 5120.63.
- “Repeat violent offender” means a person about whom both of the following apply:
 - (1) The person is being sentenced for committing or for complicity in committing any of the following:
 - (a) Aggravated murder, murder, any first or second degree felony that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a first or second degree felony;
 - (b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (1)(a).
 - (2) The person has a prior conviction for an offense described in division (1)(a) or (b).
- “Sanction” means any penalty imposed on an offender who commits an offense, including any sanction imposed under RC 2929.14 to 2929.18 or 2929.24 to 2929.28.
- “Schedule I” and “schedule II” have the same meanings as in RC 3719.01.
- “Sentence” means the sanction or combination of sanctions imposed by the sentencing court on an offender who commits an offense.
- “Sexual motivation specification” has the same meaning as in RC 2971.01.
- “Sexually oriented offense” has the same meaning as in RC 2950.01.
- “Sexually violent offense” has the same meaning as in RC 2971.01.
- “Sexually violent predator” and “sexually violent predator specification” have the same meaning as in RC 2971.01.
- “Stated prison term” means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court under RC 2929.14, 2929.142, or 2971.03. “Stated prison term” includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits under RC 2967.193.
- “Tier III sex offender/child-victim offender” has the same meaning as in RC 2950.01.
- “Unit dose” has the same meaning as in RC 2925.01.
- “Victim-offender mediation” means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.
- “Violent sex offense” has the same meaning as in RC 2971.01.

Purposes and Principles—§2929.11

This section covers principles that govern all felony sentencing.

§2929.11. Purposes of Felony Sentencing—Showing Amendments

(A) **Purposes & Considerations** ~~A court that sentences an offender for a felony~~ Felony sentencing shall be guided by the ~~overriding following~~ overriding purposes of felony sentencing. ~~The overriding purposes of felony sentencing are to:~~

- To protect the public from future crime by the offender and others and to;
- To punish the offender.

To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) **Principles** A felony sentence imposed for a felony shall be reasonably calculated to achieve ~~the two overriding~~ those purposes of felony sentencing set forth in division (A) of this section, and the following principles:

- The sentence shall be commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon on the victim, and;
- The sentence shall be consistent with sentences imposed for similar crimes committed by similar offenders.

(C) **Prohibited Bases** ~~A court that imposes a sentence upon an offender for a felony shall not base the sentence upon~~ No felony sentence shall be unlawfully [clarifies] based on the race, ethnic background, gender, or religion of the offender.

Here's how it would read if the amendments were made.

§2929.11. Purposes of Felony Sentencing—As Amended

(A) **Purposes & Considerations** Felony sentencing shall be guided by the following purposes:

- To protect the public from future crime by the offender and others;
- To punish the offender.

To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) **Principles** A felony sentence shall be reasonably calculated to achieve those purposes and the following principles:

- The sentence shall be commensurate with and not demeaning to the seriousness of the offender's conduct and its impact on the victim;
- The sentence shall be consistent with sentences imposed for similar crimes committed by similar offenders.

(C) **Prohibited Bases** No felony sentence shall be unlawfully based on the race, ethnic background, gender, or religion of the offender.

Sentencing Factors—§2929.12

The lists of seriousness and recidivism factors used in felony sentencing have held up well since S.B. 2 and seldom cause confusion. The *Foster* decision did not affect these factors, as they are “merely” considerations.

§2929.12 Seriousness & Recidivism Factors—Showing Amendments

(A) **Discretion** Unless otherwise required by ~~section 2929.13 or 2929.14 of the Revised Code law~~ [recognizes there are provisions outside of §2929.13 & §2929.14 that limit discretion], a court that ~~imposes imposing a felony sentence under this chapter upon an offender for a felony~~ has discretion to determine the most effective way to comply with the purposes and principles of sentencing ~~set forth in section RC 2929.11 of the Revised Code~~. In exercising that discretion, the court shall consider the factors set forth in ~~divisions (B) and (C) of this section relating to the seriousness of the conduct and the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism and, in addition, may consider together with~~ any other factors that are relevant to achieving those purposes and principles of sentencing.

(B) **More Serious** The sentencing court shall consider all of the following ~~that apply regarding the offender, the offense, or the victim~~ when relevant, and any other relevant factors, ~~as indicating that indicate~~ that indicate that the offender's conduct is more serious than conduct normally constituting the offense:

- (1) The physical or mental injury suffered by the victim ~~of the offense due to the conduct of the offender~~ was exacerbated worsened because of the physical or mental condition or age of the victim.
- (2) The victim ~~of the offense~~ suffered serious physical, psychological, or economic harm ~~as a result of the offense~~.
- (3) The offender held a public office or position of trust in the community, and the offense related to that office or position.
- (4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.
- (5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.
- (6) The offender's relationship with the victim facilitated the offense.
- (7) The offender committed the offense for hire or as a part of an organized criminal activity.
- (8) ~~In committing the offense, the~~ The offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.
- (9) ~~If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.~~
[Since this provision only applies to certain domestic assaults it should appear in the indicated sections rather than here among rules applicable to all cases.]

[MINOR SUSTANTIVE ALTERNATIVE: If there is a desire to keep the 9th factor in this list, it may make sense to broaden it to cover *any* offense committed in the presence of a child, particularly since the factor lies in the discretion of the court, tempering any unjust application. Thus, (B)(9) could be made generally applicable—and more logical—as follows: (9) ~~If the~~ The offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity presence of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.]

(C) **Less Serious** The sentencing court shall consider all of the following ~~that apply regarding the offender, the offense, or the victim~~ when relevant, and any other relevant factors, ~~as indicating that indicate~~ that the offender's conduct is less serious than conduct normally constituting the offense:

- (1) The victim induced or facilitated the offense.
- (2) ~~In committing the offense, the~~ The offender acted under strong provocation.
- (3) ~~In committing the offense, the~~ The offender did not cause or expect to cause physical harm to any person or property.
- (4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

(D) **Recidivism More Likely** The sentencing court shall consider all of the following ~~that apply regarding the offender~~ when relevant, and any other relevant factors, ~~as factors indicating that indicate~~ that the offender is likely to commit future crimes:

- (1) At the time of ~~committing~~ the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed ~~pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code for an earlier offense, or under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense,~~ or had been unfavorably terminated from post-release control for a prior offense ~~pursuant to division (B) of section 2967.16 or section 2929.141 of the Revised Code.~~
- (2) The offender previously was adjudicated a delinquent child ~~pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code,~~ or the offender has a history of criminal convictions.
- (3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child ~~pursuant to Chapter 2151. of the Revised Code prior to~~

~~January 1, 2002, or pursuant to Chapter 2152, of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions or juvenile delinquency adjudications.~~

~~(4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that that pattern, or the offender refuses treatment for the drug or alcohol abuse.~~

~~(5) The offender shows no genuine remorse for the offense.~~

~~(E) **Recidivism Less Likely** The sentencing court shall consider all of the following that apply regarding the offender when relevant, and any other relevant factors, as factors indicating that indicate that the offender is not likely to commit future crimes:~~

~~(1) Prior to committing the offense, the The offender had not previously been adjudicated a delinquent child.~~

~~(2) Prior to committing the offense, the The offender had not been convicted of or pleaded guilty to has no prior conviction for a criminal offense. [*The phrase "convicted of or pled guilty to" appears hundreds of times throughout the Code. A new definition of "conviction" would allow removal of the "or" clause in this Chapter and in many—but not all—other places.*] or has~~

~~(3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years. [*Merges (2) & (3).*]~~

~~(4)(3) The offense was committed under circumstances not likely to recur.~~

~~(5)(4) The offender shows genuine remorse for the offense.~~

Here's how the section would look if the amendments were adopted.

§2929.12 Seriousness & Recidivism Factors—As Amended

(A) **Discretion** Unless otherwise required by law, a court imposing a felony sentence has discretion to determine the most effective way to comply with the purposes and principles of sentencing in RC 2929.11. In exercising that discretion, the court shall consider the factors set forth in this section together with any other factors that are relevant to achieving those purposes and principles.

(B) **More Serious** The court shall consider all of the following when relevant, and any other relevant factors that indicate that the offender's conduct is more serious than conduct normally constituting the offense:

(1) The physical or mental injury suffered by the victim was worsened because of the physical or mental condition or age of the victim.

(2) The victim suffered serious physical, psychological, or economic harm.

(3) The offender held a public office or position of trust in the community and the offense related to that office or position.

(4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

(5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

(6) The offender's relationship with the victim facilitated the offense.

(7) The offender committed the offense for hire or as a part of an organized criminal activity.

(8) The offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

(C) **Less Serious** The court shall consider all of the following when relevant, and any other relevant factors, that indicate that the offender's conduct is less serious than conduct normally constituting the offense:

(1) The victim induced or facilitated the offense.

(2) The offender acted under strong provocation.

(3) The offender did not cause or expect to cause physical harm to any person or property.

(4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

- (D) **Recidivism More Likely** The court shall consider all of the following when relevant, and any other relevant factors, that indicate that the offender is likely to commit future crimes:
- (1) At the time of the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed for an earlier offense, under post-release control for an earlier offense, or had been unfavorably terminated from post-release control for a prior offense.
 - (2) The offender previously was adjudicated a delinquent child or has a history of criminal convictions.
 - (3) The offender has not responded favorably to sanctions previously imposed for criminal convictions or juvenile delinquency adjudications.
 - (4) The offender has demonstrated a pattern of drug or alcohol abuse related to the offense and refuses to acknowledge that pattern or refuses treatment for the abuse.
 - (5) The offender shows no genuine remorse for the offense.
- (E) **Recidivism Less Likely** The court shall consider all of the following when relevant, and any other relevant factors, that indicate that the offender is not likely to commit future crimes:
- (1) The offender had not previously been adjudicated a delinquent child.
 - (2) The offender has no prior conviction for a criminal offense or has led a law-abiding life for a significant number of years.
 - (3) The offense was committed under circumstances not likely to recur.
 - (4) The offender shows genuine remorse for the offense.

Guidance on Prison v. Community Control—§2929.13

This section generally guides the “in-out” decision and lists the situations carrying mandatory prison terms. The draft moves the mandatory terms to the section governing prison sentences (§2929.14) where it fits better.

Foster did not strike the findings under this section. In fact, it specifically retained division (B)’s guidance against prison for low-level felons and didn’t subject division (D)’s presumption in favor of prison for high level felons to *Blakely* analysis. Thus, both remain in this draft.

§2929.13. Guidance on Prison vs. Community Control—Showing Amendments

(A) **Discretion; Economy** ~~Except as provided in division (E), (F), or (G) of this section and unless~~ Unless a specific sanction is required to be imposed or is precluded from being imposed pursuant to by law, a court that imposes a sentence upon on an offender for a felony shall consider and ~~[allows us to strike the next ¶] may impose any sanction or combination of sanctions on the offender that are provided in section RC 2929.14 to 2929.18 of the Revised Code. The sentence shall not impose an unnecessary burden on state or local government resources.~~ [replaces this language with the simple “shall consider” reference in the prior ¶] the court is required to impose a mandatory prison term for the offense for which sentence is being imposed, the court also may impose a financial sanction pursuant to under section 2929.18 of the Revised Code but may not impose any additional sanction or combination of sanctions under section 2929.16 or 2929.17 of the Revised Code [unnecessary in light of other provisions below]. ~~If the offender is eligible to be sentenced to community control sanctions, the court shall consider the appropriateness of imposing a financial sanction pursuant to section 2929.18 of the Revised Code or a sanction of community service pursuant to section 2929.17 of the Revised Code as the sole sanction for the offense. Except as otherwise provided in this division, if~~ [These and other OVI provisions are streamlined and consolidated in new 2929.143:] If the offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, in addition to the mandatory term of local incarceration or the mandatory prison term required for the offense by division (G)(1) or (2) of this section, the court shall impose upon the

offender a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code and may impose whichever of the following is applicable:

(1) For a fourth degree felony OVI offense for which sentence is imposed under division (G)(1) of this section, an additional community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code. If the court imposes upon the offender a community control sanction and the offender violates any condition of the community control sanction, the court may take any action prescribed in division (B) of section 2929.15 of the Revised Code relative to the offender, including imposing a prison term on the offender pursuant to that division.

(2) For a third or fourth degree felony OVI offense for which sentence is imposed under division (G)(2) of this section, an additional prison term as described in division (D)(4) of section 2929.14 of the Revised Code or a community control sanction as described in division (G)(2) of this section.

(B) Findings Re F-4s & F-5s [Specifically upheld by Foster]

(1) Except as provided in division (B)(2), (E), (F), or (G) of this section, in sentencing an offender for a felony of the fourth or fifth degree felony, other than certain drug offenses, OVI, other mandatory terms, or when otherwise specified, the sentencing court shall determine whether any of the following apply:

(a) In committing the offense, the offender ~~caused~~ did any of the following:

- Caused physical harm to a person;
- ~~(b) In committing the offense, the offender attempted~~ Attempted to cause or made an actual threat of physical harm to a person with a deadly weapon;
- ~~(c) In committing the offense, the offender attempted~~ Attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person.

~~(d)(b)~~ The offender held a public office or position of trust and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others.

~~(e)(c)~~ The offender committed the offense for hire or as part of an organized criminal activity.

~~(f)(d)~~ The offense is a sex offense that is a fourth or fifth degree felony violation of under section RC 2907.03, 2907.04, 2907.05, 2907.22, 2907.31, 2907.321, 2907.322, 2907.323, or 2907.34 of the Revised Code.

~~(g)(e)~~ The offender, at the time of the offense, was serving, or the offender previously had served, a prison term.

~~(h)(f)~~ The offender committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance.

~~(i)(g)~~ The offender committed the offense while in possession of a firearm.

(2)

(a) If the court ~~makes a finding described in~~ determines that division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section applies and if the court, after considering the factors set forth in section RC 2929.12 of the Revised Code, finds concludes that a prison term is consistent with the purposes and principles of sentencing set forth in section RC 2929.11 of the Revised Code and ~~finds that the offender is not amenable to an available~~ community control sanction, the court shall impose a prison term upon the offender.

(b) Except as provided in division (E), (F), or (G) of this section, if the court ~~does not make a finding described in~~ determines that division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section does not apply and if the court, after considering the factors set forth in section RC 2929.12 of the Revised Code, finds concludes that a community control sanction or combination of community control sanctions is consistent with the purposes and principles of sentencing set forth in section under RC 2929.11 of the Revised Code, the court shall impose a community control sanction or combination of one or more community control sanctions upon the offender.

(c) Otherwise the court shall comply with the purposes and principles of sentencing under section RC 2929.11 and with section RC 2929.12. [Clarifies the implication in current law.]

~~(C) **F-3s** Except as provided in division (D), (E), (F), or (G) of this section Unless the offense carries a mandatory prison term, in determining whether to impose a prison term as a sanction for a felony of the third degree felony or a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to this division for purposes of sentencing, the sentencing court shall comply with the purposes and principles of sentencing under section RC 2929.11 of the Revised Code and with section RC 2929.12 of the Revised Code.~~

~~(D) **Presumption for F-1s & F-2s, Etc.** [Not struck by Foster]~~

~~(1) Except as provided in division (E) or (F) of this section Unless the offense carries a mandatory prison term, for a felony of the first or second degree felony, or for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, and for a violation of division (A)(4) of section 2907.05 of the Revised Code or any other offense for which a presumption in favor of a prison term is specified as being applicable applies, it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section RC 2929.11 of the Revised Code [replaces the incomplete list of exceptions—which now include drugs, theft of a weapon, GSI with victim <13 (only mandatory with corroboration or certain priors), & importuning—with a generic reference]. Division (D)(2) of this section does not apply to a presumption established under this division for a violation of division (A)(4) of section 2907.05 of the Revised Code. [Duplicates (D)(2).]~~

~~(2) Notwithstanding the presumption established under division (D)(1) of this section for the offenses listed in that division other than a violation of division (A)(4) of section 2907.05 of the Revised Code [this GSI exception is confusing; striking the phrase puts it under the general rule], the sentencing court may impose a community control sanction or a combination of one or more community control sanctions instead of a prison term on an offender for a felony of the first or second degree or for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable if it makes determines both of the following findings:~~

~~(a) A community control sanction or a combination of One or more community control sanctions would adequately punish the offender and [this is the protection test; (b) deals with punishment] protect the public from future crime, because the applicable factors under section RC 2929.12 of the Revised Code indicating a lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.~~

~~(b) A community control sanction or a combination of One or more community control sanctions would not demean the seriousness of the offense adequately punish the offender [see note in (a)], because one or more factors under section RC 2929.12 of the Revised Code that indicate indicating that the offender's conduct was less serious than conduct normally constituting the offense are applicable, and they outweigh the applicable factors under that section that indicate indicating that the offender's conduct was more serious than conduct normally constituting the offense.~~

~~(E) **Certain Drug Offenses**~~

~~(1) Except as provided in division (F) of this section Unless the offense carries a mandatory prison term, for any drug offense that is a violation of any provision of under Chapter 2925. of the Revised Code and that is a felony of the third, fourth, or fifth degree felony, the applicability of a presumption under division (D) of this section in favor of a prison term or of division (B) or (C) of this section in determining whether to impose a prison term for the offense, or (D) shall be determined as specified in section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the Revised Code, whichever is applicable regarding the violation that chapter.~~

~~(2) If an offender who was convicted of or pleaded guilty to of a felony a felon violates the conditions of a community control sanction imposed for the offense solely by reason of~~

producing positive results on a drug test, the court, as punishment for the violation of the ~~sanction~~, shall not order that the offender be imprisoned unless the court determines on the record either of the following:

(a) The offender had been ordered as a ~~sanction for the felony~~ to participate in a drug treatment program, in a drug education program, or in narcotics anonymous or a similar program, and the offender continued to use illegal drugs after a reasonable period of participation in the program.

(b) The imprisonment of the offender for the violation is consistent with the purposes and principles of sentencing ~~set forth in section RC 2929.11 of the Revised Code.~~

(F) Mandatory Prison Term Offenses. [*Shown as stricken here; moves in streamlined form to §2929.14, which governs prison terms.*] ~~Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under sections 2929.02 to 2929.06, section 2929.14, section 2929.142, or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20 or 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code shall not reduce the term or terms pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code for any of the following offenses:~~

~~(1) Aggravated murder when death is not imposed or murder;~~

~~(2) Any rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape if, had the offender completed the rape that was attempted, the offender would have been guilty of a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and would be sentenced under section 2971.03 of the Revised Code;~~

~~(3) Gross sexual imposition or sexual battery, if the victim is less than thirteen years of age and if any of the following applies:~~

~~(a) Regarding gross sexual imposition, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and the victim of the previous offense was less than thirteen years of age;~~

~~(b) Regarding gross sexual imposition, the offense was committed on or after August 3, 2006, and evidence other than the testimony of the victim was admitted in the case corroborating the violation.~~

~~(c) Regarding sexual battery, either of the following applies:~~

~~(i) The offense was committed prior to August 3, 2006, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.~~

~~(ii) The offense was committed on or after August 3, 2006.~~

~~(4) A felony violation of section 2903.04, 2903.06, 2903.08, 2903.11, 2903.12, or 2903.13 of the Revised Code if the section requires the imposition of a prison term;~~

~~(5) A first, second, or third-degree felony drug offense for which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, or 4729.99 of the Revised Code, whichever is applicable regarding the violation, requires the imposition of a mandatory prison term;~~

~~(6) Any offense that is a first or second degree felony and that is not set forth in division (F)(1), (2), (3), or (4) of this section, if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses;~~

~~(7) Any offense that is a third degree felony and either is a violation of section 2903.04 of the Revised Code or an attempt to commit a felony of the second degree that is an offense of violence and involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person if the offender previously was convicted of or pleaded guilty to any of the following offenses:~~

~~(a) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the Revised Code prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;~~

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense listed in division (F)(7)(a) of this section that resulted in the death of a person or in physical harm to a person.

(8) Any offense, other than a violation of section 2923.12 of the Revised Code, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to a portion of the sentence imposed pursuant to division (D)(1)(a) of section 2929.14 of the Revised Code for having the firearm;

(9) Any offense of violence that is a felony, if the offender wore or carried body armor while committing the felony offense of violence, with respect to the portion of the sentence imposed pursuant to division (D)(1)(d) of section 2929.14 of the Revised Code for wearing or carrying the body armor;

(10) Corrupt activity in violation of section 2923.32 of the Revised Code when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree;

(11) Any violent sex offense or designated homicide, assault, or kidnapping offense if, in relation to that offense, the offender is adjudicated a sexually violent predator;

(12) A violation of division (A)(1) or (2) of section 2921.36 of the Revised Code, or a violation of division (C) of that section involving an item listed in division (A)(1) or (2) of that section, if the offender is an officer or employee of the department of rehabilitation and correction;

(13) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, or an investigator of the bureau of criminal identification and investigation, as defined in section 2903.11 of the Revised Code, with respect to the portion of the sentence imposed pursuant to division (D)(5) of section 2929.14 of the Revised Code;

(14) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the offender has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 of the Revised Code, or three or more violations of any combination of those divisions and offenses, with respect to the portion of the sentence imposed pursuant to division (D)(6) of section 2929.14 of the Revised Code;

(15) Kidnapping, in the circumstances specified in section 2971.03 of the Revised Code and when no other provision of division (F) of this section applies.

(G) **OVI** [*Moved to new §2929.143.*] Notwithstanding divisions (A) to (E) of this section, if an offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, the court shall impose upon the offender a mandatory term of local incarceration or a mandatory prison term in accordance with the following:

(1) If the offender is being sentenced for a fourth degree felony OVI offense and if the offender has not been convicted of and has not pleaded guilty to a specification of the type described in section 2941.1413 of the Revised Code, the court may impose upon the offender a mandatory term of local incarceration of sixty days or one hundred twenty days as specified in division (G)(1)(d) of section 4511.19 of the Revised Code. The court shall not reduce the term pursuant to section 2929.20, 2967.193, or any other provision of the Revised Code. The court that imposes a mandatory term of local incarceration under this division shall specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender shall serve the term in the type of facility specified by the court. A mandatory term of local incarceration imposed under division (G)(1) of this section is not subject to extension under section 2967.11 of the Revised Code, to a period of post-release control under section 2967.28 of the Revised Code, or to any other Revised Code provision that pertains to a prison term except as provided in division (A)(1) of this section.

(2) If the offender is being sentenced for a third degree felony OVI offense, or if the offender is being sentenced for a fourth degree felony OVI offense and the court does not impose a mandatory term of local incarceration under division (G)(1) of this section, the court shall impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or shall impose upon the offender a mandatory prison term of sixty days or one hundred twenty days as specified in division (G)(1)(d) or (e) of section 4511.19

of the Revised Code if the offender has not been convicted of and has not pleaded guilty to a specification of that type. The court shall not reduce the term pursuant to section 2929.20, 2967.193, or any other provision of the Revised Code. The offender shall serve the one-, two-, three-, four-, or five-year mandatory prison term consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense. In no case shall an offender who once has been sentenced to a mandatory term of local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OVI offense be sentenced to another mandatory term of local incarceration under that division for any violation of division (A) of section 4511.19 of the Revised Code. In addition to the mandatory prison term described in division (G)(2) of this section, the court may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve the prison term prior to serving the community control sanction. The department of rehabilitation and correction may place an offender sentenced to a mandatory prison term under this division in an intensive program prison established pursuant to section 5120.033 of the Revised Code if the department gave the sentencing judge prior notice of its intent to place the offender in an intensive program prison established under that section and if the judge did not notify the department that the judge disapproved the placement. Upon the establishment of the initial intensive program prison pursuant to section 5120.033 of the Revised Code that is privately operated and managed by a contractor pursuant to a contract entered into under section 9.06 of the Revised Code, both of the following apply:

(a) The department of rehabilitation and correction shall make a reasonable effort to ensure that a sufficient number of offenders sentenced to a mandatory prison term under this division are placed in the privately operated and managed prison so that the privately operated and managed prison it has full occupancy.

(b) Unless the privately operated and managed prison has full occupancy, the department of rehabilitation and correction shall not place any offender sentenced to a mandatory prison term under this division in any intensive program prison established pursuant to section 5120.033 of the Revised Code other than the privately operated and managed prison.

(H) DNA/Sexual Predators [*Concept moves to the sentencing hearing statute—§2929.19.*] If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a felony committed on or after January 1, 1997, the judge shall require the offender to submit to a DNA specimen collection procedure pursuant to section 2901.07 of the Revised Code.

