



OHIO CRIMINAL SENTENCING COMMISSION MEETING

March 12, 2026, 10:00 am—12:00 pm

Ohio Judicial Center, Room 281

- I. Call to Order Chair Chief Justice Sharon L. Kennedy
- II. Roll Call Director Melissa A. Knopp, Esq.
- III. Approval of Minutes from December 18, 2025 **(Vote Needed)**
- IV. Introduction of New Commission Members
 - A. Judge Eamon Costello, Madison County Common Pleas Court
 - B. Judge Janaya Trotter Bratton, Hamilton County Municipal Court
- V. Committee Reports
 - A. Adult Criminal Justice Committee Judge Stephen McIntosh
 - 1. Updated Felony Reference Guide **(Vote Needed)**
 - 2. Updated Felony Bench Card **(Vote Needed)**
 - 3. Update Competency Guide **(Vote Needed)**
 - B. Juvenile Justice Committee Judge Robert DeLamatre
 - 1. Juvenile Justice Terminology Guide **(Vote Needed)**
 - C. Data Committee Chief Justice Sharon L. Kennedy
 - 1. Ohio Department of Rehabilitation and Correction Data Map **(Vote Needed)**
 - 2. Ohio Department of Behavioral Health Data Map **(Votes Needed)**
 - D. Personnel Committee Chief Justice Sharon L. Kennedy
 - 1. Update on Legislative Counsel Job Posting
- VI. Legislative Update Director Melissa A. Knopp, Esq.
- VII. Old Business
- VIII. New Business
 - A. Save the Date—National Association of Sentencing Commissions 2026 Conference
Date: August 12—14, 2026 in Albuquerque, New Mexico
- IX. Adjourn

2026 Full Commission Meeting Dates

Thursday, May 14, 2026, at 10:00 am, Room 281

Thursday, September 10, 2026, at 10:00 am, Room 281

Thursday, December 10, 2026, at 10:00 am, Room 101



CRIMINAL SENTENCING COMMISSION

65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3431 • TELEPHONE: 614.387.9305 • FAX: 614.387.9309

FELONY SENTENCING REFERENCE GUIDE

The Felony Sentencing Reference Guide summarizes the statutory provisions governing Ohio's felony sentencing scheme. The sections below outline the relevant considerations at each stage of the sentencing process, and the guide is updated as necessary to reflect new legislative revisions as well as Supreme Court of Ohio opinions. Further information and instruction on felony sentencing is available through reference to the Criminal Sentencing Commission's Uniform [Sentencing Entry](#), [hosted on the Ohio Supreme Court website](#). ~~Templates package and instructions, which will be hyperlinked within the Reference Guide.~~

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March 20264

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UNIFORM SENTENCING ENTRY (USE)

The complex, intricate process of felony sentencing in Ohio makes ensuring clear, comprehensible sentences of the utmost import for the administration of justice and promoting confidence in the system. As such, the Commission convened an ad hoc committee on uniform sentencing entry (USE). The committee developed a USE that prescribes the most clear and concise minimum language required to comply with Criminal Rule 32¹ and existing case law, and establishes standardized, common data essential for identifying relationships and trends common to all felony courts.²

Further, there are certain important elements that precede sentencing but are not essential to the minimum language required for a USE—especially in light of recent Supreme Court of Ohio decisions and the ever-changing statutory provisions regarding sentencing. Thus, the committee also developed companion method of conviction (plea) entries, as well as entries memorializing the other manners in which a felony criminal case may be disposed.

Additionally, throughout the work of the committee, there was a common thread to the discussion centered squarely on the notion of what the committee coined “good civics.” In other words, there are a number of standardized documents and notices that are used with regularity and recommended for use but not required by law for sentence or other disposition. The committee agreed that the Commission should obtain these documents from individual jurisdictions and serve as a repository to make them available.

After approximately one year of work and collaboration with the Ohio Common Pleas Judges Association, Ohio Prosecuting Attorneys Association, Supreme Court of Ohio, Ohio Judicial Conference, Ohio Clerk of Courts Association, Ohio Chief Probation Officers Association, and Ohio felony court administrators, among others, a “package” of documents for felony sentencing was endorsed, including:

- The USE;
 - Disposition forms;
 - “Good civics” forms and notices;
 - Not Guilty by Reason of Insanity forms;
 - Competency forms; and
 - Alternative disposition forms.
- The goal, in part, was to design a “living document” that will be adapted as law, rules, and practices dictate. Accordingly, the Commission is monitoring legislation and Supreme Court of Ohio case decisions to keep the USE and associated documents current with any necessary changes, notifying practitioners of those changes, and working with jurisdictions to provide training as the entry is adopted.