(I) SORN Duties [*Already covered by the sentencing hearing statute—§2929.19.*] If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under division (A)(2) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that section, or, if required under division (A)(6) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that division.

(J) Attempts [*Already covered by the attempts statute, §2923.02(E).*]

(1) Except as provided in division (J)(2) of this section, when considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit an offense in violation of section 2923.02 of the Revised Code, the sentencing court shall consider the factors applicable to the felony category of the violation of section 2923.02 of the Revised Code instead of the factors applicable to the felony category of the offense attempted.

(2) When considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense, the sentencing court shall consider the factors applicable to the felony category that the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt.

(K)(3) Drug Abuse Offense Defined As used in this section, "drug abuse offense" has the same meaning as in section 2925.01 of the Revised Code.

~~(L) GPS [Moved to §2929.17 and made available for all offenses. Change is considered non-substantive, since courts have general authority (“including but not limited to”) to order it today in any case.] At the time of sentencing an offender who is a sexual predator for any sexually oriented offense, if the offender does not serve a prison term or jail term, the court may require that the offender be monitored by means of a global positioning device. If the court requires such monitoring, the cost of monitoring shall be borne by the offender. If the offender is indigent, the cost of compliance shall be paid by the crime victims reparations fund.~~

Here’s how §2929.13 would look if the amendments were made.

§2929.13. Guidance on Prison vs. Community Control—As Amended

(A) **Discretion; Economy** Unless a specific sanction is required or precluded by law, a court that imposes a sentence on an offender for a felony shall consider and may impose any sanction or combination of sanctions on the offender that are provided in RC 2929.14 to 2929.18. The sentence shall not impose an unnecessary burden on state or local government resources.

(B) **Findings Re F-4s & F-5s**

(1) In sentencing an offender for a fourth or fifth degree felony, other than certain drug offenses, OVI, other mandatory terms, or when otherwise specified in this section, the sentencing court shall determine whether any of the following apply:

(a) In committing the offense, the offender did any of the following:

- Caused physical harm to a person;
- Attempted to cause or made an actual threat of physical harm to a person with a deadly weapon;
- Attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person.

(b) The offender held a public office or position of trust and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others.

(c) The offender committed the offense for hire or as part of an organized criminal activity.

(d) The offense is a sex offense under RC 2907.03, 2907.04, 2907.05, 2907.22, 2907.31, 2907.321, 2907.322, 2907.323, or 2907.34.

(e) The offender, at the time of the offense, was serving or previously served a prison term.

(f) The offender committed the offense while under a community control sanction or while released from custody on a bond or personal recognizance.

(g) The offender committed the offense while in possession of a firearm.

(2)

(a) If the court determines that division (B)(1) applies and, after considering the factors set forth in RC 2929.12, concludes that a prison term is consistent with the purposes and principles of sentencing set forth in RC 2929.11, the court shall impose a prison term.

(b) Except as provided in division (E), if the court determines that division (B)(1) does not apply and, after considering the factors set forth in RC 2929.12, concludes that community control is consistent with the purposes and principles of sentencing set forth in RC 2929.11, the court shall impose one or more community control sanctions.

(c) Otherwise the court shall comply with the purposes and principles of sentencing under RC 2929.11 and with RC 2929.12.

(C) **F-3s** Unless the offense carries a mandatory prison term, in determining whether to impose a prison term for a third degree felony or a felony drug offense that is specified as being subject to this division, the court shall comply with the purposes and principles of sentencing under RC 2929.11 and with RC 2929.12.

(D) Presumption for F-1s & F-2s, Etc.

(1) Unless the offense carries a mandatory prison term, for a first or second degree felony, or for a felony drug offense or any other offense for which a presumption in favor of a prison term applies, it is presumed that a prison term is necessary to comply with the purposes and principles of sentencing under RC 2929.11.

(2) Notwithstanding the presumption under division (D)(1), the court may impose one or more community control sanctions instead of a prison term on an offender for which a presumption in favor of a prison term is specified as being applicable if it determines both of the following:

(a) One or more community control sanctions would adequately protect the public from future crime, because the applicable factors under RC 2929.12 indicating a lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.

(b) One or more community control sanctions would adequately punish the offender, because one or more factors under RC 2929.12 indicating that the offender's conduct was less serious than conduct normally constituting the offense outweigh the applicable factors under that section indicating that the offender's conduct was more serious than conduct normally constituting the offense.

(E) Certain Drug Offenses

(1) Unless the offense carries a mandatory prison term, for any drug offense under Chapter 2925 that is a third, fourth, or fifth degree felony, the applicability of division (B), (C), or (D) shall be determined as specified in that chapter.

(2) If a felon violates the conditions of a community control sanction solely by producing positive results on a drug test, the court, as punishment for the violation, shall not order that the offender be imprisoned unless the court determines on the record either of the following:

(a) The offender had been ordered to participate in a drug treatment program, in a drug education program, or in narcotics anonymous or a similar program, and the offender continued to use illegal drugs after a reasonable period of participation in the program.

(b) The imprisonment of the offender for the violation is consistent with the purposes and principles of sentencing in RC 2929.11.

Prison Terms—§2929.14

The list of offenses and activities carrying mandatory prison terms from current §2929.13(F) to division (B) of this section, where it more logically fits. This would make §2929.14 the Chapter's longest section, but the increases are offset by mechanical changes.

As for *Foster*, this draft reconciles the oddities regarding repeat violent offenders (RVO) and consecutive sentences in a manner consistent with the spirit of the case. For example:

- Regarding the findings required before imposing discretionary consecutive sentences, *Foster's* meaning is clear. But the application is difficult. Current §2929.14(E)(4)—(D)(3) below—requires findings not allowed under *Foster*. In ¶97, *Foster* says the division should be severed in its *entirety*. But, to do so goes beyond *Foster* and repeals the sentencing court's authority to order consecutive sentences. Applying the spirit, not the letter, of *Foster*, the draft saves consecutive sentencing while eliminating the offending findings.

- The Court stated in Syllabus #5 that the RVO and major drug offender (MDO) “specifications ... are unconstitutional.” In reality, the *specifications* are not the problem. They merely make clear that the judge or jury must make the RVO and MDO findings beyond a reasonable doubt before sentencing. That’s probably why, in providing a remedy, the Court does not sever the specifications. The problem was the *findings* required by §2929.14 in RVO and MDO cases, once the specifications were proved.
- *Foster* found unconstitutional and severed the mandatory RVO and MDO provisions. Of course, the Court didn’t intend to completely remove the relevant RVO and MDO penalties, merely the required findings. As it noted, “The excised portions remove only the presumptive and judicial findings that relate to ‘upward departures,’ that is, the findings necessary to increase the potential prison penalty.” Thus, this draft retains the general language on mandatory RVOs in (D)(2)(b) and MDOs in (D)(3)(b).

§2929.14. Prison Terms—Showing Amendments

(A) **Basic Ranges.** ~~Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(4), (D)(5), (D)(6), (G), or (L) of this section and except in relation to an offense for which when~~ a sentence of death or life imprisonment is to ~~or a sentence as a sexually violent predator must~~ be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to for a felony under this chapter, the court shall impose a definite prison term that shall be one of the following as follows:

- (1) For a ~~felony of the first degree~~ felony, the prison term shall be three, four, five, six, seven, eight, nine, or ten years.
- (2) For a ~~felony of the second degree~~ felony, the prison term shall be two, three, four, five, six, seven, or eight years.
- (3) For a ~~felony of the third degree~~ felony, the prison term shall be one, two, three, four, or five years.
- (4) For a ~~felony of the fourth degree~~ felony, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.
- (5) For a ~~felony of the fifth degree~~ felony, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

(B) **Guidance on Shortest Term** [*Struck by Foster.*] ~~Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(5), (D)(6), or (G), or (L) of this section, in section 2907.02 or 2907.05 of the Revised Code, or in Chapter 2925. of the Revised Code, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender, the court shall impose the shortest prison term authorized for the offense pursuant to division (A) of this section, unless one or more of the following applies:~~

- (1) ~~The offender was serving a prison term at the time of the offense, or the offender previously had served a prison term.~~
- (2) ~~The court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others.~~

(C) **Guidance on Longest Term** [*Struck by Foster.*] ~~Except as provided in division (G) or (L) of this section or in Chapter 2925. of the Revised Code, the court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of the offense, upon offenders who pose the greatest likelihood of committing future crimes, upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section.~~

(B) Mandatory Prison Terms *[This division is not strictly necessary, but is useful as a list of mandatory prison terms in one place. It moves from current §2929.13(F). In formal bill form, this would all appear stricken from the former section and inserted as wholly new law here. It is included here as it would have been amended as part of §2929.13 to allow you to see how it was shortened. Also, offense names are used in cross-references instead of section references for quicker recognition.]* ~~Notwithstanding divisions (A) to (E) of this section, the~~ The court shall impose a mandatory prison term or terms under ~~sections 2929.02 to 2929.06, section 2929.14, section 2929.142, or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20 or 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code shall not reduce the term or terms pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967, or Chapter 5120. of the Revised Code~~ *[the non-reduction phrase would be made part of the definition of “mandatory prison term” in current 2929.01(Y), saving space here and elsewhere]* relevant sentencing statutes for any of the following offenses *[reordered to group similar offenses]:*

- (1) Aggravated murder when death is not imposed or murder;
- (2) Felonious assault, aggravated assault, or assault, when the victim is a peace officer or an investigator of the bureau of criminal identification and investigation and the victim suffered serious physical harm *[clarified & moved from current (7)]*;
- (3) Any other first or second degree felony if the offender has a prior conviction for aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses *[streamlined & moved from current (6)]*;
- (4) Any third degree felony involuntary manslaughter, or any attempt to commit a second degree felony offense of violence that involved attempted or actual serious physical harm to a person, if the offender has a prior conviction for aggravated murder, murder, involuntary manslaughter, rape, the former offense of felonious sexual penetration, another first or second degree felony that resulted in death or physical harm to a person, complicity in or an attempt to commit any of those offenses, or an offense under existing or former law of this state, another state, or the United States that is substantially equivalent to those offenses; *[streamlined from current (7)]*
- (5) ~~Any rape, regardless of whether force was involved and regardless of the age of the victim, or an~~ *[in current (F)(2)]*;
- (6) ~~An attempt to commit rape if, had the offender rape been completed the rape that was attempted, the offender would have been subject to a sentence of any term of life imprisonment or life imprisonment without parole for the rape~~ *[in current (2)]*;
- (7) ~~Gross sexual imposition or sexual battery, if the victim is under age thirteen years of age and if any one of the following conditions in RC 2907.05(A)(4)(a) or (b)~~ *[already covers the following]* applies:
 - (a) ~~Regarding gross sexual imposition, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and the victim of the previous offense was under thirteen years of age;~~
 - (b) ~~Regarding gross sexual imposition, the offense was committed on or after August 3, 2006, and evidence other than the testimony of the victim was admitted in the case corroborating the violation.~~ *[Note: The Commission has several concerns about these conditions, including: whether one offense should be singled out for greater corroboration; whether corroboration makes it more difficult to take a plea (since the likelihood of corroboration is still uncertain) or chills the right to trial by jury; and whether it causes confusion about a mandatory sentence once the offender reaches prison, since corroboration isn't likely to be in the record.]*
- (8) Sexual battery, if the victim is under age thirteen and either of the following applies:
 - (i)(a) ~~The offense was committed prior to before~~ August 3, 2006, the offender previously was convicted of or pleaded guilty to has a prior conviction for rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was under age thirteen years of age.
 - (i)(b) ~~The offense was committed on or after August 3, 2006.~~

(9) Any offense for which the offender is found to be a sexually violent predator [streamlined & moved from current (11)];

(10) Repeat failure to register under the SORN Law when required by RC 2950.99;

(4)(11) A felony violation of section 2903.04, 2903.06, 2903.08, 2903.11, 2903.12, or 2903.13 of the Revised Code if the section requires the imposition of a prison term involuntary manslaughter, aggravated vehicular homicide, vehicular homicide, aggravated vehicular assault, or vehicular assault, when the offender was under the influence of alcohol or drugs or when otherwise required by statute [assaults against peace officers fleshed out & moved to (2)];

(12) Operating a vehicle under the influence of alcohol or drugs when the offender is convicted of a RC 2941.1413 specification for having five prior OVI offenses in twenty years;

~~(5)(13) A first, second, or third degree felony drug offense for which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, or 4729.99 of the Revised Code, whichever is applicable regarding the violation, requires the imposition of a mandatory prison term, when required by statute;~~

~~(6) Any offense that is a first or second degree felony and that is not set forth in division (F)(1), (2), (3), or (4) of this section, if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses [moved to (3)];~~

~~(7) Any offense that is a third degree felony and either is a violation of section 2903.04 of the Revised Code or an attempt to commit a felony of the second degree that is an offense of violence and involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person if the offender previously was convicted of or pleaded guilty to any of the following offenses:~~

~~(a) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the Revised Code prior to September 3, 1996, a felony of the first or second degree that resulted in death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;~~

~~(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense listed in division (F)(7)(a) of this section that resulted in the death of a person or in physical harm to a person. [streamlined & moved to (4)]~~

[Current (F)(8), (9), (13), & (14) cover certain specifications, but do not mention other specs carrying mandatory prison terms. Since the list grows during each legislative session, we suggest the following shorthand description:]

~~(8)(14) Any offense, other than a violation of section 2923.12 of the Revised Code, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to a portion of the sentence imposed pursuant to division (D)(1)(a) of section 2929.14 of the Revised Code for having the firearm~~

Any mandatory prison term imposed for a conviction on a specification under Chapter 2941;

~~(9) Any offense of violence that is a felony, if the offender wore or carried body armor while committing the felony offense of violence, with respect to the portion of the sentence imposed pursuant to division (D)(1)(d) of section 2929.14 of the Revised Code for wearing or carrying the body armor; [see (12), above]~~

~~(10)(15) Corrupt activity in violation of section RC 2923.32 of the Revised Code when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree felony;~~

~~(11) Any violent sex offense or designated homicide, assault, or kidnapping offense if, in relation to that offense, the offender is adjudicated a sexually violent predator [moved to (A)(6)];~~

~~(12)(16) A violation of division (A)(1) or (2) of section 2921.36 of the Revised Code, or a violation of division (C) of that section involving an item listed in division (A)(1) or (2) of that section Illegally conveying improper items, if the offender is an officer or employee of the department of rehabilitation and correction, as provided in RC 2921.36.~~

~~(13) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, with respect to the portion of the sentence imposed pursuant to division (D)(5) of section 2929.14 of the Revised Code; [see new (12)]~~

~~(14) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the offender has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 of the Revised Code, or three or more violations of any combination of those divisions and offenses, with respect to the portion of the sentence imposed pursuant to division (D)(6) of section 2929.14 of the Revised Code. [See new (12).]~~

~~(15)(17) Kidnapping, in the circumstances specified in section 2971.03 of the Revised Code and when no other provision of division (F) of this section applies [unnecessary clause].~~

~~(D)~~(C) **Surpenalties**

(1) **Gun Specs**

(a) Except as provided in division ~~(D)~~(C)(1)(e) of this section, if an a felony offender who is convicted of or pleads guilty to of a felony also is convicted of or pleads guilty to of a specification of the type described in section 2941.141, 2941.144, or 2941.145 of the Revised Code firearm specification, the court shall impose on the offender one of the following mandatory prison terms:

(i) A prison term of six years if the specification is of the type described in section for a RC 2941.144 of the Revised Code specification that charges the offender with having a firearm that is an automatic firearm or that was a firearm equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony;

(ii) A prison term of three years if the specification is of the type described in section for a RC 2941.145 of the Revised Code specification that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm possession of, or using it a firearm to facilitate the offense;

(iii) A prison term of one year if the specification is of the type described in section for a RC 2941.141 of the Revised Code specification that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

(b) **Limitation** ~~If a court imposes a prison term on an offender under division (D)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. [Ditto re "mandatory prison term".] A court shall not impose more than one prison term on an offender under division ~~(D)~~(C)(1)(a) through (f) of this section for felonies committed as part of the same act or transaction, unless authorized by division (C)(1)(c) or (d). [Subject to change in pending S.B. 184.]~~

(c) **Drive-By Add-On** ~~Except as provided in division (B)(1)(a) of this section, if an offender who is convicted of or pleads guilty to a violation of improperly discharging a firearm under section RC 2923.161 of the Revised Code or to of a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to of a specification of the type described in section RC 2941.146 of the Revised Code specification that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of section 2923.161 of the Revised Code or for the other felony offense [covered under consecutives, below] under division (A), ~~(D)(2), or (3) of this section~~ (C)(1)(a), shall impose an additional mandatory prison term of five years ~~upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code [ditto re "mandatory prison term"]. A court shall not impose more than one additional prison term on an offender under division (D)(1)(c) of this section for felonies committed as part of the~~~~

same act or transaction. [~~Covered by (C)(1)(b).~~] If a court imposes an additional prison term on an offender under division (D)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (D)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense. [~~Last sentence is covered by reference to (C)(1)(a) 2 sentences earlier.~~]

(d) **Body Armor Add-On** If an offender who is convicted of or pleads guilty to an of a felony offense of violence that is a felony also is convicted of or pleads guilty to of a specification of the type described in section RC 2941.1411 of the Revised Code specification that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a mandatory prison term of two years. The prison term so imposed shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. [~~Ditto re "mandatory prison term".~~] A court shall not impose more than one prison term on an offender under division (D)(1)(d) of this section for felonies committed as part of the same act or transaction. [~~Covered by (C)(1)(b).~~] If a The court imposes an additional may impose a prison term under this division in addition to a prison term imposed under division ~~(D)(C)~~(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (D)(1)(d) of this section.

(e) **Exceptions** The court shall not impose any of the additional prison terms described in under division (C)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of if the underlying offense is carrying a concealed weapon under section RC 2923.12 or a liquor premises firearm violation under 2923.123 of the Revised Code.

[¶]The court shall not impose any of the additional prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of if the underlying offense is having a weapon under a disability under section RC 2923.13 of the Revised Code unless all both of the following apply:

- The offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree felony.
- (ii) Less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(f) **Shooting at Peace Officers** If an offender is convicted of or pleads guilty to of a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to of a specification of the type described in section RC 2941.1412 of the Revised Code specification that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in section 2935.01 of the Revised Code or a corrections officer as defined in section 2941.1412 of the Revised Code, the court, after imposing a prison term on the offender for the felony offense under division (A), (D)(2), or (D)(3) of this section [covered in the consecutive rules below], shall impose an additional mandatory prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code [~~ditto re "mandatory prison term"~~]. A court shall not impose more than one additional prison term on an offender under division (D)(1)(f) of this section for felonies committed as part of the same act or transaction. [~~Covered by (C)(1)(b).~~] If a court imposes an additional prison term on an offender under this division (D)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division ~~(D)(C)~~(1)(a) or (c) of this section relative to the same offense.

(2) Repeat Violent Offenders

(a) **Discretionary RVOs** [~~Amended to reflect the spirit of Foster despite reenactment by HB 95.~~] If division ~~(D)(C)~~(2)(b) of this section does not apply, the court may impose on an offender, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

- (i) ~~The offender is convicted of or pleads guilty to of a specification of the type described in section RC 2941.149 of the Revised Code that the offender is a repeat violent offender specification.~~
- (ii) ~~The offense of which the offender is convicted or to which the offender currently pleads guilty is aggravated of any of the following:~~
- o ~~Aggravated murder, murder, terrorism, or a first degree felony offense of violence, and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any when permitted;~~
 - o ~~Any felony of the second degree that is an felony offense of violence and when the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.~~
- (iii) ~~The court imposes the longest prison term for the offense that is not life imprisonment without parole.~~
- [Reflects spirit of Foster.]* (iv) ~~The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are inadequate to punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism.~~
- [Reflects spirit of Foster.]* (v) ~~The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are demeaning to the seriousness of the offense, because one or more of the factors under section 2929.12 of the Revised Code indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that section indicating that the offender's conduct is less serious than conduct normally constituting the offense.~~
- (b) **Mandatory RVOs** *[Findings severed by Foster and removed by HB 95.]* The court shall impose on an offender the longest prison term authorized or required for the offense and shall impose on the offender an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:
- (i) ~~The offender is convicted of or pleads guilty to of a specification of the type described in section RC 2941.149 of the Revised Code that the offender is a repeat violent offender specification.~~
- (ii) ~~The offender within Within the preceding twenty years, the offender has been convicted of or pleaded guilty to three or more convictions for offenses described in division (DD)(1) of section RC 2929.01 of the Revised Code, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.~~
- (iii) ~~The offense or offenses of which the offender is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person of any of the offenses referred to in division (C)(2)(a)(ii).~~

(c) For purposes of division ~~(D)~~(C)(2)(b) of this section, two or more offenses committed at the same time or as part of the same act or event shall be considered one offense, and that one offense shall be the offense with the greatest penalty.

~~(d) A sentence imposed under division (D)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20 or section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. [Ditto re "mandatory prison term".] The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense. [Covered by (D), below.]~~

~~(e) [Struck by Foster.] When imposing a sentence pursuant to division (D)(2)(a) or (b) of this section, the court shall state its findings explaining the imposed sentence.~~

(3) Major Drug Offenders, Certain Corrupt Activities & Attempted Rapes

~~(a) Except when an offender commits a violation of section 2903.01 or 2907.02 of the Revised Code, and the penalty imposed for the violation is life imprisonment or commits a violation of section 2903.02 of the Revised Code, if the~~ The court shall impose a mandatory prison term of ten years in all of the following situations, unless a longer prison term is otherwise required:

- ~~If an offender commits a violation of drug offense under section RC 2925.03 or 2925.11 of the Revised Code and that section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, if the;~~
- If an offender commits a felony violation of drug offense under section RC 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161, 4729.37, or 4729.61, division (C) or (D) of section RC 3719.172(C) or (D), division (C) of section 4729.51(C), or division (J) of section 4729.54(J) of the Revised Code that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in section RC 2941.1410 of the Revised Code charging that the offender is a major drug offender, if specification;
- ~~If the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if felony;~~
- If the offender is guilty of an attempted violation of section 2907.02 of the Revised Code rape and, had the offender completed the violation of section RC 2907.02 of the Revised Code that was attempted, the offender would have been subject to a any sentence of life imprisonment or life imprisonment without parole for the violation of section 2907.02 of the Revised Code, the court shall impose upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant to section 2929.20 or Chapter 2967. or 5120. of the Revised Code [ditto re "mandatory prison term"].

~~(b) [Findings severed by Foster.] The court imposing a prison term on an offender under division (D)(C)(3)(a) of this section may has discretion to impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to the term imposed under division (D)(3)(a) of this section and, if applicable, divisions (D)(1) and (2) of this section, makes both of the findings set forth in divisions (D)(2)(a)(iv) and (v) of this section.~~

(4) Gang Spec [*Streamlined & moved from current (I).*] If an offender who is guilty of a felony offense of violence also is guilty of a RC 2941.142 criminal gang specification, the court shall impose an additional prison term of one, two, or three years.

(5) School Zone Spec [*Streamlined & moved from current (J).*] If an offender who is guilty of aggravated murder, murder, or a first, second, or third degree felony offense of violence also is guilty of a RC 2941.143 school safety zone specification, the court shall impose an additional prison term of two years.

(4) Felony OVIs [*See new §2929.143.*] ~~If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the sentencing court shall impose upon the offender a mandatory prison term in accordance with~~

that division. In addition to the mandatory prison term, if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced for a third degree felony OVI offense, the sentencing court may sentence the offender to an additional a prison term of any duration specified in division (A)(3) of this section.

In either case, the additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the mandatory prison term. The total of the additional prison term imposed under division (D)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense. If the court imposes an additional prison term under division (D)(4) of this section, the offender shall serve the additional prison term after the offender has served the mandatory prison term required for the offense. In addition to the mandatory prison term or mandatory and additional prison term imposed as described in division (D)(4) of this section, the court also may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction. If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code and the court imposes a mandatory term of local incarceration, the court may impose a prison term as described in division (A)(1) of that section.

~~(5)(6)~~ **Aggravated Vehicular Homicide: Peace Officer Victim** [Moves to §2929.142.] If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1414 of the Revised Code that charges that the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, the court shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (D)(5) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(5) of this section for felonies committed as part of the same act.

~~(6)(7)~~ **Aggravated Vehicular Homicide: Prior OVIs** [Moves to §2929.142.] If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1415 of the Revised Code that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 of the Revised Code, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (D)(6) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(6) of this section for felonies committed as part of the same act.

~~(E)(D)~~ **Consecutive Sentences**

(1) **Specs** (a) Subject to division (E)(1)(b) of this section, if ~~If~~ a mandatory prison term is imposed upon an offender pursuant to ~~under~~ division (D)(B)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony, if a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(c) of this section for committing a felony specified in that division by discharging a firearm from a motor vehicle, or if both types of mandatory prison terms are imposed, the offender shall serve any the mandatory prison term imposed under either division consecutively to any other mandatory prison term imposed under either division or under division (D)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (D)(2), or (D)(3) of this section or any other section of the Revised

Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon on the offender.

~~(b) If a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(d) of this section for wearing or carrying body armor while committing an offense of violence that is a felony, the offender shall serve the mandatory term so imposed consecutively to any other mandatory prison term imposed under that division or under division (D)(1)(a) or (c) of this section, consecutively to and prior to any prison term imposed for the underlying felony under division (A), (D) (B)(2), or (D) (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender. [Merged into above ¶.]~~

~~(c) If a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(f) of this section, the offender shall serve the mandatory prison term so imposed consecutively to and prior to any prison term imposed for the underlying felony under division (A), (D)(2), or (D)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender. [Merged into above ¶.]~~

(2) Other Mandatory Consecutives The following offenders shall serve any new prison term imposed consecutively to any term being served and to any other prison term previously or subsequently imposed on the offender:

~~(a) If an offender who is an An inmate in a jail, prison, or other residential detention facility violates who commits aggravated riot, riot, escape, or aiding escape or resisting authority under section RC 2917.02, 2917.03, 2921.34, or 2921.35 of the Revised Code, if an offender who is under detention at a detention facility who commits a felony weapon under detention violation under of section RC 2923.131 of the Revised Code, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is offender under detention at a detention facility who commits another felony while the offender is an escapee in violation of section RC 2921.34 of the Revised Code, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.;~~

~~(3)(b) If a prison term is imposed for a violation of division (B) of Any person who commits aggravated robbery of a law enforcement officer's weapon under section RC 2911.01(B) of the Revised Code, a violation of division (A) of theft under section RC 2913.02(A) of the Revised Code in which when the stolen property is a firearm or dangerous ordnance, or a felony violation of division (B) of failure to comply with a police officer under section RC 2921.331(B) of the Revised Code, the offender shall serve that prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.;~~

~~(4)(3) Discretionary Consecutives [Foster called for severing this entire division, which would remove authority to impose consecutive terms. The draft instead severs the findings formerly required before imposing certain consecutive terms.] If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively, if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:~~

~~(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.~~

~~(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of~~

~~any of the courses of conduct adequately reflects the seriousness of the offender's conduct.~~

~~(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender or concurrently.~~

~~(5) If a mandatory prison term is imposed upon an offender pursuant to division (D)(5) or (6) of this section, the offender shall serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 of the Revised Code. If a mandatory prison term is imposed upon an offender pursuant to division (D)(5) of this section, and if a mandatory prison term also is imposed upon the offender pursuant to division (D)(6) of this section in relation to the same violation, the offender shall serve the mandatory prison term imposed pursuant to division (D)(5) of this section consecutively to and prior to the mandatory prison term imposed pursuant to division (D)(6) of this section and consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 of the Revised Code. [Subsumed by general rule in (C)(1).]~~

~~(6) When consecutive prison terms are imposed pursuant to division (E)(1), (2), (3), (4), or (5) of this section, the term to be served is the aggregate of all of the terms so imposed. [If necessary, this can be covered by the definition of "prison term" or "stated prison term"]~~

~~(F)~~**(E) Post-Release Control**

~~(1) **Mandatory PRC** If a court imposes a prison term for a ~~felony of the first or second degree~~ felony, for a ~~felony of the second degree~~, for a any felony sex offense, or for a ~~felony of the third degree~~ felony that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, ~~in accordance with that division~~. If a court imposes a sentence including a prison term of a type described in this division on On or after July 11, 2006, the failure of a court to include a post-release control requirement in the sentence pursuant to under this division does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender under division (B) of section RC 2967.28(B) of the Revised Code. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control. [Merged into new (3) below.]~~

~~(2) **Discretionary PRC** If a court imposes a prison term for a ~~felony of the third, fourth, or fifth degree~~ felony that is not subject to division ~~(F)(E)(1) of this section~~, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, ~~in accordance with~~ under that division, if the parole board determines that a period of post-release control is necessary.~~

~~(3) **Correcting Failure to Notify** Section RC 2929.191 of the Revised Code applies if, prior to before July 11, 2006, a court imposed a sentence including a prison term of a type described in this division (E)(1) or (2) and failed to include in the sentence pursuant to this division a statement regarding post-release control. [Split from current (2) to apply to (1) & (2) and cut redundancy.]~~

~~(G)~~**(F) Sexual Predator Sentencing** The court shall impose sentence upon the offender in accordance with section under the RC 2971.03 of the Revised Code, and Chapter 2971. of the Revised Code applies regarding the prison term or term of life imprisonment without parole imposed upon the offender and the service of that term of imprisonment sexual predator provisions if any of the following apply:

~~(1) A person is ~~convicted of or pleads guilty to~~ of a violent sex offense or a designated homicide, assault, or kidnapping offense, and, in relation to that offense, the offender is adjudicated a sexually violent predator.~~

~~(2) A person is ~~convicted of or pleads guilty to~~ of a violation of division ~~(A)(1)(b) of section RC 2907.02(A)(1)(b)~~ of the Revised Code committed on or after January 2, 2007, and either the~~

court does not impose a sentence of life without parole ~~when authorized pursuant to division (B) of section under RC 2907.02(B) of the Revised Code, or division (B) of section 2907.02 of the Revised Code that division~~ provides that the court shall not [?] sentence the offender pursuant to section under RC 2971.03 of the Revised Code.

(3) A person is ~~convicted of or pleads guilty to~~ of attempted rape committed on or after January 2, 2007, and a specification of the type described in section RC 2941.1418, 2941.1419, or 2941.1420 of the Revised Code attempted rape specification.

(4) A person is ~~convicted of or pleads guilty to a violation of section of kidnapping under RC 2905.01 of the Revised Code committed on or after the effective date of this amendment, and that section requires the court to sentence the offender pursuant to section under RC 2971.03 of the Revised Code.~~

(5) A person is ~~convicted of or pleads guilty to~~ of aggravated murder committed on or after the effective date of this amendment, and division (A)(2)(b)(ii) of section RC 2929.022(A)(2)(b)(ii), division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d) of section 2929.03(A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d), or division (A) or (B) of section 2929.06(A) or (B) of the Revised Code requires the court to sentence the offender pursuant to division (B)(3) of section under RC 2971.03(B)(3) of the Revised Code.

(6) A person is ~~convicted of or pleads guilty to~~ of murder committed on or after the effective date of this amendment, and division (B)(2) of section RC 2929.02(B)(2) of the Revised Code requires the court to sentence the offender pursuant to section RC 2971.03 of the Revised Code.

~~(H) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a prison term or term of imprisonment under this section, sections 2929.02 to 2929.06 of the Revised Code, section 2929.142 of the Revised Code, section 2971.03 of the Revised Code, or any other provision of law, section 5120.163 of the Revised Code applies regarding the person while the person is confined in a state correctional institution. [Covered by §5120.163, which tells DRC to examine new inmates for contagious diseases.]~~

~~[The next 2 divisions move to new (B)(4) & (5) above.]~~

~~(I) If an offender who is convicted of or pleads guilty to a felony that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.142 of the Revised Code that charges the offender with having committed the felony while participating in a criminal gang, the court shall impose upon the offender an additional prison term of one, two, or three years.~~

~~(J) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.143 of the Revised Code that charges the offender with having committed the offense in a school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years, consecutively to and prior to the prison term imposed for the underlying offense.~~

~~(K)(G) Theme Prison Referrals At the time of sentencing, the court may recommend the offender for placement in a program of shock incarceration program under section RC 5120.031 of the Revised Code or for placement in an intensive program prison under section RC 5120.032 of the Revised Code, disapprove placement of the offender in a either program of shock incarceration or an intensive program prison of that nature, or make no recommendation on placement of the offender.~~

~~[¶] In no case shall the department of rehabilitation and correction place the offender in a either program or prison of that nature unless the department determines as specified in section 5120.031 or 5120.032 of the Revised Code, whichever is applicable, that the offender is eligible for the placement under section RC 5120.031 or 5120.032.~~

~~If the court disapproves placement of the offender in a either program or prison of that nature, the department of rehabilitation and correction shall not place the offender in any the program of shock incarceration or intensive program prison.~~

~~If the court recommends placement of the offender in a either program of shock incarceration or in an intensive program prison, and if the offender is subsequently placed in the recommended~~

program ~~or prison~~, the department shall notify the court of the placement and shall include with the notice a brief description of the placement.

If the court recommends placement of the offender in a either program ~~of shock incarceration or in an intensive program prison~~ and the department does not subsequently place the offender in the ~~recommended program or prison~~, the department shall ~~send a notice to~~ notify the court indicating why the offender was not placed in the recommended program ~~or prison~~.

If the court does not make a recommendation under this division with respect to an offender and if the department determines ~~as specified in section RC 5120.031 or 5120.032 of the Revised Code, whichever is applicable, [covered above & below]~~ that the offender is eligible for placement in a program or prison of that nature, the department shall screen the offender ~~and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited~~. If there is an available program ~~of shock incarceration or an intensive program prison~~ for which the offender is suited, the department shall notify the court of the proposed placement ~~of the offender as specified in section RC 5120.031 or 5120.032 of the Revised Code~~ and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

~~(L)~~(H) **Certain Vehicular Homicides** If a person ~~is convicted of or pleads guilty to~~ commits aggravated vehicular homicide ~~in violation of division (A)(1) of section under RC 2903.06 of the Revised Code and division (B)(2)(c) of that section applies~~, the person shall be sentenced pursuant to under section RC 2929.142 of the Revised Code, when applicable.

Here is how §2929.14 would look if the amendments were made.

§2929.14. Prison Terms—As Amended

(A) **Basic Ranges.** Except when a sentence of death or life imprisonment or a sentence as a sexually violent predator must be imposed, if the court elects or is required to impose a prison term on a felony offender under this chapter, the court shall impose a definite term as follows:

- (1) For a first degree felony, the prison term shall be three, four, five, six, seven, eight, nine, or ten years.
- (2) For a second degree felony, the prison term shall be two, three, four, five, six, seven, or eight years.
- (3) For a third degree felony, the prison term shall be one, two, three, four, or five years.
- (4) For a fourth degree felony, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.
- (5) For a fifth degree felony, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

(B) **Mandatory Prison Term Offenses** The court shall impose a mandatory prison term or terms under relevant sentencing statutes for any of the following offenses:

- (1) Aggravated murder when death is not imposed or murder;
- (2) A felonious assault, aggravated assault, or assault, when the victim is a peace officer or an investigator of the bureau of criminal identification and investigation and the victim suffered serious physical harm;
- (3) Any other first or second degree felony if the offender has a prior conviction for aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses;
- (4) Any third degree felony involuntary manslaughter, or any attempt to commit a second degree felony offense of violence that involved attempted or actual serious physical harm to a person, if the offender has a prior conviction for aggravated murder, murder, involuntary manslaughter, rape, the former offense of felonious sexual penetration, another first or second degree felony that resulted in death or physical harm to a person, complicity in or an attempt to commit any of those offenses, or an offense under existing or former law of this state, another state, or the United States that is substantially equivalent to those offenses;
- (5) Any rape;

- (6) An attempt to commit rape if, had the rape been completed, the offender would have been subject to any term of life imprisonment;
- (7) Gross sexual imposition, if the victim is under age thirteen and one of the conditions in RC 2907.05(C)(2)(a) or (b) applies.
- (8) Sexual battery if the victim is under age thirteen and if either of the following applies:
 - (a) The offense was committed before August 3, 2006, the offender has a prior conviction for rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was under age thirteen.
 - (b) The offense was committed on or after August 3, 2006.
- (9) Any offense for which the offender is found to be a sexually violent predator;
- (10) Repeat failure to register under the SORN Law when required by RC 2950.99;
- (11) A felony involuntary manslaughter, aggravated vehicular homicide, vehicular homicide, aggravated vehicular assault, or vehicular assault, when the offender was under the influence of alcohol or drugs or when otherwise required by statute;
- (12) Operating a vehicle under the influence of alcohol or drugs when the offender is convicted of a RC 2941.1413 specification for having five prior OVI offenses in twenty years;
- (13) A first, second, or third degree felony drug offense, when required by statute;
- (14) Any mandatory prison term imposed for a conviction on a specification under Chapter 2941;
- (15) Corrupt activity in violation of RC 2923.32 when the most serious offense in the pattern of corrupt activity is a first degree felony;
- (16) Illegally conveying improper items, if the offender is an officer or employee of the department of rehabilitation and correction, as provided in RC 2921.36.
- (17) Kidnapping, in the circumstances specified in section 2971.03.

(C) Surpenalties

(1) Gun Specs

- (a) Except as provided in division (C)(1)(e), if a felony offender also is guilty of a firearm specification, the court shall impose one of the following mandatory prison terms:
 - (i) A prison term of six years for a RC 2941.144 specification that charges the offender with having an automatic firearm or a firearm equipped with a muffler or silencer while committing the felony;
 - (ii) A prison term of three years for a RC 2941.145 specification that charges the offender with displaying, brandishing, indicating possession of, or using a firearm to facilitate the offense;
 - (iii) A prison term of one year for a RC 2941.141 specification that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.
- (b) **Limitation** A court shall not impose more than one prison term on an offender under division (C)(1)(a) through (f) for felonies committed as part of the same act or transaction, unless authorized by division (C)(1)(c) or (d).
- (c) **Drive-By Add-On** If an offender who is guilty of improperly discharging a firearm under RC 2923.161 or of a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause death or physical harm to another, also is guilty of a RC 2941.146 specification that charges the offender with committing the offense by discharging a firearm from a motor vehicle, the court, after imposing a prison term under division (C)(1)(a), shall impose an additional mandatory prison term of five years.
- (d) **Body Armor Add On** If an offender who is guilty of a felony offense of violence also is guilty of a RC 2941.1411 specification that charges the offender with wearing or carrying body armor while committing the offense, the court shall impose a mandatory prison term of two years. The court may impose a prison term under this division in addition to a prison term imposed under division (C)(1)(a) or (c).
- (e) **Exceptions** The court shall not impose any of the additional prison terms under division (C)(1) if the underlying offense is carrying a concealed weapon under RC 2923.12 or a liquor premises firearm violation under RC 2923.123.
The court shall not impose any of the additional prison terms if the underlying offense is having a weapon under a disability under RC 2923.13 unless both of the following apply:

- The offender previously has been convicted of aggravated murder, murder, or any first or second degree felony.
- Less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(f) **Shooting at Peace Officer** If an offender is guilty of a felony that includes, as an essential element, causing or attempting to cause death or physical harm to another and also guilty of a RC 2941.1412 specification that charges the offender with committing the offense by discharging a firearm at a peace or corrections officer, the court, shall impose an additional mandatory prison term of seven years. If a court imposes an additional prison term under this division, the court shall not impose a prison term under division (C)(1) relative to the same offense.

(2) **Repeat Violent Offenders**

(a) **Discretionary RVOs** If division (C)(2)(b) does not apply, the court may impose, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

- (i) The offender is guilty of a RC 2941.149 repeat violent offender specification.
- (ii) The offender is guilty of any of the following:
 - Aggravated murder, murder, terrorism, or a first degree felony offense of violence, and the court does not impose a sentence of death or life imprisonment without parole when permitted;
 - Any second degree felony offense of violence when the trier of fact finds that the offense involved an attempt or threat to cause serious physical harm to a person or resulted in serious physical harm to a person.
- (iii) The court imposes the longest prison term for the offense that is not life without parole.

(b) **Mandatory RVOs** The court shall impose the longest prison term authorized or required for the offense and shall impose an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

- (i) The offender is guilty of a RC 2941.149 repeat violent offender specification.
- (ii) Within the preceding twenty years, the offender has three or more convictions for offenses described in RC 2929.01, including the current prosecution, whether prosecuted together or separately.
- (iii) The offender is convicted of any of the offenses referred to in division (C)(2)(a)(ii).

(c) For purposes of division (C)(2)(b), two or more offenses committed at the same time or as part of the same act or event shall be considered one offense, and that one offense shall be the offense with the greatest penalty.

(3) **Major Drug Offenders, Certain Corrupt Activities & Attempted Rapes**

(a) The court shall impose a mandatory prison term of ten years in all of the following situations, unless a longer prison term is otherwise required:

- If an offender commits a drug offense under RC 2925.03 or 2925.11 and that section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term;
- If an offender commits a felony drug offense under RC 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161, 4729.37, or 4729.61, RC 3719.172(C) or (D), 4729.51(C), or 4729.54(J) that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence finds the offender guilty of a RC 2941.1410 major drug offender specification;
- If the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a first degree felony;
- If the offender is guilty of attempted rape and, had the offender completed the violation of RC 2907.02, the offender would have been subject to any sentence of life imprisonment.

- (b) The court imposing a prison term under division (C)(3)(a) has discretion to impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years.
- (4) **Gang Spec** If an offender who is guilty of a felony offense of violence also is guilty of a RC 2941.142 criminal gang specification, the court shall impose an additional prison term of one, two, or three years.
- (5) **School Zone Spec** If an offender who is guilty of aggravated murder, murder, or a first, second, or third degree felony offense of violence also is guilty of a RC 2941.143 school safety zone specification, the court shall impose an additional prison term of two years.
- (D) **Consecutive Sentences**
- (1) **Specs** If a mandatory prison term is imposed under division (C), the offender shall serve the term consecutively to any other mandatory prison term imposed, consecutively to and before any prison term imposed for the underlying felony, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed on the offender.
- (2) **Other Mandatory Consecutives** The following offenders shall serve any new prison term imposed consecutively to any term being served and to any other prison term previously or subsequently imposed on the offender:
- (a) An inmate in a jail, prison, or other residential detention facility who commits aggravated riot, riot, escape, or aiding escape or resisting authority under RC 2917.02, 2917.03, 2921.34, or 2921.35, an offender under detention at a detention facility who commits a felony weapon under detention violation under RC 2923.131, or an inmate or offender under detention at a detention facility who commits another felony while the offender is an escapee in violation of RC 2921.34;
- (b) Any person who commits aggravated robbery of a law enforcement officer's weapon under RC 2911.01(B), theft under RC 2913.02(A) when the stolen property is a firearm or dangerous ordnance, or felony failure to comply with a police officer under RC 2921.331(B);
- (3) **Discretionary Consecutives** If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively or concurrently.
- (E) **Post-Release Control**
- (1) **Mandatory PRC** If a court imposes a prison term for a first or second degree felony, for any felony sex offense, or for a third degree felony in the commission of which the offender caused or threatened to cause physical harm to a person, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment. On or after July 11, 2006, the failure of a court to include a post-release control requirement in the sentence under this division does not negate, limit, or otherwise affect the mandatory period of post-release control under RC 2967.28(B).
- (2) **Discretionary PRC** If a court imposes a prison term for a third, fourth, or fifth degree felony that is not subject to division (E)(1), it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, under that division, if the parole board determines that a period of post-release control is necessary.
- (3) **Correcting Failure to Notify** RC 2929.191 applies if, before July 11, 2006, a court imposed a sentence including a prison term of a type described in division (E)(1) or (2) and failed to include in the sentence a statement regarding post-release control.
- (F) **Sexual Predator Sentencing** The court shall impose sentence under the RC 2971.03 sexual predator provisions if any of the following apply:
- (1) A person is guilty of a violent sex offense or a designated homicide, assault, or kidnapping offense, and, in relation to that offense, the offender is adjudicated a sexually violent predator.
- (2) A person is guilty of a violation of RC 2907.02(A)(1)(b) committed on or after January 2, 2007, and either the court does not impose a sentence of life without parole under RC 2907.02(B), or that division provides that the court shall not sentence the offender under RC 2971.03.

(3) A person is guilty of attempted rape committed on or after January 2, 2007, and a RC 2941.1418, 2941.1419, or 2941.1420 attempted rape specification.

(4) A person is guilty of kidnapping under RC 2905.01 committed on or after the effective date of this amendment, and that section requires the court to sentence the offender under RC 2971.03.

(5) A person is guilty of aggravated murder committed on or after the effective date of this amendment, and RC 2929.022(A)(2)(b)(ii), 2929.03(A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d), or 2929.06(A) or (B) requires the court to sentence the offender under RC 2971.03(B)(3).

(6) A person is guilty of murder committed on or after the effective date of this amendment, and RC 2929.02(B)(2) requires the court to sentence the offender RC 2971.03.

(G) **Theme Prison Referrals** At sentencing, the court may recommend the offender for placement in a shock incarceration program under RC 5120.031 or in an intensive program prison under RC 5120.032, disapprove placement of the offender in either program, or make no recommendation.

In no case shall the department of rehabilitation and correction place the offender in either program unless the department determines that the offender is eligible for the placement under RC 5120.031 or 5120.032.

If the court disapproves placement of the offender in either program, the department shall not place the offender in the program. If the court recommends placement of the offender in either program and if the offender is subsequently placed in the program, the department shall notify the court of the placement and shall include with the notice a brief description of the placement.

If the court recommends placement of the offender in either program and the department does not subsequently place the offender in the program, the department shall notify the court indicating why the offender was not placed in the program.

If the court does not make a recommendation under this division with respect to an offender and if the department determines that the offender is eligible for placement in a program or prison of that nature, the department shall screen the offender. If there is an available program for which the offender is suited, the department shall notify the court of the proposed placement as specified in RC 5120.031 or 5120.032 and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

(H) **Certain Vehicular Homicides** If a person is commits aggravated vehicular homicide under RC 2903.06, the person shall be sentenced under RC 2929.142, when applicable.

New Felony Committed on PRC, etc.—§2929.141

This section was added a few years back by taking S.B. 2 language from Ch. 2967 and moving it here so it would be more visible to judges, practitioners, and literate offenders. The intent was to cover post-release control violators, but the draft was inadvertently made applicable to parole violators, albeit in uncertain ways. Since removing parole could be perceived as substantive, it was left in for the time being. The issue is addressed in DRC's "omnibus" bill, HB 130.

§2929.141 Post-Release Control Violator Penalties—Showing Amendments

(A) As used in this section, "person on release" means a "releasee" or "parolee," both as defined in section 2967.01 of the Revised Code.

~~(B) A person on release who by committing a felony violates any condition of parole, any post-release control sanction, or any conditions described in division (A) of section 2967.131 of the Revised Code that are imposed upon the person may be prosecuted for the new felony. [The "In addition to ..." clause in (A) covers this.] Upon the person's On conviction of or plea of guilty to the for a new felony, the court shall impose sentence for the new felony committed by a person on post-release control or parole, the court may terminate the term of post-release control if the person is a releasee and the court may do either or both of the following for a person who is~~

~~either a releasee or parolee, regardless of whether the sentencing court or another court of this state imposed the original prison term for which on the person is on parole or is serving a term of post-release control:~~

~~(1)(A) [Note that current law doesn't clearly address the penalty for parole violations.] In addition to any prison term for the new felony, impose a prison term for the violation. ~~If the person is a releasee, the~~ The maximum prison term for the violation shall be the greater of twelve months or the period of post-release control for the earlier felony, minus any time the releasee person has spent under post-release control for the earlier felony. ~~In all cases, any~~ Any prison term imposed for the violation shall be reduced by any prison term that is ~~administratively~~ imposed by the parole board or ~~adult parole authority~~ as a post-release control sanction. ~~In all cases, a~~ A prison term imposed for the violation shall be served consecutively to any prison term imposed for the new felony. ~~If the person is a releasee, a prison term imposed for the violation, and a prison term imposed for the new felony shall not count as, or be credited toward, terminate~~ the remaining period of post-release control ~~imposed~~ for the earlier felony.~~

~~(2)(B) Impose a sanction under section RC 2929.15 to 2929.18 of the Revised Code for the violation that shall be served concurrently or consecutively, as specified by the court, with any community control sanctions for the new felony.~~

Here's how it would look if the amendments were made.