Judges and courts are in various stages of implementing the USE and associated documents. Additional information on the topics covered in the Felony Sentencing Guide can be found in the USE package instructions.

1 <https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/criminal/CriminalProcedure.pdf>

2 For details, email OCSC@sc.ohio.gov

PURPOSES & PRINCIPLES OF SENTENCING [R.C. 2929.11(A)]

Overriding Purposes:

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

Principles:

- Always consider the need for incapacitation, deterrence, rehabilitation of the offender, and restitution to the victim and/or the public [R.C. 2929.11(A)].
- Sentences should be commensurate with, and not demeaning to, the seriousness of offender’s conduct and its impact on the victim, and consistent with sentences for similar crimes by similar offenders [R.C. 2929.11(B)].
- Courts shall not sentence based on the offender’s race, ethnicity, gender, or religion [R.C. 2929.11(C)].



SERIOUSNESS & RECIDIVISM FACTORS: CONSIDER IN EVERY CASE

The court must weigh the following factors, if present, as well as any other relevant factors.

~~A.~~ OFFENDER'S CONDUCT MORE SERIOUS [R.C. 2929.12(B)]

- Injury exacerbated by victim's physical or mental condition or age;
- Victim suffered serious physical, psychological, or economic harm;
- Victim died by suicide as a result of the offense;
- Offender held public office or position of trust related to the offense;
- Offender's occupation, elected office, or profession obliged the offender to prevent the offense or to bring those committing it to justice;
- Offender's professional reputation or occupation, elected office, or profession facilitated the offense or is likely to influence others' conduct;
- Offender's relationship with the victim facilitated the offense;
- Offender acted for hire or as part of organized criminal activity;
- Offender was motivated by prejudice based on race, ethnicity, gender, sexual orientation, or religion; and
- In a domestic violence or assault case, offender is parent or custodian, the victim was a family or household member, and the offense was committed in the vicinity of one or more children other than the victim.

~~B.~~ OFFENDER'S CONDUCT LESS SERIOUS [R.C. 2929.12(C)]

- Victim induced and/or facilitated the offense;
- Offender acted under strong provocation;
- Offender did not cause or expect to cause physical harm to person or property; and
- Substantial grounds exist to mitigate the offender's conduct, even if they do not constitute a defense.

~~C.~~ OFFENDER'S RECIDIVISM MORE LIKELY [R.C. 2929.12(D)]

- Offense was committed while on bail, awaiting sentencing, on felony community control or post-release control (PRC), or after PRC unfavorably terminated;
- Offender has a history of criminal convictions or juvenile delinquency adjudications;
- Offender has not responded favorably to sanctions previously imposed in adult or juvenile court;
- Offender shows pattern of alcohol/drug use related to offense and doesn't acknowledge it or refuses treatment; and
- Offender shows no genuine remorse.

~~D.~~ OFFENDER'S RECIDIVISM LESS LIKELY [R.C. 2929.12(E)]

- Offender has no prior juvenile delinquency adjudication and/or no prior adult conviction;
- Offender has led a law-abiding life for a significant number of years;
- Offense was committed under circumstances unlikely to recur; and
- Offender shows genuine remorse.

-OFFENDER'S VETERAN STATUS [R.C. 2929.12(F)]

ALFORD PLEA [R.C. 2929.12(G)]

- Court not to consider whether offender shows genuine remorse.