§2929.141. Post-Release Control Violator Penalties

On conviction for a new felony committed by a person on post-release control or parole, the court may terminate the term of post-release control and may do either or both of the following, regardless of whether the court imposed the original prison term on the person:

(A) In addition to any prison term for the new felony, impose a prison term for the violation. The maximum prison term for the violation shall be the greater of twelve months or the period of post-release control for the earlier felony, minus any time the person has spent under post-release control for the earlier felony. Any prison term imposed for the violation shall be reduced by any prison term that is imposed by the parole board as a post-release control sanction. A prison term imposed for the violation shall be served consecutively to any prison term imposed for the new felony and shall terminate the remaining period of post-release control for the earlier felony.

(B) Impose a sanction under RC 2929.15 to 2929.18 for the violation that shall be served concurrently or consecutively, as specified by the court, with any community control sanctions for the new felony.

Aggravated Vehicular Homicide Surpenalties—§2929.142

This section covers the super penalties available for certain aggravated vehicular homicides (AVH). For tidiness, the draft also merges in AVH surpenalty language from current §2929.14(B) (5) & (6).

§2929.142. Aggravated Vehicular Homicide Sentencing—Showing Amendments

(A) Impaired AVH Mandatory Incarceration Notwithstanding the definite prison term specified in ~~division (A) of section RC 2929.14(A) of the Revised Code for a felony of the first degree felony,~~ if an offender is ~~convicted of or pleads guilty to~~ of aggravated vehicular homicide ~~in violation of division (A)(1) of section under RC 2903.06(A)(1) of the Revised Code,~~ the court shall impose upon the offender a mandatory prison term of ten, eleven, twelve, thirteen, fourteen, or fifteen years if any of the following apply:

~~(A)(1) The offender previously has been convicted of or pleaded guilty to three or more prior violations of convictions for OVI under section RC 4511.19, of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.~~

~~(B) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A) of boating OVI under section RC 1547.11(A) of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.~~

~~(C) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(3) of aircraft OVI under section RC 4561.15(A)(3) of the Revised Code, or of a substantially equivalent municipal ordinance, within the previous six years.~~
~~(D)(2) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of convictions for aggravated vehicular homicide under section RC 2903.06(A)(1) of the Revised Code.~~
~~(E) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of or aggravated vehicular assault under section RC 2903.08(A)(1) of the Revised Code.~~
~~(F)(3) The offender previously has been convicted of or pleaded guilty to three or more prior violations of convictions for involuntary manslaughter under section RC 2903.04 of the Revised Code in circumstances in which division (D) of that section applied regarding the violations.~~
~~(G)(4) The offender previously has been convicted of or pleaded guilty to three or more violations of prior convictions for any combination of the offenses listed in division (A), (B), (C), (D), (E), or (F)(1) through (3) of this section.~~
~~(H)(5) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony violation of division (A) of OVI under section RC 4511.19(A) of the Revised Code.~~

~~(B)(5) **Peace Officer Victim** [shown as amended from 2929.14(B)] If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of aggravated vehicular homicide under section RC 2903.06(A)(1) or (2) of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section RC 2941.1414 of the Revised Code specification that charges that the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, the court shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (D)(5) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code [covered by revised definition of "mandatory prison term"].~~ A court shall not impose more than one prison term on an offender under this division (D)(5) of this section for felonies committed as part of the same act.

~~(C)(6) **Prior OVIs** [shown as amended from 2929.14(B)] If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of aggravated vehicular homicide under section RC 2903.06(A)(1) or (2) of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section RC 2941.1415 of the Revised Code specification that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of prior OVI convictions under section RC 4511.19(A) or (B) of the Revised Code or, an equivalent offense, as defined in section 2941.1415 of the Revised Code, or three or more violations of any combination of those divisions and offenses both, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (D)(6) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. [Ditto re "mandatory prison term"]~~ A court shall not impose more than one prison term on an offender under this division (D)(6) of this section for felonies committed as part of the same act.

Here's how the AVH section would look if the amendments were made.

§2929.142. Impaired Aggravated Vehicular Homicide Penalties—As Amended

(A) **Impaired AVH Mandatory Incarceration** Notwithstanding the definite prison term specified in RC 2929.14(A) for a first degree felony, if an offender is guilty of aggravated vehicular homicide under 2903.06(A)(1), the court shall impose a mandatory prison term of ten, eleven, twelve, thirteen, fourteen, or fifteen years if any of the following apply:

(1) The offender has three or more prior convictions for OVI under RC 4511.19, boating OVI under RC 1547.11(A), or aircraft OVI under RC 4561.15(A)(3), or of a substantially equivalent municipal ordinance, within the previous six years.

(2) The offender previously has three or more prior convictions for aggravated vehicular homicide under RC 2903.06(A)(1) or aggravated vehicular assault under RC 2903.08(A)(1).

(3) The offender has three or more prior convictions for involuntary manslaughter under RC 2903.04 in circumstances in which division (D) of that section applied.

(4) The offender has three or more convictions for any combination of the offenses listed in division (A)(1) through (3).

(5) The offender previously has a second or subsequent felony OVI under RC 4511.19(A).

(B) **Peace Officer Victim** If an offender is guilty of aggravated vehicular homicide under RC 2903.06(A)(1) or (2) and of a RC 2941.1414 specification that charges that the victim of the offense is a peace officer, the court shall impose a prison term of five years. A court shall not impose more than one prison term on an offender under this division for felonies committed as part of the same act.

(C) **Prior OVIs** If an offender is guilty of aggravated vehicular homicide under RC 2903.06(A)(1) or (2) and of a RC 2941.1415 specification that charges that the offender has three or more prior OVI convictions under RC 4511.19(A) or (B), an equivalent offense, or both, the court shall impose a prison term of three years. A court shall not impose more than one prison term under this division for felonies committed as part of the same act.

Felony OVI Sentencing—§2929.143

The Commission suggests pulling the unusual provisions for operating a vehicle under the influence of alcohol or drugs (OVI) out of the basic sentencing statutes since they interrupt the flow of those sections. Instead, they would be gathered in one place in this chapter. Specifically, the draft consolidates OVI's felony aspects in new §2929.143. In so doing, it distills provisions that interrupt current §§2929.13(A) & (G), 2929.14(B) & (D), 2929.15(A), 2929.16(A), 2929.17, & 2929.18(B). The sentencing hearing statute—§2929.19—would still mention OVI, but more succinctly. Enacting the new section makes it easier to streamline the basic sentencing statutes and, of course, to further shrink the Code.

Current Words	Proposed Words	Shrinkage
1,972	616	69%

Here are the amendments needed to create the composite section.

§2929.143. Felony OVI Sentencing—Showing Amendments

(A) **Mandatory Incarceration** [Reorders and streamlines current §2929.13(G)] If an offender is being sentenced for a felony OVI, the court shall impose a term of local incarceration or a prison term or terms as follows:

(1) **With 5 in 20 Spec** [From current §2929.13(G)(2), in part] If the offender is convicted of a section 2941.1413 specification for having five prior OVI offenses in twenty years, the court shall impose a mandatory prison term of one, two, three, four, or five years which shall be served consecutively to and before the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed for the offense.

(2) **Local Incarceration** [From current §2929.13(G)(1)] ~~(4)~~ If the offender is being sentenced for a fourth degree felony OVI offense and if the offender has not been convicted of and has not pleaded guilty to a specification of the type described in section 2941.1413 of the Revised Code, the court may impose upon the offender a mandatory term of local incarceration of sixty days or one hundred twenty days as specified in division (G)(1)(d) of section 4511.19(G)(1)(d) of the Revised Code. The court shall not reduce the term pursuant to section 2929.20, 2967.193, or any other provision of the Revised Code [covered by new

~~§2929.01]. The court that imposes a mandatory term of local incarceration under this division shall specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender shall serve the term in the type of facility specified by the court. A mandatory The term of local incarceration imposed under division (G)(1) of this section is not subject to extension under section 2967.11 of the Revised Code, to *[removes bad time]* a period of post-release control under section 2967.28 of the Revised Code, or to any other Revised Code provision that pertains to a prison term except as provided in division (A)(1) of this section. *[Shortened from the latter part of current .13(G)(2), struck below:]* An offender shall not be sentenced to local incarceration if the offender was sentenced to a previous term of local incarceration under this division.~~

~~(2)(3) **Prison** [from current .13(G)(2)] If the offender is being sentenced for a third degree felony OVI offense, or if the offender is being sentenced for a fourth degree felony OVI offense and the court does not impose a mandatory term of local incarceration under division (G)(1) of this section (B)(2), the court shall impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code [moved to new (A)] or shall impose upon the offender a mandatory prison term of sixty days or one hundred twenty days as specified in division (G)(1)(d) or (e) of section 4511.19(G)(1)(d) or (e) of the Revised Code if the offender has not been convicted of and has not pleaded guilty to a specification of that type. The court shall not reduce the term pursuant to section 2929.20, 2967.193, or any other provision of the Revised Code [covered in new §2929.01]. The offender shall serve the one, two, three, four, or five year mandatory prison term consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense [moved to new (A)]. In no case shall an offender who once has been sentenced to a mandatory term of local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OVI offense be sentenced to another mandatory term of local incarceration under that division for any violation of division (A) of section 4511.19 of the Revised Code. [Moves to the end of (2) above.] In addition to the mandatory prison term described in division (G)(2) of this section, the court may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve the prison term prior to serving the community control sanction. [Redundant with (C)(2) below.]~~

~~(4) **Intensive Program Prison** [From the latter part of current §2929.13(G)(2)] The department of rehabilitation and correction may place an offender sentenced to a mandatory prison term under this division in an intensive program prison established pursuant to under section 5120.033 of the Revised Code if the department gave the sentencing judge prior notice of its intent to place the offender in an intensive the program prison established under that section and if the judge did not notify the department that the judge disapproved of the judge's disapproval of the placement.~~

~~[The next part of current §2929.13(G)(2), setting standards for private IPPs, doesn't belong in sentencing law. It should be merged—to the extent it's not redundant—into the law governing private IPPs in §9.06 & §5120.033: Upon the establishment of the initial Regarding an intensive program prison pursuant to under section 5120.033 of the Revised Code that is privately operated and managed by a contractor pursuant to under a contract entered into under section 9.06 of the Revised Code, both of the following apply:~~

~~(a) The department of rehabilitation and correction shall make a reasonable effort to ensure that a sufficient number of offenders sentenced to a mandatory prison term under this division are placed in the privately operated and managed prison so that the privately operated and managed prison it has full occupancy.~~

~~(b) Unless the privately operated and managed private prison has full occupancy, the department of rehabilitation and correction shall not place any offender sentenced to a mandatory prison term under this division in any intensive program prison established pursuant to under section 5120.033 of the Revised Code other than the privately operated and managed prison.]~~

(B) Additional Sanctions [Brings together parts of current §§2929.13(A) & (G)(2), 2929.14(D)(4), 2929.15(A)(1), 2929.16(A), the preface to 2929.17, & 2929.18(B)(3)]

(1) Additional Jail Term [From current §2929.16(A).] ~~(3) If the offender is convicted of In addition to a mandatory term of local incarceration imposed for a fourth degree felony OVI offense and is sentenced under division (G)(1) of section 2929.13 of the Revised Code under division (B)(2), subject to division (D) of this section, the court may impose a term of up to one year in a jail less the mandatory term of local incarceration of sixty or one hundred twenty consecutive days of imprisonment imposed pursuant to that division;~~

(4)(2) Additional Prison Term [From current §2929.14(D)(4)] ~~If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the sentencing court shall impose upon the offender a mandatory prison term in accordance with that division. In addition to the any mandatory prison term imposed under division (B)(3), if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a impose the following prison terms:~~

- ~~For a fourth degree felony OVI, a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced for;~~
- ~~For a third degree felony OVI offense, the sentencing court may sentence the offender to an additional a prison term of any duration specified in division (A)(3) of this section authorized by section 2929.14 for a third degree felony.~~

~~In either case, the any additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the day mandatory prison term. The total of the additional prison term imposed under division (D)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense [effectively redundant]. If the court imposes an Any additional prison term under division (D)(4) of this section, the offender shall serve the additional prison term be served after the offender has served serves the mandatory prison term required for the offense.~~

~~In addition to the mandatory prison term or mandatory and additional prison term imposed as described in division (D)(4) of this section, the court also may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction. [Covered by (C)(2) below.]~~

~~If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code and the court imposes a mandatory term of local incarceration, the court may impose a prison term as described in division (A)(1) of that section. [This refers to the prison term available for community control violations and is dealt with later.]~~

~~[From current §2929.15(A)(2); another redundant reference to additional prison term.] (2) For a third or fourth degree felony OVI offense for which sentence is imposed under division (G)(2) of this section, an additional prison term as described in division (D)(4) of section 2929.14 of the Revised Code or a community control sanction as described in division (G)(2) of this section.~~

(3) Community Control [From current §2929.15(A)(1), allowing repeal of parts of §§2929.13(G)(2), 2929.16(A), & 2929.17.] ~~(1) If the court is sentencing an offender for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code, in In addition to the mandatory term of local incarceration imposed under that division and the mandatory fine [fine is covered below] required by division (B)(3) of section 2929.18 of the Revised Code, the court may impose upon the offender a community control sanction or combination of community control sanctions in accordance with sections 2929.16 and 2929.17 of the Revised Code. If the court is sentencing an offender for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, in addition to or the mandatory prison term or mandatory prison term and any additional prison term of confinement imposed under that division this section, the court also may impose upon~~

~~the offender a community control sanction or combination of one or more community control sanctions under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to any term of confinement before serving the community control sanction.~~

~~[This allows repeal of these provisions:~~

~~From current §2929.16(A):] The court imposing a sentence for a fourth degree felony OVI offense under division (G)(1) or (2) of section 2929.13 of the Revised Code or for a third degree felony OVI offense under division (G)(2) of that section may impose upon the offender, in addition to the mandatory term of local incarceration or mandatory prison term imposed under the applicable division, a community residential sanction or combination of community residential sanctions under this section, and the offender shall serve or satisfy the sanction or combination of sanctions after the offender has served the mandatory term of local incarceration or mandatory prison term required for the offense.~~

~~[From the preface to current §2929.17:] The court imposing a sentence for a fourth degree felony OVI offense under division (G)(1) or (2) of section 2929.13 of the Revised Code or for a third degree felony OVI offense under division (G)(2) of that section may impose upon the offender, in addition to the mandatory term of local incarceration or mandatory prison term imposed under the applicable division, a nonresidential sanction or combination of nonresidential sanctions under this section, and the offender shall serve or satisfy the sanction or combination of sanctions after the offender has served the mandatory term of local incarceration or mandatory prison term required for the offense.~~

~~**Prison for Violations** [Streamlined from current §2929.13(A)] If the offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, in addition to the a mandatory term of local incarceration or the a mandatory prison term required for the offense by division (G)(1) or (2) of this section, the court shall impose upon the offender a mandatory fine [below] in accordance with division (B)(3) of section 2929.18 of the Revised Code and may impose whichever of the following is applicable: (1) For a fourth degree felony OVI offense for which sentence is imposed under division (G)(1) of this section, and an additional community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code. If the court imposes upon the offender a community control sanction and if the offender violates any condition of the community control sanction, the court may take any action prescribed in division (B) of section 2929.15(B) of the Revised Code relative to the offender, including imposing a prison term on the offender pursuant to under that division.~~

~~(4) **Mandatory Fine** [from §2929.18(B)(3)] (B)(3) For a fourth degree felony OVI offense and for a third degree felony OVI offense, the The sentencing court shall impose upon the offender a mandatory fine in the amount specified in division (G)(1)(d) or (e) of section 4511.19(G)(1)(d) or (e) of the Revised Code, whichever is applicable. The mandatory fine so imposed shall be disbursed as provided in the division pursuant to which it is imposed [unnecessary redundancy].~~

Here's how the new section would read.

§2929.143. Felony OVI Sentencing—As Amended

(A) **Mandatory Incarceration** If an offender is being sentenced for a felony OVI, the court shall impose a term of local incarceration or a prison term or terms as follows:

(1) **With 5 in 20 Spec** If the offender is convicted of a section 2941.1413 specification for having five prior OVI offenses in twenty years, the court shall impose a mandatory prison term of one, two, three, four, or five years which shall be served consecutively to and before the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed for to the offense. If the offender is not convicted of a section 2941.1413 specification, the offender shall be sentenced to local incarceration or prison under division (B)(2) or (3).

(2) **Local Incarceration** If the offender is being sentenced for a fourth degree felony OVI, the court may impose a mandatory term of local incarceration of sixty or one hundred twenty

days as specified in section 4511.19(G)(1)(d). The court shall specify whether the term is to be served in a jail, community-based correctional facility, halfway house, or alternative residential facility. The term of local incarceration is not subject to a period of post-release control under section 2967.28. An offender shall not be sentenced to local incarceration if the offender was sentenced to a previous term of local incarceration under this division.

(3) **Prison** If the offender is being sentenced for a third degree felony OVI, or for a fourth degree felony OVI and the court does not impose a mandatory term of local incarceration under division (B)(2), the court shall impose a mandatory prison term of sixty or one hundred twenty days as specified in section 4511.19(G)(1)(d) or (e).

(4) **Intensive Program Prison** The department of rehabilitation and correction may place an offender sentenced to a mandatory prison term under this division in an intensive program prison established under section 5120.033 if the department gave the sentencing judge prior notice of its intent to place the offender in the program and if the judge did not notify the department of the judge's disapproval of the placement.

(B) Additional Sanctions

(1) **Additional Jail Term** In addition to a mandatory term of local incarceration imposed for a fourth degree felony OVI under division (B)(2), the court may impose a term of up to one year in a jail less the mandatory sixty or one hundred twenty days of imprisonment imposed.

(2) **Additional Prison Term** In addition to any mandatory prison term imposed under division (B)(3), the court may impose the following prison terms:

- For a fourth degree felony OVI, a definite prison term of not less than six months and not more than thirty months;
- For a third degree felony OVI, a prison term of any duration authorized by section 2929.14 for a third degree felony.

In either case, any additional prison term imposed shall be reduced by the sixty or one hundred twenty day mandatory prison term. Any additional prison term shall be served after the offender serves the mandatory prison term.

(3) **Community Control** In addition to the mandatory term of local incarceration or the mandatory prison term and any additional term of confinement imposed under this section, the court also may impose one or more community control sanctions under section 2929.16 or 2929.17, but the offender shall serve any term of confinement before serving the community control.

Prison for Violations If the offender is being sentenced to a mandatory term of local incarceration or a mandatory prison term and an additional community control sanction or sanctions and if the offender violates any condition of community control, the court may take any action prescribed in section 2929.15(B), including imposing a prison term under that division.

(4) **Mandatory Fine** The sentencing court shall impose a mandatory fine in the amount specified in section 4511.19(G)(1)(d) or (e).

Community Control Generally—§2929.15

This section lays out the basic conditions of community control for felons and how to deal with violators.

§2929.15. Community Control Generally—Showing Amendments

(A) General Rules

(1) **Direct Sentencing; Conditions** If, in sentencing an offender for a felony, the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions authorized pursuant to under section RC 2929.16, 2929.17, or 2929.18 of the Revised Code.

[See *new §2929.143*] ~~If the court is sentencing an offender for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code, in addition to the mandatory term of local incarceration imposed under that division and the mandatory fine~~

~~required by division (B)(3) of section 2929.18 of the Revised Code, the court may impose upon the offender a community control sanction or combination of community control sanctions in accordance with sections 2929.16 and 2929.17 of the Revised Code. If the court is sentencing an offender for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, in addition to the mandatory prison term or mandatory prison term and, additional prison term imposed under that division, the court also may impose upon the offender a community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction. The duration of all community control sanctions imposed upon an offender under this division shall not exceed five years. If the offender absconds or otherwise leaves the jurisdiction of the court in which the offender resides without obtaining permission from the court or the offender's probation officer to leave the jurisdiction of the court under this division, or if the offender is confined in any institution for the commission of any offense while under a community control sanction, the period of the community control sanction ceases to run until the offender is brought before the court for its further action.~~

~~[¶] **Mandatory Conditions** If the court sentences the offender to one or more nonresidential community control sanctions under section 2929.17 of the Revised Code, the court shall impose as a condition of the nonresidential sanctions that, during the period of while under the sanctions, the offender must abide by the law and must not leave the state without the permission of the court or the offender's probation officer. *[Makes clear the basic conditions of community control apply to all, as intended.]* The court may impose any other conditions of release under a community control sanction that the court considers appropriate, including, but not limited to, requiring that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in division (D) of this section to determine whether the offender ingested or was injected with a drug of abuse and requiring that the results of the drug test indicate that the offender did not ingest or was not injected with a drug of abuse *[No need to single out one condition]*.~~

(2) Probation Departments; Violations

~~(a) If a court sentences an offender to any community control sanction or combination of one or more community control sanctions authorized pursuant to section by RC 2929.16, 2929.17, or 2929.18 of the Revised Code, the court shall place the offender under the general control and supervision of a probation department of probation in the county that serves the court for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer *[subsumed under violating any condition]*. Alternatively, if the offender resides in another county and that has a county probation department of probation has been established in that county or that county is served by a multicounty probation department established under section RC 2301.27 of the Revised Code, the court may request the court of common pleas of that county to receive the offender into the general control and supervision of that county or multicounty probation department of probation for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer violations, subject to the jurisdiction of the trial judge over and with respect to the person of the offender, and to the rules governing that probation department of probation. If there is no probation department of probation in the county that serves the court, the court shall place the offender, regardless of the offender's county of residence, under the general control and supervision of the adult parole authority for purposes of reporting violations to the court a violation of any of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer.~~

~~(b) If the court imposing sentence upon an offender sentences the an offender to any community control sanction or combination of one or more community control sanctions~~

authorized pursuant to section under RC 2929.16, 2929.17, or 2929.18 of the Revised Code, and if the offender violates any condition of the sanctions, any condition of release under a community control sanction imposed by the court, violates any law, or departs the state without the permission of the court or the offender's probation officer [*subsumed in conditions*], the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction shall report the violation or departure directly to the sentencing court, or shall report the violation or departure to the county or multicounty supervising probation department of probation with general control and supervision over the offender under division (A)(2)(a) of this section or, to the officer of that department who supervises the offender, or, if there is no such department with general control and supervision over the offender under that division, to the adult parole authority. If the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction reports the violation or departure to the county or multicounty a probation department of probation or the adult parole authority, the department's or authority's officers may treat the offender as if the offender were on probation and in violation of the probation; a violator and shall report the violation of the condition of the sanction, any condition of release under a community control sanction imposed by the court, the violation of law, or the departure from the state without the required permission to the sentencing court.

(B) Penalties for Violations If the conditions of a community control sanction are violated or if the offender violates a law or leaves the state without the permission of the court or the offender's probation officer [*covered by the minimum conditions*], the sentencing court may impose a any of the following:

- A longer time under the same sanction if, provided the total time under the sanctions does not exceed the five-year limit specified in under division (A) of this section, may impose a;
- A more restrictive sanction under section RC 2929.16, 2929.17, or 2929.18 of the Revised Code, or may impose a;
- A prison term on the offender pursuant to section 2929.14 of the Revised Code. The prison term, if any, imposed upon a violator pursuant to this division shall be within from the range of prison terms available for the offense for which the violated sanction that was violated was imposed and that shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing pursuant to division (B)(3) of under section RC 2929.19(B)(2) of the Revised Code.

(C) Rewarding Success The court may reduce the longer period of time that the offender is required to spend under the longer sanction, the more restrictive sanction, or a the prison term imposed pursuant to this division by the time the offender successfully spent under the sanction that was initially imposed.

~~(C)~~ If an offender, for a significant period of time, fulfills the conditions of a sanction imposed pursuant to under section RC 2929.16, 2929.17, or 2929.18 of the Revised Code in an exemplary manner, the court may reduce the period of time under the sanction or impose a less restrictive sanction, but the court shall not permit the offender to violate any law or permit the offender to leave the state without the permission of the court or the offender's probation officer [*covered by minimum conditions*].

(D) Random Drug Testing

(1) If a court under division (A)(1) of this section imposes a condition of release under a community control sanction that requires the an offender to submit to random drug testing as a condition of community control, the supervising probation department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section may cause the offender to submit to random drug testing performed by a laboratory or entity that has entered into a contract with any of the governmental supervising entities or officers authorized to enter into a contract with that laboratory or entity under section RC 341.26, 753.33, or 5120.63 of the Revised Code.

(2) If no laboratory or entity described in division (D)(1) of this section has entered into a testing contract as specified in that division, the supervising probation department of probation or the adult parole authority that has general control and supervision of the offender

~~under division (A)(2)(a) of this section shall cause the offender to submit to random drug testing performed by a reputable public laboratory to determine whether the individual who is the subject of the drug test ingested or was injected with a drug of abuse.~~

~~(3) A The laboratory or entity that has entered into a contract pursuant to section 341.26, 753.33, or 5120.63 of the Revised Code shall perform the random drug tests under division (D)(1) of this section in accordance with under the applicable standards that are included in the terms of that its contract. A or, absent a contract, public laboratory shall perform the random drug tests under division (D)(2) of this section in accordance with under the standards set forth in the policies and procedures established by the department of rehabilitation and correction pursuant to under section RC 5120.63 of the Revised Code. An offender who is required under division (A)(1) of this section to submit to random drug testing as a condition of ~~release under a community control sanction~~ and whose test results indicate that the offender ingested or was injected with a drug of abuse shall pay the fee for the drug test if the supervising probation department of probation or the adult parole authority that has general control and supervision of the offender requires payment of a fee. A laboratory or entity that performs the random drug testing on an offender under division (D)(1) or (2) of this section shall transmit the results of the drug test to the appropriate supervising probation department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section.~~

This is how the section would look if the amendments were made.

§2929.15. Community Control Generally—As Amended

(A) General Rules

(1) **Direct Sentencing** If, in sentencing for a felony, the court is not required to impose a prison term, the court may directly impose one or more community control sanctions authorized under RC 2929.16, 2929.17, or 2929.18.

The duration of all community control sanctions imposed on an offender shall not exceed five years. If the offender absconds or otherwise leaves the jurisdiction of the court without obtaining permission under this division, or if the offender is confined in any institution for the commission of any offense while under community control, the period of the sanction ceases to run until the offender is brought before the court for further action.

Mandatory Conditions If the court sentences the offender to one or more community control sanctions, the court shall impose as a condition of the sanctions that, while under the sanctions, the offender must abide by the law and must not leave the state without the permission of the court or the offender's probation officer. The court may impose any other conditions that the court considers appropriate.

(2) Probation Departments; Violations

(a) If a court sentences an offender to one or more community control sanctions authorized by RC 2929.16, 2929.17, or 2929.18, the court shall place the offender under the general supervision of a probation department in the county that serves the court for purposes of reporting to the court a violation of any condition of community control imposed by the court. Alternatively, if the offender resides in another county that has a county probation department or that is served by a multicounty probation department under RC 2301.27, the court may request the court of common pleas of that county to receive the offender into the general supervision of that county or multicounty probation department for purposes of reporting violations, subject to the jurisdiction of the trial judge over the offender and to the rules governing that probation department. If there is no probation department in the county that serves the court, the court shall place the offender, regardless of the offender's county of residence, under the general supervision of the adult parole authority for purposes of reporting violations to the court.

(b) If the court sentences an offender to one or more community control sanctions authorized under RC 2929.16, 2929.17, or 2929.18, and if the offender violates any condition of the sanctions, the public or private person or entity that administers the sanction shall report the violation directly to the sentencing court, to the supervising

probation department, to the officer of that department who supervises the offender, or, if there is no such department, to the adult parole authority. If the person or entity that operates the sanction reports the violation to a probation department or the adult parole authority, the department's or authority's officers may treat the offender as a violator and shall report the violation to the sentencing court.

(B) **Penalties for Violations** If the conditions of a community control sanction are violated, the sentencing court may impose any of the following:

- A longer time under the same sanction, provided the total time does not exceed the five-year limit under division (A);
- A more restrictive sanction under RC 2929.16, 2929.17, or 2929.18;
- A prison term from the range available for the offense for which the violated sanction was imposed that shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing under RC 2929.19(B)(2).

(C) **Rewarding Success** The court may reduce the longer time that the offender is required to spend under the sanction, the more restrictive sanction, or the prison term by the time the offender successfully spent under the sanction that was initially imposed.

If an offender, for a significant time, fulfills the conditions of a sanction imposed under RC 2929.16, 2929.17, or 2929.18 in an exemplary manner, the court may reduce the time under the sanction or impose a less restrictive sanction.

(D) **Random Drug Testing**

(1) If a court requires an offender to submit to random drug testing as a condition of community control, the supervising probation department or the adult parole authority may cause the offender to submit to random drug testing performed by a laboratory or entity that has entered into a contract with the supervising entities or officers under RC 341.26, 753.33, or 5120.63.

(2) If no laboratory or entity has entered into a testing contract, the supervising probation department or adult parole authority shall cause the offender to submit to random drug testing performed by a reputable public laboratory.

(3) The laboratory or entity shall perform the random drug tests under the standards included in its contract or, absent a contract, under standards established by the department of rehabilitation and correction under RC 5120.63. An offender who is required to submit to random drug testing as a condition of community control and whose test results indicate that the offender ingested or was injected with a drug of abuse shall pay the fee for the test if the supervising probation department or adult parole authority requires a fee. A laboratory or entity that performs the testing shall transmit the results of the test to the supervising probation department or adult parole authority.

Residential Sanctions—§2929.16

This section covers confinement for felons in places other than prison.

§2929.16 Community Residential Sanctions—Showing Amendments

(A) **Options** ~~Except as provided in this division, the~~ The court imposing a sentence for a felony ~~upon or~~ on an offender who is not required to serve a mandatory prison term may impose any community residential sanction or combination of ~~community residential~~ sanctions under this section. [See new §2929.143] ~~The court imposing a sentence for a fourth degree felony OVI offense under division (G)(1) or (2) of section 2929.13 of the Revised Code or for a third degree felony OVI offense under division (G)(2) of that section may impose upon the offender, in addition to the mandatory term of local incarceration or mandatory prison term imposed under the applicable division, a community residential sanction or combination of community residential sanctions under this section, and the offender shall serve or satisfy the sanction or combination of sanctions after the offender has served the mandatory term of local incarceration or mandatory prison term required for the offense.~~ Community residential sanctions include, but are not limited to, the following:

- (1) ~~A term of up to six months at a community-based correctional facility that serves the county for up to six months;~~
- (2) ~~Except as otherwise provided in division (A)(3) of this section and subject to division (D) of this section, a term of A jail for up to six months in a jail;~~
- (3) ~~[See new §2929.143.] If the offender is convicted of a fourth degree felony OVI offense and is sentenced under division (G)(1) of section 2929.13(G)(1) of the Revised Code, subject to division (D) of this section, a term of up to one year in a jail less the mandatory term of local incarceration of sixty or one hundred twenty consecutive days of imprisonment imposed pursuant to that division;~~
- (4) ~~A term in a halfway halfway house for a time specified by the court or program;~~
- (5) ~~A term in an An alternative residential facility for a time specified by the court or program.~~

(B) **Split Sentences** ~~The court that assigns sentences any offender convicted of a felony to a residential sanction under this section may authorize the offender to be released so that the offender may seek or maintain employment, receive education or training, or receive treatment. A release pursuant to under this division shall be only for the duration of time that is needed to fulfill the purpose of the release and for travel that reasonably is necessary to fulfill the purposes of the release purpose.~~

(C) **Jail Industry Programs** ~~[Wood Co. still has this program.] If the court assigns an offender to a county jail that is not a minimum security misdemeanor jail in a county that has established a county jail industry program pursuant to under section RC 5147.30 of the Revised Code, the court shall specify, as part of the sentence, whether the sheriff of that county may consider the offender for participation in the county jail industry program. During the offender's term in the county jail, the court shall retain jurisdiction to modify its specification upon on a reassessment of the offender's qualifications for participation in the program.~~

(D) **Minimum Security Jails** ~~If a court sentences an offender to a jail term in jail under division (A)(2) or (3) of this section and if the sentence is imposed for a felony of the fourth or fifth degree felony that is not an offense of violence, the court may specify that it prefers that the offender serve the term in a minimum security jail established under section RC 341.34 or 753.21 of the Revised Code. If the court includes a specification of that type in the sentence so specifies and if the administrator of the appropriate minimum security jail or the designee of that jail administrator classifies the offender in accordance with under section RC 341.34 or 753.21 of the Revised Code as a minimal security risk, the offender shall serve the term in the minimum security jail established under section 341.34 or 753.21 of the Revised Code. Absent a specification of that type and a finding of that type, the offender shall serve the term in a jail other than a minimum security jail established under section 341.34 or 753.21 of the Revised Code.~~

(E) **Contagion Testing** ~~[Covered by various statutes governing jails and prisons, including Ch. 341 and 753, & §§1713.55 & 2301.57.] If a person who has been convicted of or pleaded guilty to a felony is sentenced to a community residential sanction as described in division (A) of this section, at the time of reception and at other times the person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place at which the offender will serve the residential sanction determines to be appropriate, the person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place may cause the convicted offender to be examined and tested for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, and other contagious diseases. The person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place at which the offender will serve the residential sanction may cause a convicted offender in the community-based correctional facility, jail, halfway house, alternative residential facility, or other place who refuses to be tested or treated for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, or another contagious disease to be tested and treated involuntarily.~~

Here's how §2929.16 would look if the amendments were adopted.

§2929.16 Community Residential Sanctions—As Amended

(A) **Options** The court imposing a sentence for a felony on an offender who is not required to serve a mandatory prison term may impose any community residential sanction or combination of sanctions under this section. Community residential sanctions include, but are not limited to, the following:

- (1) A community-based correctional facility for up to six months;
- (2) A jail for up to six months;
- (3) A halfway house for a time specified by the court or program;
- (4) An alternative residential facility for a time specified by the court or program.

(B) **Split Sentences** The court that sentences any offender to a residential sanction under this section may authorize the offender to be released to seek or maintain employment, receive education or training, or receive treatment. A release under this division shall be only for the time needed to fulfill the purpose of the release and for travel that reasonably is necessary to fulfill the purpose.

(C) **Jail Industry Programs** If the court assigns an offender to a county jail industry program under RC 5147.30, the court shall specify, as part of the sentence, whether the sheriff of that county may consider the offender for the program. During the offender's term in the county jail, the court shall retain jurisdiction to modify its specification on a reassessment of the offender's qualifications for participation in the program.

(D) **Minimum Security Jails** If a court sentences an offender to a jail term under this section and if the sentence is imposed for a fourth or fifth degree felony that is not an offense of violence, the court may specify that it prefers that the offender serve the term in a minimum security jail established under RC 341.34 or 753.21. If the court so specifies and if the jail administrator classifies the offender under RC 341.34 or 753.21 as a minimal security risk, the offender shall serve the term in the minimum security jail.

Non-Residential Sanctions—§2929.17

This section contains the litany of non-residential sanctions available in felony cases.

§2929.17 Nonresidential Sanctions—Showing Amendments

~~Except as provided in this section, the~~ The court imposing a sentence for a felony ~~upon~~ on an offender who is not required to serve a mandatory prison term may impose any nonresidential sanction or combination of ~~nonresidential~~ sanctions authorized under this section. ~~If the court imposes one or more nonresidential sanctions authorized under this section, the court shall impose as a condition of the sanction that, during the period of the nonresidential sanction, the offender shall abide by the law and shall not leave the state without the permission of the court or the offender's probation officer. [Covered in .15(A)]~~

~~[See new §2929.143:] The court imposing a sentence for a fourth degree felony OVI offense under division (G)(1) or (2) of section 2929.13 of the Revised Code or for a third degree felony OVI offense under division (G)(2) of that section may impose upon the offender, in addition to the mandatory term of local incarceration or mandatory prison term imposed under the applicable division, a nonresidential sanction or combination of nonresidential sanctions under this section, and the offender shall serve or satisfy the sanction or combination of sanctions after the offender has served the mandatory term of local incarceration or mandatory prison term required for the offense.~~

Nonresidential sanctions include, but are not limited to, the following:

- (A) A term of day Day reporting;
- (B) A term of house House arrest with₁ electronic monitoring₁ or continuous alcohol monitoring ~~or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest without electronic monitoring or continuous alcohol monitoring, alone or in combination with one another;~~
- (C) A term of community Community service of up to five hundred hours ~~pursuant to division (B) of under section RC 2951.02(B) of the Revised Code~~ or, if the court determines that the offender

is financially incapable of fulfilling a financial sanction ~~described in under section RC 2929.18 of the Revised Code~~, a term of community service as an alternative to a financial sanction;

- (D) ~~A term in a drug Drug treatment program~~ with a level of security for the offender as determined necessary by the court;
- (E) ~~A term of intensive Intensive probation supervision~~;
- (F) ~~A term of basic Basic probation supervision~~;
- (G) ~~A term of monitored Monitored time~~;
- (H) ~~A term of drug Drug and alcohol use monitoring, including random drug testing~~;
- (I) ~~A curfew term Curfew~~;
- (J) A requirement that the offender obtain or maintain employment;
- (K) A requirement that the offender obtain education or training;
- (L) Provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation;
- (M) A license violation report;
- (N) ~~A requirement that the offender obtain counseling. If the offense is a violation of section 2919.25 or a violation of section, 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, if the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and if the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children, a requirement that the offender obtain counseling. This division does not limit the court in requiring the offender to obtain counseling for any offense or in any circumstance not specified in this division. [Since this is optional, it is subsumed into the general authority to order counseling.]~~
- (O) **GPS Monitoring** *[Current §2929.13(L) gives judges discretion to order GPS for sexual predators. It's implicit in the general sentencing authority for other offenses. This would clarify that the option is available in all cases, provided LSC determines that the impact on the victims fund is minimal.]* A requirement that the offender be monitored by means of a global positioning device with the cost of monitoring borne by the offender. If the offender is indigent, the cost shall be paid by the crime victims reparations fund.

Here's how the section would look if the amendments were made.

§2929.17 Nonresidential Sanctions—As Amended

The court imposing a sentence for a felony on an offender who is not required to serve a mandatory prison term may impose any nonresidential sanction or combination of sanctions authorized under this section. Nonresidential sanctions include, but are not limited to, the following:

- (A) Day reporting;
- (B) House arrest, electronic monitoring, or continuous alcohol monitoring, alone or in combination with one another;
- (C) Community service of up to five hundred hours under RC 2951.02(B) or, if the court determines that the offender is financially incapable of fulfilling a financial sanction under RC 2929.18, a term of community service as an alternative to a financial sanction;
- (D) Drug treatment with a level of security for the offender as determined necessary by the court;
- (E) Intensive probation supervision;
- (F) Basic probation supervision;
- (G) Monitored time;
- (H) Drug and alcohol use monitoring, including random drug testing;
- (I) Curfew;
- (J) A requirement that the offender obtain or maintain employment;
- (K) A requirement that the offender obtain education or training;
- (L) Provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation;
- (M) A license violation report;
- (N) A requirement that the offender obtain counseling.

(O) A requirement that the offender be monitored by means of a global positioning device with the cost of monitoring borne by the offender. If the offender is indigent, the cost shall be paid by the crime victims reparations fund.

Financial Sanctions—§2929.18

This section covers various financial penalties available in felony cases.

§2929.18. Financial Sanctions—Showing Amendments

(A) ~~Except as otherwise provided in this division and in~~ In addition to imposing court costs pursuant to under section RC 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, ~~in the circumstances specified in regarding the crime victim recovery fund under section RC 2929.32 of the Revised Code,~~ may impose upon the offender a fine in accordance with under that section [*the Crime Victim Recovery Fund language added in 2004*].

[¶] Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) **Restitution** Restitution by the offender to the victim of the offender's crime, or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court.

[¶] If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. ~~If the court imposes restitution, the~~ The court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense [*redundant to the definition of "economic loss"*].

[¶] If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

If the court imposes restitution, the court may order that the offender pay a surcharge of not more than five per cent of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) **Day Fine** Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision, or as described in division (B)(2) of this section to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon on the seriousness of the offense. A fine ordered under this division shall not exceed the maximum conventional fine amount authorized for the level of the offense under division (A)(3) of this section.

(3) **Conventional Fine** ~~Except as provided in division (B)(1), (3), or (4) of this section, a~~ A fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or as described in division (B)(2) of this section to one or more law enforcement agencies, in the following amount, unless an additional amount is authorized for a drug offense under division (B):

- (a) For a ~~felony of the first degree~~ felony, not more than twenty thousand dollars;
- (b) For a ~~felony of the second degree~~ felony, not more than fifteen thousand dollars;

- (c) For a ~~felony of the third degree~~ felony, not more than ten thousand dollars;
- (d) For a ~~felony of the fourth degree~~ felony, not more than five thousand dollars;
- (e) For a ~~felony of the fifth degree~~ felony, not more than two thousand five hundred dollars.

(4) **State Fine** A state fine or costs as defined in section RC 2949.111 of the Revised Code.

(5) **Reimbursements** ~~(a)~~ Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:

- ~~(i)(a)~~ **For Sanctions** All or part of the costs of implementing any community control sanction, including a supervision fee under section RC 2951.021 of the Revised Code;
- ~~(i)(b)~~ **For Confinement** All or part of the costs of confinement under a sanction imposed pursuant to section RC 2929.14, 2929.142, 2929.143, or 2929.16 of the Revised Code, provided that the amount of reimbursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and *[unnecessary in light of (E)]* shall not exceed the actual cost of the confinement.

~~(b)[1]~~ If the offender is sentenced to a sanction of Reimbursement for the costs of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another local governmental entity, if, pursuant to section 307.93, 341.14, 341.19, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code and section 2929.37 of the Revised Code, or for fees charged during confinement, shall be made only if the board, legislative authority, or other local governmental entity requires prisoners to reimburse the county, municipal corporation, or other entity for its expenses incurred by reason of the prisoner's confinement, and if the court does not impose a financial sanction under division (A)(5)(a)(ii) of this section, confinement costs may be assessed pursuant to section 2929.37 of the Revised Code. In addition, the offender may be required to pay the fees specified in section 2929.38 of the Revised Code in accordance with that section the reimbursement or fees in a policy adopted under RC 2929.37 or 2929.38. *[Stricken cross-references are covered by references to §§2929.37 & .38.]*

(c) **Arson Cases** Reimbursement by the offender for costs pursuant to in an arson case under section RC 2929.71 of the Revised Code.

(B) Mandatory Drug Fines

(1) For a first, second, or third degree felony violation of any provision of drug offense under Chapter 2925-, 3719-, or 4729- of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to under division (A)(3) of this section unless the court determines that the offender. ~~If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.~~

(2) Any mandatory fine imposed upon an offender under division (B)(1) of this section and any fine imposed upon an offender under division (A)(2) or (3) of this section for any fourth or fifth degree felony violation of any provision of Chapter 2925-, 3719-, or 4729- of the Revised Code shall be paid to law enforcement agencies pursuant to division (F) of under section RC 2925.03(F) of the Revised Code.

~~(3) OVI [See new §2929.143] For a fourth degree felony OVI offense and for a third degree felony OVI offense, the sentencing court shall impose upon the offender a mandatory fine in the amount specified in division (G)(1)(d) or (e) of section 4511.19 of the Revised Code, whichever is applicable. The mandatory fine so imposed shall be disbursed as provided in the division pursuant to which it is imposed.~~

~~(4)(3) Additional Drug Fine Notwithstanding any fine otherwise authorized or required to be imposed under division (A)(2) or (3) or (B)(1) of this section or section 2929.31 of the Revised Code for a violation of section 2925.03 of the Revised Code, in addition to any penalty or sanction imposed for that offense under section 2925.03 or sections 2929.11 to 2929.18 of~~

~~the Revised Code, and in addition to the forfeiture of property in connection with the offense as prescribed in sections 2925.42 to 2925.45 of the Revised Code, the court that sentences an offender In addition to any other discretionary or mandatory financial sanction imposed for a drug trafficking in violation of section RC 2925.03 of the Revised Code, the court may impose upon the offender a fine in addition to any fine imposed under division (A)(2) or (3) of this section and in addition to any mandatory fine imposed under division (B)(1) of this section. The fine imposed under division (B)(4) of this section shall be used as provided in division (H) of section RC 2925.03(H) of the Revised Code. A, provided the additional fine imposed under division (B)(4) of this section shall not exceed whichever of the following is applicable [this fine raises questions about how a judge can instruct the defendant about the maximum penalty faced when taking a guilty plea]:~~

~~(a) The total value of any personal or real property [covered by §2901.01 definition] in which the offender has an interest and that was used in the course of, or intended for use in the course of, derived from, or realized through conduct in violation of drug trafficking under section RC 2925.03 of the Revised Code, including any property that constitutes proceeds derived from that offense;~~

~~(b) If the offender has no interest in any property of the type described in division (B)(4)(3)(a) of this section or if it is not possible to ascertain whether the offender has an interest in any property of that type in which the offender may have an interest, the amount of the mandatory fine for the offense imposed under division (B)(1) of this section or, if no mandatory fine is imposed under division (B)(1) of this section, the amount of the fine authorized for the level of the offense imposed under division (A)(3) of this section.~~

~~(5)(4) **Nonexclusive** Prior to imposing a fine under division (B)(4) of this section, the court shall determine whether the offender has an interest in any property of the type described in division (B)(4)(a) of this section. [Implicit in (B)(4)(a).] Except as provided in division (B)(6) or (7) of this section, a A fine that is authorized and imposed under division (B)(4)(3) of this section does not limit or affect the imposition of the any other penalties and sanctions for a violation of drug trafficking in violation of section RC 2925.03 of the Revised Code prescribed under those sections or sections 2929.11 to 2929.18 of the Revised Code and does not limit or affect a including other fines and asset forfeiture of property in connection with the offense as prescribed in sections 2925.42 to 2925.45 of the Revised Code.~~

~~(6)(5) **Up to Maximum** If the sum total of a mandatory fine amount imposed for a first, second, or third degree felony violation of section RC 2925.03 of the Revised Code under division (B)(1) of this section plus the amount of any fine imposed under division (B)(4)(3) of this section does not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section RC 2929.31 of the Revised Code, the court may impose a fine for the offense in addition to the mandatory fine and the fine imposed under division (B)(4) of this section. The sum total of the amounts of the mandatory fine, the fine imposed under division (B)(4) of this section, and the additional fine imposed under division (B)(6) of this section shall not exceed up to the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code those provisions.~~

~~[¶] The clerk of the court shall pay any fine that is imposed under this division (B)(6) of this section to the county, township, municipal corporation, park district as created pursuant to under section RC 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender pursuant to division (F) of section under RC 2925.03(F) of the Revised Code.~~

~~(7) If the sum total of the amount of a mandatory fine imposed for a first, second, or third degree felony violation of drug trafficking under section RC 2925.03 of the Revised Code plus the amount of any fine imposed under division (B)(4)(3) of this section exceeds the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section RC 2929.31 of the Revised Code, the court shall not impose a fine under this division (B)(6) of this section. [This one is confusing. Presumably, it covers when the property, e.g. a crack house, exceeds the maximum fine.]~~

(C) **Pay-for-Stay Reimbursement Distribution** ~~(4)~~ The offender shall pay reimbursements imposed upon the offender pursuant to under division (A)(5)(a) of this section as follows:

~~(1) Reimbursements to pay cover~~ the costs incurred by the department of rehabilitation and correction in operating a prison or other facility used to confine offenders pursuant to sanctions imposed under section 2929.14, 2929.142, or 2929.16 of the Revised Code shall be paid to the treasurer of state. The treasurer of state shall deposit the reimbursements in the confinement cost reimbursement fund that is hereby created in the state treasury. ~~The department of rehabilitation and correction shall use the amounts deposited in the fund to fund pay for the operation of facilities used to confine offenders pursuant to sections 2929.14, 2929.142, and 2929.16 of the Revised Code felons.~~

(2) **Distribution** Except as provided in for supervision fees under section RC 2951.021 of the Revised Code, the offender shall pay reimbursements upon the offender pursuant to division (A)(5)(a) of this section to pay for any sanction imposed under this section or RC 2929.16 or 2929.17, shall be distributed as follows:

(a) Reimbursements to pay the cover costs incurred by a county pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code shall be paid to the county treasurer. The county treasurer shall deposit the reimbursements in the sanction cost reimbursement fund that each board of county commissioners shall create in its county treasury. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

~~(3)(b)~~ Except as provided in section 2951.021 of the Revised Code, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section Reimbursements to pay the cover costs incurred by a municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code shall be paid to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in a special fund that shall be established in the treasury of each municipal corporation shall create. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

~~(4)(c)~~ Except as provided in section 2951.021 of the Revised Code, the offender shall pay reimbursements imposed pursuant to division (A)(5)(a) of this section for the Reimbursements to cover costs incurred by a private provider pursuant to a sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code shall be paid to the provider.