PRETRIAL DIVERSION

County prosecuting attorneys are permitted to establish pretrial diversion programs under standards approved by the presiding judge in their jurisdiction pursuant to R.C. 2935.36. Programs and availability may vary by jurisdiction but are generally aimed at helping defendants with a low risk for recidivism avoid criminal conviction. ~~Model diversion application and acceptance entries are available as part of the uniform sentencing entry (USE) package.~~

- Pretrial diversion eligibility is determined by the charge or nature of the offense or offenses involved [R.C. 2935.36(A)(1-5)].
- Defendants accepted into diversion must, in writing, waive their speedy trial rights, agree to tolling of the statute of limitations, and agree to pay any supervision fees established under the program [R.C. 2935.36(B)].
- Victims of the criminal offenses and the arresting officers may object to offender's acceptance [R.C. 2935.36(C)].
- Successful completion of the diversion program results in a dismissal of the charges against the defendant. Unsuccessful termination from the program results in the defendant being brought to trial on the charges [R.C. 2935.36(D)].

INTERVENTION IN LIEU OF CONVICTION

Defendants who allege that one of four types of conditions were a factor contributing to their commission of the offenses with which they are charged may request that the trial court grant intervention in lieu of conviction (ILC). If ILC is granted and successfully completed, the defendant may have the charges against them dismissed and are eligible to have those charges sealed as a dismissal [R.C. 2951.041]. ~~Model ILC application and acceptance entries are available as part of the USE package.~~

Procedure: The application requesting intervention in lieu must contain a waiver of applicable speedy trial rights and an allegation that one of the following contributed to their commission of the criminal offense(s):

- Drug or alcohol use by the defendant;
- Mental illness;
- Intellectual disability; or
- The defendant was a victim of human trafficking [R.C. 2905.32] or compelling prostitution [R.C. 2907.21].

The court may then schedule a hearing to determine the defendant's eligibility for ILC. If a hearing is ordered, the court must order the defendant assessed for program eligibility and a recommended intervention plan. [R.C. 2951.041(A)(1)]

Whether a defendant is eligible for ILC is determined pursuant to R.C. 2951.041(B)(1-10), and includes consideration of defendant's criminal history, the nature of the offenses charged and the victims involved, the assessment ordered, and whether ILC would reduce the likelihood of recidivism and not demean the seriousness of the offense.

All felony sex offenses are excluded from ILC eligibility. At the hearing, the court shall presume ILC is appropriate, and must state the reasons for a denial of ILC in a written entry.

If the defendant is found appropriate for ILC, the court accepts but does not file, a guilty plea and speedy trial rights waiver from them, and stays all criminal proceedings, placing them under supervision for completion of the intervention plan imposed for at least one, but up to five years. The intervention plan must include drug and alcohol abstinence, treatment, and testing, along with other conditions the court finds appropriate [R.C. 2951.041(C-D)].

Successful completion of ILC results in dismissal of the charges, **sealable immediately as dismissals pursuant to R.C. 2953.51-.56**. Failure to comply with conditions imposed may result in revocation and the defendant being found guilty pursuant to the plea and sentenced [R.C. 2951.041(E-F)].

DISCRETIONARY PRISON TERMS AND COMMUNITY CONTROL

Unless a prison term is mandatory for an offense or specification, the sentencing court has the option to either place a defendant under the court’s supervision on community control with a reserved prison sentence, or to impose a prison term for the offense. ~~The form and structure of the Uniform Sentencing Entry and its instructions lead courts through the necessary considerations and findings when imposing sentences.~~

A . COMMUNITY CONTROL

Courts have authority, based on the offense involved, to place a defendant under a period of supervision by their probation department with appropriate residential, nonresidential, and/or financial sanctions as conditions of that community control. The judge must inform the defendant of the prison term that could be imposed if they violate their community control. The sentencing judge is not required to select a specific prison term - instead, the court is required to inform the defendant of the range of prison terms available for the offense. [R.C. 2929.19(B)(4)] At the initial sentencing hearing when a judge places a defendant on a period of community control, the judge must inform the defendant that a violation of community control could result in a prison term being run consecutively to any other term of incarceration.¹

The sentencing court can reduce the period of community control or impose less restrictive sanctions for defendants who fulfill the conditions of their supervision “in an exemplary manner” [R.C. 2929.15(C)].

If the defendant is found to be in violation of community control, pursuant to R.C. 2929.15(B)(1) the court can:

- Extend the defendant’s period of supervision, up to a maximum of five years;
- Impose additional or more restrictive sanctions; and/or
- Impose a prison term for the violation, subject to the limitations and rules in R.C. 2929.15(B)(1)(c)(i-iii) and (3).
 - The prison term must be from the range of terms available for the offense that the defendant was notified of at the original sentencing hearing.