(D) **Judgment; Enforcement** Except as otherwise provided in this division, a financial sanction imposed pursuant to ~~division (A) or (B) of this section~~ is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, ~~and the offender subject to the financial sanction is the judgment debtor.~~ A financial sanction of reimbursement imposed pursuant to ~~division (A)(5)(a)(ii) of this section upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation, and the offender subject to the financial sanction is the judgment debtor.~~ A financial sanction of reimbursement Reimbursement imposed upon an offender pursuant to this section for costs expenses incurred by a private provider of sanctions is a judgment in favor of the private provider, ~~and the offender subject to the financial sanction is the judgment debtor.~~ A financial sanction of restitution Restitution imposed pursuant to this section is an order in favor of the victim of the offender's criminal act that can be collected through execution as described in ~~division (D)(1) of this section or through an order as described in division (D)(2) of this section~~

~~[unneeded in light of "or order" in next ¶], and the. The offender subject to any financial sanction shall be considered for purposes of the collection as is the judgment debtor.~~

~~[(¶)] Imposition of a financial sanction and execution on the judgment or order does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may bring an action to do any of the following:~~

- ~~(1) Obtain execution of the judgment or order through any available procedure, including:
 - ~~(a) An execution against the property of the judgment debtor under Chapter 2329. of the Revised Code;~~
 - ~~(b) An execution against the person of the judgment debtor under Chapter 2331. of the Revised Code;~~
 - ~~(c) A proceeding in aid of execution under Chapter 2333. of the Revised Code, including:
 - ~~(i) A proceeding for the examination of the judgment debtor under sections RC 2333.09 to 2333.12 and sections 2333.15 to 2333.27 of the Revised Code;~~
 - ~~(ii) A proceeding for attachment of the person of the judgment debtor under section RC 2333.28 of the Revised Code;~~
 - ~~(iii) A creditor's suit under section RC 2333.01 of the Revised Code.~~~~
 - ~~(d) The attachment of the property of the judgment debtor under Chapter 2715. of the Revised Code;~~
 - ~~(e) The garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code.~~~~
- ~~(2) Obtain an order for the assignment of wages of the judgment debtor under section RC 1321.33 of the Revised Code.~~

~~(E) **Ability to Pay Hearing** A court that imposes a financial sanction upon on an offender, including an otherwise mandatory fine for a drug offense, may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it.~~

~~(F) **Collections** Each court imposing a financial sanction upon an offender under this section or under section RC 2929.32 of the Revised Code [the additional fine to the Crime Victims Recovery Fund; should it be instead integrated into this section?] may designate the clerk of the court or another person to collect the financial sanction. The clerk or other person authorized by law or the court to collect the financial sanction may enter into contracts with one or more public agencies or private vendors for the collection of; amounts due under the financial sanction imposed pursuant to this section or section 2929.32 of the Revised Code. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this section or section 2929.32 of the Revised Code, a court shall comply with competitive bidding requirements under sections RC 307.86 to 307.92 of the Revised Code.~~

~~(G) **Rewarding Offenders** If a court that imposes a financial sanction under division (A) or (B) of this section finds that an offender satisfactorily has completed all other sanctions imposed upon the offender and that all restitution that has been ordered has been paid as ordered, the court may suspend any financial sanctions sanction imposed pursuant to under this section or section RC 2929.32 of the Revised Code that have not been paid.~~

~~(H) **Civil Action** No financial sanction imposed under this section or section RC 2929.32 of the Revised Code shall preclude a victim from bringing a civil action against the offender.~~

This is how it would look if the amendments were made.

§2929.18. Financial Sanctions—As Amended

(A) In addition to imposing court costs under RC 2947.23, the court imposing a sentence for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, regarding the crime victim recovery fund under RC 2929.32, may impose a fine under that section.

Financial sanctions include, but are not limited to, the following:

- (1) **Restitution** Restitution by the offender to the victim of the offender's crime, or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes

restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court.

If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. The court may base the amount on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim.

If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

If the court imposes restitution, the court may order that the offender pay a surcharge of not more than five per cent of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) **Day Fine** Except as provided in division (B)(1), (3), or (4), a fine payable by the offender to the state, to a political subdivision, or as described in division (B)(2) to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based on the seriousness of the offense. A fine ordered under this division shall not exceed the maximum conventional fine amount authorized for the level of the offense under division (A)(3).

(3) **Conventional Fine** A fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or as described in division (B)(2) to one or more law enforcement agencies, in the following amount, unless an additional amount is authorized for a drug offense under division (B):

- (a) For a first degree felony, not more than twenty thousand dollars;
- (b) For a second degree felony, not more than fifteen thousand dollars;
- (c) For a third degree felony, not more than ten thousand dollars;
- (d) For a fourth degree felony, not more than five thousand dollars;
- (e) For a fifth degree felony, not more than two thousand five hundred dollars.

(4) **State Fine** A state fine or costs as defined in RC 2949.111.

(5) **Reimbursements** Reimbursement by the offender of any or all of the costs of sanctions incurred by government, including the following:

- (a) **For Sanctions** All or part of the costs of implementing any community control sanction, including a supervision fee under RC 2951.021;
- (b) **For Confinement** All or part of the costs of confinement under a sanction imposed under RC 2929.14, 2929.142, 2929.143, or 2929.16, provided that the amount of reimbursement ordered shall not exceed the actual cost of confinement. Reimbursement for the costs of confinement in a facility operated by a county, municipal corporation, or another local governmental entity, or for fees charged during that confinement, shall be made only if the local governmental entity requires the reimbursement or fees in a policy adopted under RC 2929.37 or 2929.38.
- (c) **Arson Cases** Reimbursement by the offender for costs in an arson case under RC 2929.71.

(B) Mandatory Drug Fines

(1) For a first, second, or third degree felony drug offense under Chapter 2925, 3719, or 4729, the sentencing court shall impose a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense under division (A)(3) unless the court determines that the offender is indigent and unable to pay the fine.

(2) Any mandatory fine imposed under division (B)(1) and any fine imposed under division (A)(3) for any fourth or fifth degree felony violation of any provision of Chapter 2925, 3719, or 4729 shall be paid to law enforcement agencies under RC 2925.03(F).

(3) **Additional Drug Fine** In addition to any other discretionary or mandatory financial sanction imposed for drug trafficking in violation of RC 2925.03, the court may impose a fine as provided in RC 2925.03(H), provided the additional fine shall not exceed whichever of the following is applicable:

- (a) The total value of any property in which the offender has an interest and that was used or intended for use in the course of, derived from, or realized through drug trafficking under RC 2925.03, including any proceeds derived from that offense;
- (b) If the offender has no interest in any property described in division (B)(3)(a) or if it is not possible to ascertain whether the offender has an interest, the amount of the mandatory fine for the offense imposed under division (B)(1) or, if no mandatory fine is imposed, the amount of the fine imposed under division (A)(3).

(4) **Nonexclusive** A fine that is authorized and imposed under division (B)(3) does not limit any other penalties for drug trafficking in violation of RC 2925.03 including other fines and asset forfeiture.

(5) **Up to Maximum** If the total of a mandatory fine amount imposed for a first, second, or third degree felony violation of RC 2925.03 under division (B)(1) plus the amount of any fine imposed under division (B)(3) does not exceed the maximum fine authorized for the level of the offense under division (A)(3) or RC 2929.31, the court may impose a fine up to the maximum fine authorized under those provisions.

The clerk of the court shall pay any fine imposed under this division to the county, township, municipal corporation, park district as created under RC 511.18 or 1545.04, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender under RC 2925.03(F).

If the total of the amount of a mandatory fine imposed for first, second, or third degree felony drug trafficking under RC 2925.03 plus the amount of any fine imposed under division (B)(3) exceeds the maximum statutory fine amount authorized for the level of the offense under division (A)(3) or RC 2929.31, the court shall not impose a fine under this division.

(C) **Pay-for-Stay Reimbursement Distribution** The offender shall pay reimbursements imposed under division (A)(5)(a) as follows:

- (1) Reimbursements to cover the costs incurred by the department of rehabilitation and correction shall be paid to the treasurer of state. The treasurer shall deposit the reimbursements in the confinement cost reimbursement fund that is hereby created in the state treasury to pay for the operation of facilities used to confine felons.
- (2) Except for supervision fees under RC 2951.021, reimbursements to pay for any sanction imposed under this section or RC 2929.16 or 2929.17, shall be distributed as follows:
 - (a) Reimbursements to cover costs incurred by a county shall be paid to the county treasurer. The treasurer shall deposit the reimbursements in the sanction cost reimbursement fund that each board of county commissioners shall create.
 - (b) Reimbursements to cover costs incurred by a municipal corporation shall be paid to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in a special fund that each municipal corporation shall create.
 - (c) Reimbursements to cover costs incurred by a private provider shall be paid to the provider.

(D) **Judgment; Enforcement** Except as otherwise provided in this division, a financial sanction is a judgment in favor of the state or a political subdivision in which the court that imposed the sanction is located. Reimbursement imposed for expenses incurred by a private provider is a judgment in favor of the private provider. Restitution is an order in favor of the victim. The offender subject to any financial sanction is the judgment debtor.

Imposition of a financial sanction and execution on the judgment or order does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment or order, the victim, private provider, state, or political subdivision may bring an action to do any of the following:

- (1) Obtain execution of the judgment or order through any available procedure, including:
 - (a) An execution against the property of the judgment debtor under Chapter 2329;
 - (b) An execution against the person of the judgment debtor under Chapter 2331;
 - (c) A proceeding in aid of execution under Chapter 2333, including:

- (i) A proceeding for the examination of the judgment debtor under RC 2333.09 to 2333.12 and RC 2333.15 to 2333.27;
- (ii) A proceeding for attachment of the person of the judgment debtor under RC 2333.28;
- (iii) A creditor's suit under RC 2333.01.
- (d) The attachment of the property of the judgment debtor under Chapter 2715;
- (e) The garnishment of the property of the judgment debtor under Chapter 2716.
- (2) Obtain an order for the assignment of wages of the judgment debtor under RC 1321.33.
- (E) **Ability to Pay Hearing** A court that imposes a financial sanction on an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it.
- (F) **Collections** Each court imposing a financial sanction under this section or RC 2929.32 may designate the clerk of the court or another person to collect the financial sanction. The clerk or other person may enter into contracts with one or more public agencies or private vendors for the collection of amounts due under the sanction. Before entering into a contract, a court shall comply with competitive bidding requirements under RC 307.86 to 307.92.
- (G) **Rewarding Offenders** If a court that imposes a financial sanction finds that an offender satisfactorily has completed all other sanctions imposed and that all restitution has been paid as ordered, the court may suspend any financial sanction imposed under this section or RC 2929.32 that have not been paid.
- (H) **Civil Action** No financial sanction imposed under this section or RC 2929.32 shall preclude a victim from bringing a civil action against the offender.

Sentencing Hearing—§2929.19

The distilled statute reflects *Foster* and simplifies felony OVI cases.

§2929.19. Felony Sentencing Hearing—Showing Amendments

(A) **General Duties** The court shall hold a sentencing hearing before imposing a sentence ~~under this chapter upon~~ on an offender ~~who was convicted of or pleaded guilty to~~ for a felony and before resentencing an offender ~~who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to~~ under section RC 2953.07 or 2953.08 ~~of the Revised Code~~. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative ~~in accordance with~~ under section RC 2930.14 ~~of the Revised Code~~, and, with the approval of the court, any other person may present information relevant to the ~~imposition of sentence in the case~~. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed ~~upon the offender~~.

(B) **Considerations; Sentencing**

(1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person ~~pursuant to~~ under division (A) ~~of this section, and, if one was prepared,~~ the presentence investigation report made ~~pursuant to~~ under section RC 2951.03 ~~of the Revised Code~~ or Criminal Rule 32.2, ~~if prepared,~~ and any victim impact statement made ~~pursuant to~~ under section RC 2947.051 ~~of the Revised Code~~.

(2) **Findings on Minimum, Maximum, & Consecutive Terms** [*Struck by Foster*. The court shall impose a sentence and shall make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances:

(a) Unless the offense is a violent sex offense or designated homicide, assault, or kidnapping offense for which the court is required to impose sentence pursuant to division (G) of section 2929.14 of the Revised Code, if it imposes a prison term for a felony of the fourth or fifth degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to division (B) of section 2929.13 of the Revised Code for purposes of sentencing, its reasons for imposing the prison term, based upon the overriding purposes and principles of felony sentencing set forth in section 2929.11 of the Revised Code, and any factors listed in divisions (B)(1)(a) to (i) of section 2929.13 of the Revised Code that it found to apply relative to the offender.

~~(b) If it does not impose a prison term for a felony of the first or second degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and for which a presumption in favor of a prison term is specified as being applicable, its reasons for not imposing the prison term and for overriding the presumption, based upon the overriding purposes and principles of felony sentencing set forth in section 2929.11 of the Revised Code, and the basis of the findings it made under divisions (D)(1) and (2) of section 2929.13 of the Revised Code.~~

~~(c) If it imposes consecutive sentences under section 2929.14 of the Revised Code, its reasons for imposing the consecutive sentences;~~

~~(d) If the sentence is for one offense and it imposes a prison term for the offense that is the maximum prison term allowed for that offense by division (A) of section 2929.14 of the Revised Code or section 2929.142 of the Revised Code, its reasons for imposing the maximum prison term;~~

~~(e) If the sentence is for two or more offenses arising out of a single incident and it imposes a prison term for those offenses that is the maximum prison term allowed for the offense of the highest degree by division (A) of section 2929.14 of the Revised Code or section 2929.142 of the Revised Code, its reasons for imposing the maximum prison term.~~

~~(3) **Imposing Prison Terms** Subject to division (B)(4)(3) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:~~

~~(a) **Prison Term** Impose a stated prison term;~~

~~(b) **Bad Time Warning** Notify the offender that, as part of the sentence, the parole board may extend the stated prison term for certain violations of prison rules for up to one-half of the stated prison term;~~

~~(c) **Mandatory PRC** Notify the offender that the offender will be supervised under section RC 2967.28 of the Revised Code after the offender leaves leaving prison if the offender is being sentenced for a felony of the first degree or second degree felony, for a felony sex offense, or for a felony of the third degree felony that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person.~~

~~[This ¶ becomes part of new (e) below.] If a court imposes a sentence including a prison term of a type described in division (B)(3)(c) of this section on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(c) of this section that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(c) of this section and failed to notify the offender pursuant to division (B)(3)(c) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.~~

~~(d)(c) **Optional PRC** Notify the offender that the offender may be supervised under section RC 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree felony that is not subject to division (B)(3)(c)(2)(b) of this section.~~

~~[This ¶ becomes part of new (e) below.] Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(d) of this section and failed to notify the offender pursuant to division (B)(3)(d) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.~~

~~(e)(d) **PRC Violations Warning** Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section RC 2967.131(B) of the Revised~~

Code, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon on the offender.

(e) Missing PRC Notices [*This consolidates language from current (c), (d), & (e) on failure of the court to notify of PRC and failure to say that a prison term may be imposed for violations.*] If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to ~~under~~ division (B)(3)(e)(2)(b) through (d) of this section that the offender will or may be supervised under RC 2967.28 after leaving prison or that the parole board may impose a prison term as described in ~~division (B)(3)(e) of this section~~ for a violation of that supervision or a condition of post-release control imposed under ~~division (B) of section 2967.131 of the Revised Code~~, or to include in the judgment of conviction entered on the its journal a statement to that effect, does not negate, limit, or otherwise affect the mandatory or discretionary period of supervision or the authority of the parole board to impose a prison term for a violation of that nature if, pursuant to division (D)(1) of section 2967.28 of the Revised Code, the parole board notifies the offender prior to before the offender's release of the board's authority to so impose a prison term. Section RC 2929.191 of the Revised Code applies if, prior to before July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(3)(e) of this section regarding mandatory or optional post-release control or regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control. If the board imposes a prison term for a violation, the board also shall notify the offender before release of the board's authority to impose the term under RC 2967.28(D)(1).

(f) Drug Ban Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in ~~section RC 341.26, 753.33, or 5120.63 of the Revised Code~~, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

(4)(3) Certain Sexual Offenders

(a) The court shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, and ~~the court shall comply with the requirements of section RC 2950.03 of the Revised Code~~ if any of the following apply:

(i) The offender is being sentenced for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator in relation to that offense.

(ii) The offender is being sentenced for a sexually oriented offense that the offender committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iii) The offender is being sentenced on or after July 31, 2003, for a child-victim oriented offense, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iv) The offender is being sentenced under ~~section RC 2971.03 of the Revised Code~~ for a rape in violation of division (A)(1)(b) of section RC 2907.02(A)(1)(b) of the Revised Code committed on or after January 2, 2007.

(v) The offender is sentenced to a term of life without parole for rape under ~~division (B) of section RC 2907.02(B) of the Revised Code~~.

(vi) The offender is being sentenced for attempted rape committed on or after January 2, 2007, and a specification of the type described in section RC 2941.1418, 2941.1419, or 2941.1420 of the Revised Code attempted rape specification.

(vii) The offender is being sentenced under ~~division (B)(3)(a), (b), (c), or (d) of section RC 2971.03(B)(3)(a), (b), (c), or (d) of the Revised Code~~ for an offense described in those divisions committed on or after the effective date of this amendment.

(b) Additionally, if any criterion set forth in divisions (B)(4)(a)(i) to (vii) ~~of this section~~ is satisfied, in the circumstances described in ~~division (G) of section RC 2929.14(F) of the~~

~~Revised Code~~, the court shall impose sentence on the offender as described in under that division.

~~(5)(4) Imposing Community Control~~ If the sentencing court determines at the sentencing hearing that imposes a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. ~~The court, it~~ shall notify the offender that, if the conditions of community control or the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and. The court shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to under section RC 2929.14 of the Revised Code.

~~(6)(5) Imposing Financial Sanctions~~ Before imposing a financial sanction under section RC 2929.18 of the Revised Code or a fine under section 2929.32 of the Revised Code, the court shall consider the offender's present and future ability to pay the amount of the sanction or fine.

~~(7)(6) Local Confinement~~ If the sentencing court sentences the offender to a sanction of confinement pursuant to under section RC 2929.14 or 2929.16 of the Revised Code that is to be served in a local detention facility, as defined in section RC 2929.36 of the Revised Code, and if the local detention facility is covered by a reimbursement policy adopted pursuant to under section RC 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code and section RC 2929.37 of the Revised Code, both of the following apply:

- (a) The court shall specify both of the following as part of the sentence:
 - (i) If the offender is presented with an itemized bill pursuant to under section RC 2929.37 of the Revised Code for payment of the costs of confinement, the offender is required to pay the bill in accordance with under that section.
 - (ii) If the offender does not dispute the bill described in division (B)~~(7)(6)~~(a)(i) of this section and does not pay the bill by the times specified in section RC 2929.37 of the Revised Code, the clerk of the court may issue a certificate of judgment against the offender as described in under that section.
- (b) The sentence automatically includes any certificate of judgment issued as described in division (B)~~(7)(6)~~(a)(ii) of this section.

(C) Imposing Felony OVI Sentences

(1) **Mandatory** If the offender is being sentenced for a fourth degree felony OVI offense, the court shall do the following under division (G)(1) of section 2929.13 of the Revised Code in accordance with RC 4511.19 and 2929.143, the court shall impose the:

- Impose a mandatory prison term for conviction of a RC 2941.1413 specification for having five prior OVI offenses in twenty years, if present, plus a mandatory prison term on the underlying offense;
- Impose a mandatory term of local incarceration in accordance with that division and specify where the term will be served, or impose a mandatory prison term.
- shall impose Impose a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code,.

(2) **Discretionary** and, in addition, the court may impose additional do any of the following if authorized by RC 4511.19 and 2929.143:

- Impose an additional jail term or additional prison term;
- Impose one or more community control sanctions as specified in sections RC 2929.15, 2929.16, 2929.17, and 2929.18 of the Revised Code. The court shall not impose a prison term on the offender except that the court may impose a prison term upon the offender as provided in division (A)(1) of section 2929.13 of the Revised Code. [Confusing since it only applies to persons who receive community control and later violate the conditions.]

~~(2) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the court shall impose the mandatory prison term~~

~~in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code, and, in addition, may impose an additional prison term as specified in section 2929.14 of the Revised Code. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may impose a community control sanction on the offender, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.~~

~~(G)(D) **Theme Prison Recommendations** The sentencing court, pursuant to division (K) of under section RC 2929.14(G) of the Revised Code, may recommend placement of the offender in a program of shock incarceration under section RC 5120.031 of the Revised Code or an intensive program prison under section RC 5120.032 of the Revised Code, disapprove placement of the offender in a program or prison of that nature, or make no recommendation. If the court recommends or disapproves placement, it shall make a finding that gives its reasons for its recommendation or disapproval.~~

~~(E) **DNA Collection** [Moves from current §2929.13(H).] The judge shall require the offender to submit to a DNA specimen collection procedure under RC 2901.07, if applicable.~~

Here is how the sentencing hearing statute reads under the proposal.

§2929.19. Felony Sentencing Hearing—As Amended

(A) **General Duties** The court shall hold a sentencing hearing before imposing a sentence on an offender for a felony and before resentencing an offender whose case was remanded under RC 2953.07 or 2953.08. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative under RC 2930.14, and, with the approval of the court, any other person may present information relevant to the sentence. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed.

(B) Considerations; Sentencing

(1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person under division (A), the presentence investigation report made under RC 2951.03 or Criminal Rule 32.2, if prepared, and any victim impact statement made under RC 2947.051.

(2) **Imposing Prison Terms** Subject to division (B)(3), if the court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) **Prison Term** Impose a stated prison term;

(b) **Mandatory PRC** Notify the offender that the offender will be supervised under RC 2967.28 after leaving prison if the offender is being sentenced for a first degree or second degree felony, for a felony sex offense, or for a third degree felony in the commission of which the offender caused or threatened to cause physical harm to a person.

(c) **Optional PRC** Notify the offender that the offender may be supervised under RC 2967.28 after the offender leaves prison if the offender is being sentenced for a third, fourth, or fifth degree felony that is not subject to division (B)(2)(b).

(d) **PRC Violations Warning** Notify the offender that, if the offender violates a condition of post-release control imposed under RC 2967.131(B), the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed on the offender.

(e) **Missing PRC Notices** If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender under division (B)(2)(b) through (d) that the offender will or may be supervised under RC 2967.28 after leaving prison or that the parole board may impose a prison term for a violation of that supervision or a condition of post-release control, or to include in its journal a statement to that effect, does not negate, limit, or otherwise affect the mandatory or discretionary period of supervision or the authority of the parole board to impose a prison term for a violation. RC 2929.191 applies if, before July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender regarding mandatory or optional

post-release control or regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control. If the board imposes a prison term for a violation, the board also shall notify the offender before release of the board's authority to impose the term under RC 2967.28(D)(1).

(f) **Drug Ban** Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in RC 341.26, 753.33, or 5120.63, whichever is applicable, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

(3) Certain Sexual Offenders

(a) The court shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, and shall comply with RC 2950.03 if any of the following apply:

(i) The offender is being sentenced for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator in relation to that offense.

(ii) The offender is being sentenced for a sexually oriented offense that the offender committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iii) The offender is being sentenced on or after July 31, 2003, for a child-victim oriented offense, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iv) The offender is being sentenced under RC 2971.03 for a rape in violation of RC 2907.02(A)(1)(b) committed on or after January 2, 2007.

(v) The offender is sentenced to a term of life without parole for rape under RC 2907.02(B).

(vi) The offender is being sentenced for attempted rape committed on or after January 2, 2007, and a RC 2941.1418, 2941.1419, or 2941.1420 attempted rape specification.

(vii) The offender is being sentenced under RC 2971.03(B)(3)(a), (b), (c), or (d) for an offense described in those divisions committed on or after the effective date of this amendment.

(b) Additionally, if any criterion set forth in divisions (B)(4)(a)(i) to (vii) is satisfied, in the circumstances described RC 2929.14(F), the court shall impose sentence on the offender under that division.

(4) Imposing Community Control If the court imposes a community control sanction, it shall notify the offender that, if the conditions of community control or the sanction are violated, the court may impose a longer time under the same sanction, a more restrictive sanction, or a prison term on the offender. The court shall indicate the specific prison term that may be imposed as a sanction for the violation, selected from the range of prison terms for the offense under RC 2929.14.