¹ [State v. Jones, Slip Opinion No. 2022-Ohio-4485.](#)

- R.C. 2929.15(B)(1)(c)(iii) gives the court discretion to impose a prison term for violations during their community control supervision more than once.
 - R.C. 2929.15 provides for prison to be used as a sanction for non-technical community control violations, violations of law, or leaving the state without permission. The prison term imposed must be from the range of prison terms reserved for the offense, but the provisions of R.C. 2929.15(B)(2)(b) providing for credit against the offenders remaining time on community control do not apply under a literal reading of the statute.²

Right of Appeal: If a prison term is imposed for a defendant qualifying for mandatory community control under R.C. 2929.13(B)(1)(a), the defendant has appeal of right under R.C. 2953.08(A)(2) unless the court specifies one or more factor found in R.C. 2929.13(B)(1)(b).

B . RESIDENTIAL SANCTIONS

Including, but not limited to R.C. 2929.16, (see R.C. 2929.01 for definitions):

- Community-based correctional facility (CBCF) for up to six months;
- Jail or minimum-security jail for up to six months (or up to one year for certain F-4 OVIs);
- Halfway house, no stated time limit; and
- Alternative residential facility: another place for employment, training, education, treatment, etc.

C . NONRESIDENTIAL SANCTIONS

Including, but not limited to R.C. 2929.17, (see R.C. 2929.01 for definitions):

- Day reporting: report to an approved location to participate in work, training, treatment, etc;
- House arrest and/or electronic monitoring and/or continuous alcohol monitoring;
- Community service for up to 500 hours for felonies, which may be imposed on indigent and non-indigent persons; the 40-hour/month cap is no longer the law, community service is credited against financial sanctions imposed at judge's discretion;
- Drug treatment: inpatient, outpatient, or both; court determines level of security;
- Drug- and alcohol-use monitoring, including random drug testing;
- Intensive probation supervision; frequent contact with supervising officer, etc.;
- Basic probation supervision, subject to conditions set by the court;
- Monitored time: under court control, subject to no conditions other than leading a law-abiding life;
- Curfew;
- Employment – obtain or retain a job;
- Education or training;

² Note that the provisions allowing for imposition of a prison term followed by continued community control conflict with existing case law on criminal sentencing following SB2. Prison and community control have historically been treated as mutually exclusive options, and the imposition of both a prison term and a community control sanction on a given count has been repeatedly rejected by the Supreme Court of Ohio. See, e.g., [State v. Anderson](#), 143 Ohio St.3d 175, 2015-Ohio-2089 and [State v. Hitchcock](#), 157 Ohio St.3d 215, 2019-Ohio-3246.

- Victim-defendant mediation, with the victim’s prior consent;
- License violation report: Inform an agency granting a business or professional license of the violation;
- Counseling generally, in particular, if a parent or custodian sentenced for domestic violence or assault involving a family or household member committed in the vicinity of a child other than the victim; and
- Sex defendant treatment program (for an defendant convicted of unlawful sexual conduct with a minor committed while the defendant is <21) [R.C. 2929.17(O)].

D . “MANDATORY” COMMUNITY CONTROL

F-4s, F-5s, and “Division B” drug offenses [R.C. 2929.13(B)(1)(a)]:

Community control is mandatory, subject to R.C. 2929.13(B)(1)(b) below, if the most serious charge is an F-4 or F-5 that is not an offense of violence [R.C. 2901.01(A)(9)] or qualifying assault offense [R.C. 2929.13(K)(4)] and the defendant:

- Did not have prior felony at any time or prior misdemeanor offense of violence within two years; and
- The most serious charge against the offender at the time of sentencing is an F-4 or F-5.

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

- Physical harm to a person;
- Attempt or actual threat of physical harm to a person with a deadly weapon;
- Attempt or actual threat of physical harm to a person, plus prior conviction for causing such harm;
- Offense related to public office/position held; position obligated offender to prevent it or to bring others to justice; or offender’s reputation/position facilitated the crime or likely to influence others;
- Offense was for-hire or part of organized criminal activity;
- Offense was a sex offense;
- Offender served a prior prison term or was in prison at time of offense;
- Offense was committed while offender was under community control or on bail or bond; or
- Offender committed the offense while in possession of a firearm.