(5) Imposing Financial Sanctions Before imposing a financial sanction under RC 2929.18 or 2929.32, the court shall consider the offender's present and future ability to pay the amount of the sanction or fine.

(6) Local Confinement If the sentencing court sentences the offender to a sanction of confinement under RC 2929.14 or 2929.16 that is to be served in a local detention facility, as defined in RC 2929.36, and if the local detention facility is covered by a reimbursement policy adopted under RC 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 and RC 2929.37, both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

(i) If the offender is presented with an itemized bill under RC 2929.37 for the costs of confinement, the offender is required to pay under that section.

(ii) If the offender does not dispute the bill described in division (B)(6)(a)(i) and does not pay the bill by the times specified in RC 2929.37, the clerk of the court may issue a judgment against the offender under that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (B)(6)(a)(ii).

(C) Imposing Felony OVI Sentences

(1) **Mandatory** If the offender is being sentenced for a felony OVI, the court shall do the following in accordance with RC 4511.19 and 2929.143:

- Impose a mandatory prison term for conviction of a RC 2941.1413 specification for having five prior OVI offenses in twenty years, if present, plus a mandatory prison term on the underlying offense;
- Impose a mandatory term of local incarceration and specify where the term will be served, or impose a mandatory prison term.
- Impose a mandatory fine.

(2) **Discretionary** In addition, the court may do any of the following if authorized by RC 4511.19 and 2929.143:

- Impose an additional jail term or additional prison term;
- Impose one or more community control sanctions as specified in RC 2929.15, 2929.16, 2929.17, and 2929.18.

(D) **Theme Prison Recommendations** The sentencing court, under RC 2929.14(G), may recommend placement of the offender in a program of shock incarceration under RC 5120.031 or an intensive program prison under RC 5120.032, disapprove placement of the offender in a program or prison of that nature, or make no recommendation. If the court recommends or disapproves placement, it shall make a finding that gives its reasons for its recommendation or disapproval.

(E) **DNA Collection** The judge shall require the offender to submit to a DNA specimen collection procedure under RC 2901.07, if applicable.

Correcting Failure to Notify of Post-Release Control—§2929.191

This provision was added in 2006 to minimize the impact of appellate decisions that scolded courts for not mentioning post-release control and the penalties for violating at sentencing. It builds on similar changes made in §2929.19, above (see proposed division (B)(2)(e)).

§2929.191. Correcting Failed Post-Release Control Notice—Showing Amendments

~~(A) **Belated PRC Notice** (1) If, prior to the effective date of this section before July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(c) of section 2929.19 of the Revised Code and failed to notify the offender pursuant to that division that the offender will or may be supervised, whichever is relevant, under section RC 2967.28 of the Revised Code after the offender leaves prison, or to include a statement to that effect in the judgment of conviction entered on the its journal or in the sentence pursuant to under division (F)(1) of section RC 2929.14(E)(1) or (2) of the Revised Code, the court may issue a correction at any time before the offender is released from imprisonment under that prison term and at after a hearing conducted in accordance with under division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison.~~

~~If, prior to the effective date of this section, a court imposed a sentence including a prison term of a type described in division (B)(3)(d) of section 2929.19 of the Revised Code and failed to notify the offender pursuant to that division that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include a statement to that effect in the judgment of conviction entered on the journal or in the sentence pursuant to division (F)(2) of section 2929.14 of the Revised Code, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes~~

~~in the judgment of conviction the statement that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison.~~

~~(2) If a court prepares and issues a correction to a judgment of conviction as described in division (A)(1) of this section before the offender is released from imprisonment under the prison term the court imposed prior to the effective date of this section, the court shall place upon the journal of the court an entry nunc pro tunc to record the correction to the judgment of conviction and shall provide a copy of the entry to the offender or, if the offender is not physically present at the hearing, shall send a copy of the entry to the department of rehabilitation and correction for delivery to the offender. If the court sends a copy of the entry to the department, the department promptly shall deliver copy of the entry to the offender. The court's placement upon the journal of the entry nunc pro tunc before the offender is released from imprisonment under the term shall be considered, and shall have the same effect, as if the court at the time of original sentencing had included the statement in the sentence and the judgment of conviction entered on the journal and had notified the offender that the offender will be so supervised regarding a sentence including a prison term of a type described in division (B)(3)(c) of section 2929.19 of the Revised Code or that the offender may be so supervised regarding a sentence including a prison term of a type described in division (B)(3)(d) of that section.~~

(B) Effect on PRC Violators ~~(1) If, prior to the effective date of this section before July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to under division (B)(3)(e) of section RC 2929.19(B)(2)(e) of the Revised Code regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control, or to include in the judgment of conviction entered on the its journal a statement to that effect, at any time before the offender is released from imprisonment under that term and at, after a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of section 2929.19 of the Revised Code, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section RC 2967.131(B) of the Revised Code, the parole board may impose, as part of the sentence, a prison term of up to one-half of the stated prison term originally imposed upon on the offender.~~

~~(2) [Struck here and moved to (C)(2), shown, as amended, below.]~~

(C) Hearing, Entry, and Effect

~~(1) **Hearing** On and after the effective date of this section July 11, 2006, a court that wishes to prepare and issue a correction to a judgment of conviction of a type described in division (A)(1) or (B)(1) of under this section shall not issue the correction until after the court has conducted first conduct a hearing in accordance with this division. Before a court holds a hearing pursuant to this division, the The court shall provide notice of the date, time, place, and purpose of the hearing to the offender who is the subject of the hearing, the prosecuting attorney of the county, and the department of rehabilitation and correction. The offender has the right to be physically present at the hearing, except that, upon on the court's own motion or the motion of the offender or the prosecuting attorney, the court may permit the offender to appear at the hearing by video conferencing equipment if available and compatible. An A video appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender were physically present at the hearing. At the hearing, the offender and the prosecuting attorney may make a statement as to whether the court should issue a correction to the judgment of conviction.~~

~~(2) **Entry and Effect** [Moved from current (B)(2) and streamlined as follows:] If the court prepares and issues a correction to a judgment of conviction as described in under division (B)(1) of this section before the offender is released from imprisonment under the prison term, the court shall place upon the journal of the court journalize an entry nunc pro tunc to record the correction to the judgment of conviction and shall provide a copy of the entry to the offender or, if, If the offender is not physically present at the hearing, the court shall send a the copy of the entry to the department of rehabilitation and correction for prompt delivery to the offender. If the court sends a copy of the entry to the department, the department promptly shall deliver a copy to the offender. The court's placement upon the journal of the~~

~~entry nunc pro tunc before the offender is released from imprisonment under the term shall be considered, and shall have the same effect, as if the court at the time of original sentencing had included the statement in the judgment of conviction entered on the journal and had properly notified the offender pursuant to division (B)(3)(e) of section 2929.19 of the Revised Code regarding the supervision and the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control. [Merged into (C).]~~

Here's how the section would look if the amendments were made.

§2929.191. Correcting Failed Post-Release Control Notice—As Amended

(A) **Belated PRC Notice** If, before July 11, 2006, a court imposed a prison term and failed to notify the offender that the offender will or may be supervised, whichever is relevant, under RC 2967.28 after the offender leaves prison, or to include a statement to that effect in its journal or in the sentence under RC 2929.14(E)(1) or (2), the court may issue a correction at any time before the offender is released from that prison term after a hearing conducted under division (C).

(B) **Effect on PRC Violators** If, before July 11, 2006, a court imposed a prison term and failed to notify the offender under RC 2929.19(B)(2)(e) regarding the possibility of the parole board imposing a prison term for a violation of post-release control, or to include in its journal a statement to that effect, at any time before the offender is released from imprisonment under that term, after a hearing conducted under division (C), the court may issue a correction that, if a period of supervision is imposed following the offender's release from prison, and if the offender violates a condition of post-release control imposed under RC 2967.131(B), the parole board may impose, as part of the sentence, a prison term of up to one-half of the stated prison term originally imposed on the offender.

(C) **Hearing, Entry, and Effect**

(1) **Hearing** On and after July 11, 2006, a court that wishes to issue a correction under this section shall first conduct a hearing. The court shall provide notice of the date, time, place, and purpose of the hearing to the offender who is the subject of the hearing, the prosecuting attorney of the county, and the department of rehabilitation and correction. The offender has the right to be physically present at the hearing, except that, on the court's own motion or the motion of the offender or the prosecuting attorney, the court may permit the offender to appear at the hearing by video conferencing equipment if available and compatible. A video appearance has the same effect as if the offender were physically present. At the hearing, the offender and the prosecuting attorney may make a statement as to whether the court should issue a correction to the judgment of conviction.

(2) **Entry and Effect** If the court issues a correction under this section before the offender is released from the prison term, the court shall journalize an entry nunc pro tunc to record the correction and provide a copy of the entry to the offender. If the offender is not physically present, the court shall send the copy to the department of rehabilitation and correction for prompt delivery to the offender. The court's entry shall have the same effect as if the court at the time of original sentencing had included the statement in the journal and properly notified the offender regarding the supervision and the possibility of the parole board imposing a prison term for a violation of post-release control.

Judicial Release—§2929.20

Many of the Commission's ideas on the judicial release statute were incorporated in DRC's "omnibus bill" (H.B. 130), currently pending in the House. This draft only includes mechanical proposals. One is worthy of comment. To better clarify the law, the draft ties the timing of the judicial release petition to the length of prison term.

§2929.20. Judicial Release—Showing Amendments

(A) As used in this section, "eligible offender" means any person serving a stated prison term of ten years or less when either of the following applies:

(1) The stated prison term does not include a mandatory prison term.

(2) The stated prison term includes a mandatory prison term, and the person has served the mandatory prison term. [*Strikes language made superfluous by changes below.*]

~~(B) **General Authority** Upon~~ On the filing of a motion by ~~the eligible an offender who is serving a prison term of ten years or less, or upon~~ on its own motion regarding such an offender, a the sentencing court may reduce the offender's stated prison term through a judicial release in accordance with under this section. ~~The court shall not reduce the stated prison term of an offender who is not an eligible offender.~~

~~(B) **Timing** An eligible offender may file a motion for judicial release with the sentencing court within the following applicable period of time:~~ [*Simplifies the eligibility rules by tying the eligibility date to the sentence(s) imposed, irrespective of the degree of offense.*]

(1) ~~(a) Except as otherwise provided in division (B)(1)(b) or (c) of this section, if~~ If the stated prison term [*defined in current §2929.01(GG) to include all terms imposed*] ~~was imposed for a felony of the fourth or fifth degree is less than two years,~~ the eligible offender may file the motion not earlier than thirty days ~~or later than ninety days~~ [*upper limit isn't meaningful*] after the offender is delivered to a state correctional institution.

~~(b) If the stated prison term is five years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term.~~

~~(c) If the stated prison term is more than five years and not more than ten years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term.~~

(2) ~~Except as otherwise provided in division (B)(3) or (4) of this section, if~~ If the stated prison term ~~was imposed for a felony of the first, second, or third degree is at least two years, but less than five years,~~ the eligible offender may file the motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution.

~~(3) If the stated prison term is five years, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term.~~

~~(4) If the stated prison term is more than is five years and or more, but not more than ten years, the eligible offender may file the motion not earlier than five years after the eligible offender has served five years of the stated prison term is delivered to a state correctional institution.~~

~~(5)(4) If the offender's stated prison term includes a mandatory prison term, the offender shall file the motion within the time authorized under division (B)(1), (2), or (3), or (4) of this section for the nonmandatory portion of the prison term, but the time for filing the motion does not begin to run after the expiration of the mandatory portion of the prison term ends.~~

~~(C) **Court's Options** Upon~~ On receipt of a timely motion for judicial release ~~filed by an eligible offender under division (B) of this section or upon~~ on the sentencing court's own motion made within the appropriate time period specified in that division, the court may deny the motion without a hearing or schedule a hearing on the motion. ~~The court may deny the motion without a hearing but shall not grant the motion without a hearing. If a court denies a motion without a hearing, the court may later consider a subsequent judicial release for that eligible offender on its own motion or a subsequent motion filed by that eligible offender. If a court denies a motion after a hearing, the court shall not consider a subsequent motion for that eligible offender. The court shall hold only one hearing for any eligible offender.~~

~~A~~ The hearing ~~under this section shall be conducted in open court within sixty days after the date on which the motion is filed, provided that unless the court may delay~~ delays the hearing for a period not up to exceed one hundred eighty additional days. ~~If the court holds a hearing on the motion, the~~ The court shall enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed.

(D) **Hearing Notice** If a court schedules a hearing under division (C) ~~of this section~~, the court shall notify the ~~eligible offender of the hearing and shall notify~~ the head of the state correctional institution in which the ~~eligible offender is confined of the hearing prior to~~ before the hearing. The head of the state ~~correctional~~ institution immediately shall notify the appropriate person at the department of rehabilitation and correction of the hearing, and the department, within twenty-four hours after receipt of receiving the notice, shall post on the database it maintains pursuant to under section RC 5120.66 of the Revised Code the offender's name and all of the information specified in division (A)(1)(c)(i) of that section. ~~If the court schedules a hearing for judicial release, the~~ The court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the ~~eligible offender was indicted. Upon receipt of~~ On receiving the notice from the court, the prosecuting attorney shall notify the victim of the offense ~~for which the stated prison term was imposed or the victim's representative, pursuant to under section RC 2930.16 of the Revised Code, of the hearing.~~

(E) **Conduct Report** ~~Prior to Before~~ the date of the hearing on a motion for judicial release ~~under this section~~, the head of the state correctional institution in which the ~~eligible offender in question is confined shall send to the court a report on the eligible offender's conduct in the institution and in any institution from which the eligible offender may have been transferred. The report shall cover the eligible offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the eligible offender. The report shall be made part of the record of the hearing.~~

(F) **If Hearing Granted** If the court grants a hearing on a motion for judicial release ~~under this section~~, the ~~eligible offender shall attend the hearing if ordered to do so by the court. Upon receipt of~~ On receiving a copy of the journal entry containing the order, the head of the state correctional institution in which the ~~eligible offender is incarcerated shall deliver the eligible offender to the sheriff of the county in which the hearing is to be held. The sheriff shall convey the eligible offender to the hearing and return the offender to the institution after and from~~ the hearing.

(G) **At Hearing** At the hearing on a motion for judicial release ~~under this section~~, the court shall afford the ~~eligible offender and the eligible offender's attorney an opportunity to present written information and, if present, oral information relevant to the motion and shall afford the eligible offender, if present, and the eligible offender's attorney an opportunity to present oral information relevant to the motion.~~ The court shall afford a similar opportunity to the prosecuting attorney, the victim or the victim's representative, as defined in section RC 2930.01 of the Revised Code, and any other person the court determines is likely to present additional relevant information. The court shall consider any statement of a victim made pursuant to under section RC 2930.14 or 2930.17 of the Revised Code, any victim impact statement prepared pursuant to under section RC 2947.051 of the Revised Code, and any report made under division (E) ~~of this section~~. The court may consider any written statement of any person submitted to the court pursuant to under division (J) of this section. After ruling on the motion, the court shall notify the victim of the ruling in accordance with sections RC 2930.03 and 2930.16 of the Revised Code.

(H) **Presumption re F-1s & F-2s, etc.**

(1) A court shall not grant a judicial release ~~under this section~~ to an ~~eligible offender who is imprisoned for a felony of the first or second degree felony, or to an eligible offender who committed an offense contained in under Chapter 2925- or 3719- of the Revised Code and for whom there was a presumption under section RC 2929.13 of the Revised Code in favor of a prison term, unless the court, with reference to factors under section RC 2929.12 of the Revised Code, finds both of the following:~~

(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the ~~eligible offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;~~

(b) That a sanction other than a prison term would not demean the seriousness of the offense ~~because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense. [The re-weighting of seriousness factors seems unnecessary, since they presumably wouldn't have changed since trial.]~~

(2) A court that grants a judicial release to an eligible offender under division (H)(1) of this section shall specify its findings on the record ~~both findings required in that division and also shall list all the factors described in that division that were presented at the hearing.~~

(I) **If Granted** If the court grants a motion for judicial release ~~under this section~~, the court shall order the release of the eligible offender, ~~shall place the eligible offender under an appropriate community control sanction, under appropriate community control conditions, and under the supervision of the probation department of probation serving the court, and shall reserve the right to reimpose the sentence that it reduced pursuant to the judicial release if the offender violates the sanction. If the court reimposes the reduced sentence pursuant to this reserved right, it may do so either concurrently with, or consecutive to, any new sentence imposed upon on the eligible offender as a result of the violation that is a new offense.~~

The period of the community control ~~sanction shall be no longer than not exceed~~ five years. The court, ~~in its discretion~~, may reduce the period of the community control ~~sanction by the amount of any time the eligible offender spent in jail and prison for the offense and in prison.~~ If the court made ~~any findings pursuant to under~~ division (H)(1) of this section, the court shall serve a copy of the findings ~~upon on~~ counsel for the parties within fifteen days after the date on which the court grants the motion for judicial release.

~~Prior to being released pursuant to a judicial release granted under this section, the eligible offender shall serve any extension of sentence that was imposed under section 2967.11 of the Revised Code. [Removes obsolete reference to "bad" time.]~~

If the court grants a motion for judicial release, the court shall notify the appropriate person at the department of rehabilitation and correction ~~of the judicial release~~, and the department shall post notice of the release on the database it maintains pursuant to under section RC 5120.66 of the Revised Code.

(J) **Victim's Statement** In addition to and independent of the right of a victim to make a statement pursuant to under section RC 2930.14, 2930.17, or 2946.051 of the Revised Code and any right of a person to present written information or make a statement pursuant to under division (G) of this section, any person may submit to the court, at any time ~~prior to before~~ the hearing on the offender's motion for judicial release, a written statement concerning the effects and circumstances of the offender's crime or crimes, ~~the circumstances surrounding the crime or crimes, the manner in which the crime or crimes were perpetrated,~~ and the person's opinion as to whether the offender should be released.

Here is how §2929.20 would read, if so amended.

§2929.20. Judicial Release—As Amended

(A) **General Authority** On the filing of a motion by an offender who is serving a prison term of ten years or less, or on its own motion regarding such an offender, the sentencing court may reduce the offender's stated prison term through judicial release under this section.

(B) **Timing** An eligible offender may file a motion for judicial release with the sentencing court within the following applicable period:

- (1) If the stated prison term is less than two years, the eligible offender may file the motion not earlier than thirty days after the offender is delivered to a state correctional institution.
- (2) If the stated prison term is at least two years, but less than five years, the eligible offender may file the motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution.
- (3) If the stated prison term is five years or more, but not more than ten years, the eligible offender may file the motion not earlier than five years after the eligible offender is delivered to a state correctional institution.
- (4) If the offender's stated prison term includes a mandatory prison term, the offender shall file the motion within the time authorized under division (B)(1), (2), or (3), for the nonmandatory portion of the prison term, but the time for filing the motion does not begin to run after the mandatory portion of the prison term ends.

(C) **Court's Options** On receipt of a timely motion for judicial release under division (B) or on the sentencing court's own motion made within the appropriate time specified in that division, the court may deny the motion without a hearing or schedule a hearing. The court shall not grant the

motion without a hearing. If a court denies a motion without a hearing, the court may later consider judicial release for that offender on a subsequent motion filed by that offender. If a court denies a motion after a hearing, the court shall not consider a subsequent motion for that offender. The court shall hold only one hearing for any eligible offender.

The hearing shall be conducted in open court within sixty days after the motion is filed, unless the court delays the hearing for up to one hundred eighty additional days. The court shall enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed.

(D) Hearing Notice If a court schedules a hearing under division (C), the court shall notify the offender and the head of the state correctional institution in which the offender is confined before the hearing. The head of the state institution immediately shall notify the appropriate person at the department of rehabilitation and correction of the hearing, and the department, within twenty-four hours after receiving the notice, shall post on the database it maintains under RC 5120.66 the offender's name and the information specified in division (A)(1)(c)(i) of that section. The court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the offender was indicted. On receiving the notice, the prosecuting attorney shall notify the victim of the offense or the victim's representative, under RC 2930.16.

(E) Conduct Report Before the date of the hearing on a motion for judicial release, the head of the state correctional institution in which the offender is confined shall send to the court a report on the offender's conduct in the institution and in any institution from which the offender may have been transferred. The report shall cover the offender's participation in school, training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the offender. The report shall be made part of the record of the hearing.

(F) If Hearing Granted If the court grants a hearing on a motion for judicial release, the offender shall attend the hearing if ordered to do so by the court. On receiving a copy of the journal entry containing the order, the head of the state correctional institution in which the offender is incarcerated shall deliver the offender to the sheriff of the county in which the hearing is to be held. The sheriff shall convey the offender to and from the hearing.

(G) At Hearing At the hearing on a motion for judicial release, the court shall afford the offender and the offender's attorney an opportunity to present written information and, if present, oral information relevant to the motion. The court shall afford a similar opportunity to the prosecuting attorney, victim or the victim's representative, as defined in RC 2930.01, and any other person the court determines is likely to present additional relevant information. The court shall consider any statement of a victim made under RC 2930.14 or 2930.17, any victim impact statement prepared under RC 2947.051, and any report made under division (E). The court may consider any written statement of any person submitted to the court under division (J). After ruling on the motion, the court shall notify the victim in accordance with RC 2930.03 and 2930.16.

(H) Presumption re F-1s & F-2s, etc.

(1) A court shall not grant a judicial release to an offender who is imprisoned for a first or second degree felony, or to an offender who committed an offense under Chapter 2925 or 3719 for whom there was a presumption under RC 2929.13 in favor of a prison term, unless the court, with reference to factors under RC 2929.12, finds both of the following:

(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;

(b) That a sanction other than a prison term would not demean the seriousness of the offense.

(2) A court that grants a judicial release to an offender under division (H)(1) shall specify its findings on the record and list the factors described in that division that were presented at the hearing.

(I) If Granted If the court grants a motion for judicial release, the court shall order the release of the offender, place the offender under an appropriate community control sanction, under appropriate conditions, and under the supervision of the probation department serving the court, and reserve the right to reimpose the sentence that it reduced if the offender violates the sanction. If the court reimposes the reduced sentence, it may do so either concurrently with, or

consecutive to, any new sentence imposed on the offender as a result of the violation that is a new offense.

The period of community control shall not exceed five years. The court may reduce the period by any time the offender spent in jail for the offense. If the court made findings under division (H)(1), the court shall serve a copy of the findings on counsel for the parties within fifteen days after the date on which the court grants the motion.

If the court grants a motion for judicial release, the court shall notify the appropriate person at the department of rehabilitation and correction, and the department shall post notice of the release on the database it maintains under RC 5120.66.

(J) **Victim's Statement** In addition to and independent of the right of a victim to make a statement under RC 2930.14, 2930.17, or 2946.051 and any right of a person to present written information or make a statement under division (G), any person may submit to the court, at any time before the hearing on the offender's motion for judicial release, a written statement concerning the effects of the offender's crime or crimes and the person's opinion as to whether the offender should be released.

Concurrent & Consecutive Sentences—§2929.41

This statute is simplified in the spirit of *Foster* since a literal reading of the case doesn't quite work. *Foster* invalidates the presumption of concurrent sentences because judicial fact finding is implicitly needed to overcome the presumption (§2929.41(A)). But the case lists §2929.41 among sections "severed and excised in their entirety." This would include not only the presumption of concurrence, but also provisions instructing courts to use consecutive sentences in certain circumstances. Despite the sweeping reference, the Court *couldn't have* intended to abolish consecutive sentences. Since much of the section doesn't contain the kinds of findings deemed unconstitutional in division (A), and since the general rule on severing sections (RC §1.50) allows severance when "the invalidity does not affect other provisions ... of the section," in trying to find a neutral meaning, the draft only strikes language in (A).

The question becomes: how much of (A) should be struck? The Code should still give *some* authority to judges to sentence both consecutively and concurrently, particularly since common law doesn't apply to Ohio's criminal statutes. The draft keeps a simple statement authorizing consecutive and concurrent sentences, minus the findings.