E . NO PRESUMPTIVE SENTENCE

F-3s generally or “Division C” drug offenses: courts are directed to fashion an appropriate sentence based on the purposes and principles of sentencing as detailed in R.C. 2929.11 and R.C. 2929.12 [R.C. 2929.13(C)].

F . PRESUMPTIVE PRISON TERMS

F-1s, F-2s, “in favor” drug offenses, and certain F-3, F-4, and F-5 offenses: there is a presumption that a prison term is the appropriate sentence for these categories of offenses [R.C. 2929.13(D)(1)]. To rebut presumption, the sentencing court must find that non-prison sanctions would both [R.C. 2929.13(D)(2)]:

- Adequately protect the public and punish the offender because the factors indicating recidivism is less likely outweigh the factors indicating recidivism is more likely; and
- Not demean seriousness of the offense because less-serious factors outweigh more-serious factors.

Other offenses subject to a presumption in favor of a prison term are:

- “In favor” drug offenses where specified in [R.C. Chapter 2925]
- Theft of firearm [R.C.2913.02(B)(4)];
- Certain GSI offenses [R.C. 2907.05(A)(4) or (B)];
- F-3 importuning [R.C. 2907.07(F)(2)];
- F-4 Possession of a Controlled Substance Analogue [R.C.2925.11(C)(8)(b)]; and
- F-5 Importuning [R.C.2907.07(F)(3)].

Right of Appeal: If the presumption is overcome and a prison term is not imposed (or if a prison term is imposed but judicial release is later granted) state has appeal of right [R.C. 2953.08(B)(1)].

TARGETED COMMUNITY ALTERNATIVES TO PRISON (TCAP)

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

- The offense was an offense of violence, a sex offense, a trafficking offense, or other mandatory prison term;
- The offender has a prior conviction for a sex offense or felony offense of violence; or
- The sentence is to be served concurrently to a prison-eligible felony offense.

TECHNICAL VIOLATION COMMUNITY CONTROL VIOLATOR CAPS

A “Technical violation” is a violation of the conditions of a community control sanction imposed for a F-5, or for a F-4 that is not an offense of violence, is not a sexually oriented offense, and to which neither of the following applies [R.C. 2929.15(E)]³:

- The violation consists of a new criminal offense that is a felony or that is a

3 In *State v. Nelson*, [162 Ohio St.3d 338, 2020-Ohio-3690](#), and *State v. Castner*, [Slip Opinion No. 2020-Ohio-4950](#), the Supreme Court of Ohio held that the determination of what constitutes a “technical violation” requires a totality of the circumstances analysis of relationship between the violations in question and the overall goals of the community control sanction or condition. While these opinions were issued prior to the legislative definition of “technical violation” in [133 GA HB 1](#), the holdings may nonetheless be instructive as to the analysis in R.C.2929.15(E)(2).

misdemeanor other than a minor misdemeanor, and the violation is committed while under the community control sanction; or

- The violation consists of or includes the offender's articulated or demonstrated refusal to participate in the community control sanction imposed on the offender or any of its conditions, and the refusal demonstrates to the court that the offender has abandoned the objects of the community control sanction or condition.

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

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

MANDATORY PRISON TERMS

The General Assembly frequently changes this list and doesn't always include changes in R.C. 2929.13(F). Always check offense statute to determine if a specific penalty is mandated.

Note: factors other than prior convictions that enhance the penalty for a given offense must be specified in the indictment.

A . AGGRAVATED MURDER OR MURDER

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

B . F-1 OR F-2 WITH SPECIFIED PRIOR CONVICTIONS

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

C . ASSAULT ON POLICE OFFICERS

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

- Seven-year specification if offender shot at peace or corrections officer while committing or attempting a homicide or assault offense [R.C. 2941.1412]; [R.C. 2929.14(B)(1)(f)(i)]; and
- Five-year specification for aggravated vehicular homicide (AVH) with peace-officer victim [R.C. 2941.1414]; [R.C. 2929.14(B)(5)].