§2929.41. Concurrent and Consecutive Sentences—Showing Amendments

(A) **General Rule** [*Reflects the spirit of Foster.*] ~~Except as provided in division (B) of this section, division (E) of section 2929.14, or division (D) or (E) of section 2971.03 of the Revised Code, a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States. Except as provided in division (B)(3) of this section, a jail term or sentence of imprisonment for misdemeanor shall be served concurrently with a prison term or sentence of imprisonment for felony served in a state or federal correctional institution. Unless consecutive terms are required, the sentencing court may impose felony and misdemeanor sentences consecutive to or concurrent with other sentences.~~

~~(1)(B) **Mandatory Consecutive Jail Terms** A jail term or sentence of imprisonment [*obsolete*] for a misdemeanor shall be served consecutively to any other prison term, jail term, or sentence of~~

~~imprisonment when the trial court specifies that it is to be served consecutively or when it is imposed for a misdemeanor violation of section RC 2907.322 pandering sexually oriented matter, 2921.34 escape, or 2923.131 of the Revised Code weapon under detention. [The General Assembly should clarify whether “imposed” includes other pending cases that await sentencing.]~~

~~(C) **Cap on Misdemeanor Terms** When consecutive Consecutive sentences are imposed for misdemeanor under this division, the term to be served is the aggregate of the consecutive terms imposed, except that the aggregate term to be served misdemeanors shall not exceed eighteen months.~~

~~(2)(D) **Consecutive to Another Jurisdiction’s Prison Term** If a A court of this state imposes a prison term upon the offender for the commission of a felony and a court of another state or the United States also has imposed a prison term upon the offender for the commission of a felony, the court of this state may order that the offender serve the any prison term it imposes consecutively to any prison term imposed upon on the offender by the a court of another state or the United States.~~

~~(3)(E) **Priority of Prison and Jail Terms** [Since this paragraph merely tells judges that they have the option to sentence certain driving offenses consecutively, it’s unnecessary given the discretion under (A).] A jail term or sentence of imprisonment imposed for a misdemeanor violation of section 4510.11, 4510.14, 4510.16, 4510.21, or 4511.19 of the Revised Code shall be served consecutively to a prison term that is imposed for a felony violation of section 2903.06, 2903.07, 2903.08, or 4511.19 of the Revised Code or a felony violation of section 2903.04 of the Revised Code involving the operation of a motor vehicle by the offender and that is served in a state correctional institution when the trial court specifies that it is to be served consecutively. When consecutive jail terms or sentences of imprisonment and prison terms are imposed for one or more misdemeanors and one or more felonies under this division, the term to be served is the aggregate of the consecutive terms imposed, and the offender shall serve all terms imposed for a felony before serving any term imposed for a misdemeanor.~~

Here’s how it would read as amended.

§2929.41. Concurrent and Consecutive Sentences—As Amended

(A) **General Rule** Unless consecutive terms are required, the sentencing court may impose felony and misdemeanor sentences consecutive to or concurrent with other sentences.

(B) **Mandatory Consecutive Jail Terms** A jail term for a misdemeanor shall be served consecutively when imposed for a misdemeanor violation of RC 2907.322 pandering sexually oriented matter, 2921.34 escape, or 2923.131 weapon under detention.

(C) **Cap on Misdemeanor Terms** Consecutive sentences imposed for misdemeanors shall not exceed eighteen months.

(D) **Consecutive to Another Jurisdiction’s Prison Term** A court of this state may order that the offender serve any prison term it imposes consecutively to any prison term imposed on the offender by a court of another state or the United States.

(E) **Priority of Prison and Jail Terms** When consecutive jail and prison terms are imposed, the offender shall serve all terms imposed for a felony before serving any term imposed for a misdemeanor.

Appellate Review of Sentencing—§2953.08

The draft allows us to formally remove cumbersome language on the Appeals Cost Oversight Committee that was created related to S.B. 2 in 1996 (div. (I)). The Committee made its report in 1996 and, at the suggestion of the Sentencing Commission, abolished itself and returned its funding to the General Fund.

Separately, this statute was left uncertain by *Foster* and its companion case *State v. Mathis*, 109 Ohio St. 3rd 54 (2006).

- *Foster* clearly struck the guidance against imposing the maximum prison sentence (§2929.14(C)). But it did not address language in §2953.08(A)(1) that grants an appeal of right to a defendant when a maximum term is imposed. Thus, a defendant may still appeal a maximum term, but will not be aided by any findings on the record, which were deemed unconstitutional by *Foster*. It is unclear how an appellate court would review the case. This draft keeps the language for now, while recognizing that a substantive clarification may be needed.
- It's tough to make sense of appeals related to the guidance against prison for certain F-4s and F-5s in §2929.13 if you literally apply *Mathis's* holding that findings aren't necessary. However, if you strike the findings from this section, the remaining language could give every F-4 and F-5 offender an appeal of right. It's unlikely the Court intended that. So, since §2929.13 was upheld by *Foster*, the draft retains language on the (B)(1) factors in §2953.08(A)(2), but doesn't call them "findings." Instead, it says there's an appeal if the court didn't specify that one or more of the factors apply. That finesse won't end the larger debate, however, since, as in (A)(1), the amended language affords an appeal, but doesn't provide any meaningful findings on which to base the appeal.
- *Foster* says, "R.C. 2953.08(G), which refers to review of statutory findings for consecutive sentences in the appellate record, no longer applies." Yet (G) also covers findings on the presumption for prison for F-1s and F-2s and the guidance against prison for F-4s and F-5s, which are still valid. Division (G) also contains general law on the appellate court's ability to remand or modify sentences. The Court gave no specific indication that those should be stricken. Better advice comes in a later passage in *Foster*, which says that §2953.08(G), "insofar as it refers to the severed sections, no longer applies." Thus, this draft amends §2953.08(G)(1) and (G)(2)(a) to remove only the findings on RVOs/MDOs and consecutive terms that were specifically struck by *Foster*.

§2953.08. Sentence Appeals—Showing Amendments

(A) **For the Defendant** In addition to any other right to appeal and except as provided in division (D) of this section, a defendant who is convicted of or pleads guilty to sentenced for a felony may appeal a sentence as a matter of right ~~the sentence imposed upon the defendant~~ on one of the following grounds:

- (1) **Maximum Terms** [*Foster didn't say this division is invalid or severed.*] The sentence consisted of or included the maximum prison term allowed for the offense by ~~division (A) of section RC 2929.14(A) or section 2929.142 of the Revised Code~~, the sentence was not imposed ~~pursuant to division (D)(3)(b) of section~~ on a major drug offender under RC

~~2929.14(C)(3)(b) of the Revised Code, the maximum prison term was not required for the offense pursuant to Chapter 2925, or under any other provision of the Revised Code, and the court imposed the sentence under one of the following circumstances:~~

~~(a) The sentence was imposed for only one offense.~~

~~(b) The sentence was imposed for two or more offenses arising out of a single incident, and the court imposed the maximum prison term for the offense of the highest degree.~~

~~(2) **Against F-4, F-5 Guidance** [*The underlying provision—§2929.13(B)—was specifically upheld by Foster, but Mathis says findings aren't necessary. In trying to reflect the two cases, the draft keeps the appeal, but removes the findings. Of course, removal makes the appeal less meaningful, as in (A)(1).*] The sentence ~~consisted of or~~ included a prison term, ~~the offense for which it was imposed is~~ a felony of the fourth or fifth degree felony or is a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to division (B) of section RC 2929.13(B) of the Revised Code for purposes of sentencing, and the court did not specify at sentencing that it found one or more factors specified in divisions RC 2929.13(B)(1)(a) to (g) (i) of section 2929.13 of the Revised Code to apply relative to the defendant. ~~If the court specifies that it found one or more of these factors to apply relative to the defendant, the defendant is not entitled under this division to appeal as a matter of right the sentence imposed upon the offender.~~~~

~~(3) **Sexual Predators** The person was convicted of or pleaded guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense, was adjudicated a sexually violent predator in relation to that offense, and was sentenced pursuant to division (A)(3) of section under RC 2971.03(A)(3) of the Revised Code as a sexual predator, if the minimum term of the indefinite term imposed pursuant to division (A)(3) of section 2971.03 of the Revised Code under that section is the longest term available for the offense from among the range of terms listed in section RC 2929.14 of the Revised Code. As used in this division, “designated homicide, assault, or kidnapping offense” and “violent sex offense” have the same meanings as in section 2971.01 of the Revised Code. As used in this division, “adjudicated a sexually violent predator” has the same meaning as in section 2929.01 of the Revised Code, and a person is “adjudicated a sexually violent predator” in the same manner and the same circumstances as are described in that section.~~

~~(4) **Unlawful** The sentence is contrary to law.~~

~~(5) **RVOs** The sentence consisted of an additional prison term of ten years imposed pursuant to division (D)(2)(a) of section under RC 2929.14(C)(2)(a) of the Revised Code.~~

~~(6) **MDOs** The sentence consisted of an additional prison term of ten years imposed pursuant to division (D)(3)(b) of section under RC 2929.14(C)(3)(b) of the Revised Code.~~

~~(B) **For the Prosecution** In addition to any other right to appeal and except as provided in division (D) of this section, a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, [*these appeals exist only in felony cases*] or the attorney general, if one of these persons who prosecuted the case, may appeal as a matter of right a sentence imposed upon on a defendant who is convicted of or pleads guilty to for a felony, or, in the circumstances described in division (B)(3) of this section the modification of a sentence imposed upon such a defendant a judicial release, on any of the following grounds:~~

~~(1) **Against F-1, F-2 Presumption** [*Specifically retained by Mathis.*] The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed, as set forth in section under RC 2929.13 or Chapter 2925. of the Revised Code.~~

~~(2) **Unlawful** The sentence is contrary to law.~~

~~(3) **Judicial Release Against Presumption** [*Specifically retained by Mathis.*] The sentence is a modification under section court grants judicial release under RC 2929.20 of the Revised Code of from a sentence that was imposed for a felony of the first or second degree felony.~~

~~(C) **By Leave**~~

~~(1) **Certain Consecutives** In addition to the right to appeal a sentence granted under division (A) or (B) of this section, a defendant who is convicted of or pleads guilty to sentenced for a felony may seek leave to appeal a sentence imposed upon the defendant on the basis that~~

the sentencing judge has imposed consecutive sentences under ~~division (E)(3) or (4) of section RC 2929.14(D)(2)(b) or (3)~~ *[reflects earlier changes]* of the Revised Code and that the consecutive sentences exceed the maximum prison term allowed by division (A) of that section for the most serious offense of which the defendant was convicted. ~~Upon the~~ On filing of a motion under this division, the court of appeals may grant leave to appeal the sentence if the court determines that the allegation included as the basis of the motion is true.

(2) **Certain RVOs** A defendant may seek leave to appeal an additional sentence imposed upon the defendant pursuant to ~~division (D)(2)(a) or (b) of section~~ under RC 2929.14(C)(2)(a) or (b) *[reflects earlier changes]* of the Revised Code on a repeat violent offender if the additional sentence is for a definite prison term that is longer than five years.

(D) Exceptions

(1) **Agreed Sentences** A sentence imposed upon on a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.

(2) **Mandatory RVOs** Except as provided in division (C)(2) ~~of this section~~, a repeat violent offender sentence imposed upon on a defendant under RC 2929.14(C)(2)(b) is not subject to review under this section if ~~the sentence is imposed pursuant to division (D)(2)(b) of section 2929.14~~ *[reflects earlier changes]* of the Revised Code. Except as otherwise provided in this division, a defendant retains all rights to appeal ~~as provided~~ under this chapter or any other provision of the Revised Code. ~~A defendant has the right to~~ including an appeal under this chapter or any other provision of the Revised Code the court's application of ~~division (D)(2)(e) of section RC 2929.14(C)(2)(c)~~ *[ditto]* of the Revised Code.

(3) **Murders** A sentence imposed for aggravated murder or murder pursuant to ~~sections under RC 2929.02 to 2929.06~~ of the Revised Code is not subject to review under this section.

(E) **Procedure** A defendant, or prosecuting attorney, ~~city director of law, village solicitor, or chief municipal legal officer~~ *[reflects exclusion of misdemeanors]* shall file an appeal of a sentence under this section to a court of appeals within the time limits specified in Rule 4(B) of the Rules of Appellate Procedure, provided that, if the appeal is pursuant to under division (B)(3) of this section, the time limits specified in that rule shall not commence running until the court grants the judicial release motion that makes the sentence modification in question. A sentence appeal under this section shall be consolidated with any other appeal in the case. If no other appeal is filed, the court of appeals may review only the portions of the trial record that pertain to sentencing.

(F) **Record** On the appeal of a sentence under this section, the record to be reviewed shall include all of the following, as applicable:

(1) Any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed. An appellate court that reviews a presentence investigation report prepared pursuant to ~~section under RC 2947.06 or 2951.03 of the Revised Code~~ or Criminal Rule 32.2 in connection with the appeal of a sentence under this section shall comply with ~~division (D)(3) of section RC 2951.03(D)(3)~~ of the Revised Code when the appellate court is not using the presentence investigation report, and the appellate court's use of a ~~presentence investigation~~ the report of that nature in connection with ~~the an~~ appeal of a sentence under this section does not affect the otherwise confidential character of the contents of that report as described in ~~division (D)(1) of section RC 2951.03(D)(1)~~ of the Revised Code and does not cause that report to become a public record, as defined in ~~section RC 149.43 of the Revised Code~~, following the appellate court's use of the report.

(2) The trial record in the case ~~in which the sentence was imposed~~;

(3) Any oral or written statements made to or by the court at the sentencing hearing ~~at which the sentence was imposed~~;

(4) Any written findings that the court was required to make in connection with the modification of the sentence pursuant to ~~a by~~ judicial release under ~~division (H) of section RC 2929.20(H)~~ of the Revised Code.

(G) Appellate Court's Options

(1) **Findings re F-4s & F-5s & Judicial Release** If the sentencing court was required to make the findings required by ~~division (B) or (D) of section RC 2929.13(B) or (D) [(B) was upheld by Foster; (D) wasn't reviewed], division (D)(2)(e) or (E)(4) of section 2929.14, [reflects the findings on RVOs/MDOs & consecutive terms that were specifically struck by Foster] or ~~division (H) of section 2929.20(H) of the Revised Code~~ relative to the imposition or modification of the sentence, and if the sentencing court failed to state the required findings on the record, the court hearing an appeal under ~~division (A), (B), or (C) of this section~~ shall remand the case to the sentencing court and instruct the sentencing court to state, on the record, the required findings.~~

(2) **Findings; Options** The court hearing an appeal under ~~division (A), (B), or (C) of this section~~ shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings determinations, including those under ~~division (B) or (D) of section RC 2929.13(B) or (D) [(B) was upheld by Foster; (D) wasn't reviewed], division (D)(2)(e) or (E)(4) of section 2929.14, [reflects the findings on RVOs/MDOs & consecutive terms that were struck by Foster] or ~~division (H) of section 2929.20(H) of the Revised Code~~, whichever, if any, is relevant;~~

(b) That the sentence is otherwise contrary to law.

(H) **Further Appeal** A judgment or final order of a court of appeals under this section may be appealed, by leave of court, to the supreme court.

(I) **Appeal Cost Oversight Committee** [*The Committee reported in 1996 and abolished itself.*]

~~(1) There is hereby established the felony sentence appeal cost oversight committee, consisting of eight members. One member shall be the chief justice of the supreme court or a representative of the court designated by the chief justice, one member shall be a member of the senate appointed by the president of the senate, one member shall be a member of the house of representatives appointed by the speaker of the house of representatives, one member shall be the director of budget and management or a representative of the office of budget and management designated by the director, one member shall be a judge of a court of appeals, court of common pleas, municipal court, or county court appointed by the chief justice of the supreme court, one member shall be the state public defender or a representative of the office of the state public defender designated by the state public defender, one member shall be a prosecuting attorney appointed by the Ohio prosecuting attorneys association, and one member shall be a county commissioner appointed by the county commissioners association of Ohio. No more than three of the appointed members of the committee may be members of the same political party.~~

~~The president of the senate, the speaker of the house of representatives, the chief justice of the supreme court, the Ohio prosecuting attorneys association, and the county commissioners association of Ohio shall make the initial appointments to the committee of the appointed members no later than ninety days after July 1, 1996. Of those initial appointments to the committee, the members appointed by the speaker of the house of representatives and the Ohio prosecuting attorneys association shall serve a term ending two years after July 1, 1996, the member appointed by the chief justice of the supreme court shall serve a term ending three years after July 1, 1996, and the members appointed by the president of the senate and the county commissioners association of Ohio shall serve terms ending four years after July 1, 1996. Thereafter, terms of office of the appointed members shall be for four years, with each term ending on the same day of the same month as did the term that it succeeds. Members may be reappointed. Vacancies shall be filled in the same manner provided for original appointments. A member appointed to fill a vacancy occurring prior to the expiration of the term for which that member's predecessor was appointed shall hold office as a member for the remainder of the predecessor's term. An appointed member shall continue in office subsequent to the expiration~~

~~date of that member's term until that member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.~~

~~If the chief justice of the supreme court, the director of the office of budget and management, or the state public defender serves as a member of the committee, that person's term of office as a member shall continue for as long as that person holds office as chief justice, director of the office of budget and management, or state public defender. If the chief justice of the supreme court designates a representative of the court to serve as a member, the director of budget and management designates a representative of the office of budget and management to serve as a member, or the state public defender designates a representative of the office of the state public defender to serve as a member, the person so designated shall serve as a member of the commission for as long as the official who made the designation holds office as chief justice, director of the office of budget and management, or state public defender or until that official revokes the designation.~~

~~The chief justice of the supreme court or the representative of the supreme court appointed by the chief justice shall serve as chairperson of the committee. The committee shall meet within two weeks after all appointed members have been appointed and shall organize as necessary.~~

~~Thereafter, the committee shall meet at least once every six months or more often upon the call of the chairperson or the written request of three or more members, provided that the committee shall not meet unless moneys have been appropriated to the judiciary budget administered by the supreme court specifically for the purpose of providing financial assistance to counties under division (1)(2) of this section and the moneys so appropriated then are available for that purpose.~~

~~The members of the committee shall serve without compensation, but, if moneys have been appropriated to the judiciary budget administered by the supreme court specifically for the purpose of providing financial assistance to counties under division (1)(2) of this section, each member shall be reimbursed out of the moneys so appropriated that then are available for actual and necessary expenses incurred in the performance of official duties as a committee member.~~

~~(2) The state criminal sentencing commission periodically shall provide to the felony sentence appeal cost oversight committee all data the commission collects pursuant to division (A)(5) of section 181.25 of the Revised Code. Upon receipt of the data from the state criminal sentencing commission, the felony sentence appeal cost oversight committee periodically shall review the data; determine whether any money has been appropriated to the judiciary budget administered by the supreme court specifically for the purpose of providing state financial assistance to counties in accordance with this division for the increase in expenses the counties experience as a result of the felony sentence appeal provisions set forth in this section or as a result of a postconviction relief proceeding brought under division (A)(2) of section 2953.21 of the Revised Code or an appeal of a judgment in that proceeding; if it determines that any money has been so appropriated, determine the total amount of moneys that have been so appropriated specifically for that purpose and that then are available for that purpose; and develop a recommended method of distributing those moneys to the counties. The committee shall send a copy of its recommendation to the supreme court. Upon receipt of the committee's recommendation, the supreme court shall distribute to the counties, based upon that recommendation, the moneys that have been so appropriated specifically for the purpose of providing state financial assistance to counties under this division and that then are available for that purpose.~~

As amended, the sentencing appeals section would read like this:

§2953.08. Sentence Appeals—As Amended

(A) **For the Defendant** In addition to any other right to appeal and except as provided in division (D), a defendant who is sentenced for a felony may appeal a sentence as a matter of right on one of the following grounds:

- (1) **Maximum Terms** The sentence consisted of or included the maximum prison term allowed for the offense by RC 2929.14(A) or 2929.142, the sentence was not imposed on a major drug offender under RC 2929.14(C)(3)(b), the maximum prison term was not required

for the offense under any provision of the Revised Code, and the court imposed the sentence under one of the following circumstances:

- (a) The sentence was imposed for only one offense.
- (b) The sentence was imposed for two or more offenses arising out of a single incident, and the court imposed the maximum prison term for the offense of the highest degree.
- (2) **Against F-4, F-5 Guidance** The sentence included a prison term for a fourth or fifth degree felony or a felony drug offense that is specified as being subject to RC 2929.13(B) for purposes of sentencing, and the court did not specify at sentencing that one or more factors specified in RC 2929.13(B)(1)(a) to (g) apply relative to the defendant.
- (3) **Sexual Predators** The person was sentenced under RC 2971.03(A)(3) as a sexual predator, if the minimum of the indefinite term imposed under that section is the longest term available for the offense from the range listed in RC 2929.14.
- (4) **Unlawful** The sentence is contrary to law.
- (5) **RVOs** The sentence consisted of an additional prison term of ten years imposed under RC 2929.14(C)(2)(a).
- (6) **MDOs** The sentence consisted of an additional prison term of ten years imposed under RC 2929.14(C)(3)(b).

(B) **For the Prosecution** In addition to any other right to appeal and except as provided in division (D), a prosecuting attorney or the attorney general who prosecuted the case, may appeal as a matter of right a sentence imposed on a defendant for a felony, or a judicial release, on any of the following grounds:

- (1) **Against F-1, F-2 Presumption** The sentence did not include a prison term despite a presumption favoring a prison term under RC 2929.13 or Chapter 2925.
- (2) **Unlawful** The sentence is contrary to law.
- (3) **Judicial Release Against Presumption** The court grants judicial release under RC 2929.20 from a sentence that was imposed for a first or second degree felony.

(C) **By Leave**

- (1) **Certain Consecutives** In addition to the right to appeal under division (A) or (B), a defendant who is sentenced for a felony may seek leave to appeal a sentence on the basis that the sentencing judge imposed consecutive sentences under RC 2929.14(D)(2)(b) or (3) and that the consecutive sentences exceed the maximum prison term allowed by division (A) of that section for the most serious offense of which the defendant was convicted. On filing a motion under this division, the court of appeals may grant leave to appeal if the court determines that the allegation included as the basis of the motion is true.
- (2) **Certain RVOs** A defendant may seek leave to appeal an additional sentence imposed on a repeat violent offender under RC 2929.14(C)(2)(a) or (b) if the additional sentence is for a definite prison term that is longer than five years.

(D) **Exceptions**

- (1) **Agreed Sentences** A sentence imposed on a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.
- (2) **Mandatory RVOs** Except as provided in division (C)(2), a repeat violent offender sentence imposed on a defendant under RC 2929.14(C)(2)(b) is not subject to review under this section. Except as otherwise provided in this division, a defendant retains all rights to appeal under this chapter or any other provision of the Revised Code including an appeal of the court's application of RC 2929.14(C)(2)(c).
- (3) **Murders** A sentence imposed for aggravated murder or murder under RC 2929.02 to 2929.06 is not subject to review under this section.

(E) **Procedure** A defendant or prosecuting attorney shall file an appeal under this section to a court of appeals within the time limits specified in Rule 4(B) of the Rules of Appellate Procedure, provided that, if the appeal is under division (B)(3), the time in that rule shall not commence running until the court grants the judicial release motion. A sentence appeal under this section shall be consolidated with any other appeal in the case. If no other appeal is filed, the court of appeals may review only the portions of the trial record that pertain to sentencing.

(F) **Record** On the appeal of a sentence under this section, the record to be reviewed shall include all of the following, as applicable:

(1) Any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed. An appellate court that reviews a presentence investigation report prepared under RC 2947.06 or 2951.03 or Criminal Rule 32.2 in connection with the appeal shall comply with RC 2951.03(D)(3) when the appellate court is not using the presentence investigation report, and the appellate court's use of the report in connection with an appeal under this section does not affect the otherwise confidential character of the report as described in RC 2951.03(D)(1) and does not cause that report to become a public record, as defined in RC 149.43, following the appellate court's use of the report.

(2) The trial record in the case;

(3) Any oral or written statements made to or by the court at the sentencing hearing;

(4) Any written findings that the court was required to make in connection with the modification of the sentence by judicial release under RC 2929.20(H).

(G) **Appellate Court's Options**

(1) **Findings re F-4s & F-5s & Judicial Release** If the sentencing court was required to make the findings required by RC 2929.13(B) or (D) or 2929.20(H) relative to the imposition or modification of the sentence, and if the sentencing court failed to state the required findings on the record, the court hearing an appeal under this section shall remand the case to the sentencing court and instruct the sentencing court to state, on the record, the required findings.

(2) **Findings; Options** The court hearing an appeal under this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's determinations, including those under RC 2929.13(B) or (D) or 2929.20(H), whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

(H) **Further Appeal** A judgment or final order of a court of appeals under this section may be appealed, by leave of court, to the supreme court.