D . ASSAULT ON PREGNANT WOMEN

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

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

E . REPEAT VIOLENT OFFENDER SPECIFICATION (RVO)

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

- Discretionary RVO time: if court elects the maximum from range for underlying offense and LWOP is not imposed, it may add one to 10 more years if the court finds under R.C. 2929.14(B)(2)(a)(i-v) that the prison term for the underlying offense is:
 - Inadequate to punish the offender and protect the public (see recidivism factors in [R.C. 2929.12(D) - (E)]); and
 - Demeaning to seriousness of offense (see seriousness factors in [R.C. 2929.12(B-C)]).
 - For F-2 offenses, the court also must find serious physical harm or attempt or threat to do so.
- Under R.C. 2929.14(B)(2)(b), the court must impose the maximum prison term authorized for the offense, plus an additional one to 10 years for RVO with three or more RVO offenses in 20 years, including current, if LWOP not required or imposed.

F . VIOLENT F-3 OFFENSES WITH PRIOR CONVICTIONS

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

G . CERTAIN SEX OFFENSES

- Any offense with a sexually violent predator (SVP) specification: under R.C. 2929.13(F)(2), (11), and (15) and R.C. 2971.03, at least two years to life for specification, consecutive to underlying offense.
- Any rape: see R.C. 2929.13(F)(2)
 - Attempted rape, if victim <13 and, if completed, defendant would be classified as a sexual predator [R.C. 2929.13(F)(2)];
 - Five to 25 years for attempted statutory rape if offender ≥16 and victim <13 [R.C. 2941.1418], [R.C. 2971.03(A)(3)(e)(ii) or (B)(2)(a)], [R.C. 2929.14(E)];
 - Ten years to life for attempted statutory rape if offender ≥16 and victim <10 [R.C. 2941.1419], [R.C. 2971.03(A)(3)(e)(iii) or (B)(2)(b)]; and
 - Fifteen years to life for attempted rape, if offender has prior attempted statutory rape [R.C. 2941.1420], [R.C. 2971.03(A)(3)(e)(iv) or (B)(2)(c)].
- Sexual battery after Aug. 3, 2006, if victim <13 [R.C. 2929.13(F)(3)(c)(ii)]; or
 - Before Aug. 3, 2006, if victim <13, with prior rape, FSP, GSI, or sexual battery [R.C. 2929.13(F)(3)(c)(i)];

- Gross Sexual Imposition if victim <13 [R.C. 2929.13(F)(3)(a-b)]:
 - With prior rape, FSP, GSI, or sexual battery; or
 - On or after Aug. 3, 2006, with corroboration of victim’s testimony.⁴
- Importuning, with victim <13, if offender has prior sex offense or child-victim-oriented offense [R.C. 2929.13(F)(4)]; [R.C. 2907.07(A), (C), and (F)];
- Sex Offender Registration and Notification (SORN): repeat failure to register [R.C. 2950.99(A)(2)(b)] – mandatory sentence of at least three years.

H. CERTAIN DRUG OFFENSES

- F-1, F-2, and F-3 Drug Offenses: Generally mandatory from range when required by statute R.C. 2929.13(F)(5) and R.C. Chapter 2925. See our [Drug Offense Guide](#) for specific guidance.⁵
- F-2 Marijuana/Hashish Trafficking, Possession, or Cultivation [R.C. 2925.03-.04 and .11].
 - 20 to <40k. marijuana, 1 to <2 k. solid hashish, or 200 to <400 g. liquid hashish: five, six, seven, or eight years;
 - ≥40 k. marijuana, ≥2 k. solid hashish, or ≥400 g. liquid hashish: eight years; and
 - If in vicinity of school/juvenile: F-1 maximum.
- Major Drug Offenders (MDO): Defined in R.C. 2929.01(W).
 - F-1 maximum for specified, high-quantity amounts [R.C. 2941.1410(A)].
 - Additional three- to eight-year specification when drug involved is a fentanyl-related compound [R.C. 2941.1410(B)].

I. CORRUPT ACTIVITY

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

J. CERTAIN TRAFFIC OFFENSES

- Felony OVI when local incarceration is not imposed and for five priors in 20 years specified [R.C. 4511.19]; [R.C. 2941.1413].
 - At least 60 days or at least 120 days, as specified for felony OVI [R.C. 4511.19(G)], [R.C. 2929.13(G)(1-2)];
 - Six months or one, two, three, four, or five years on 6th OVI in 20 years [R.C. 2929.13(G)(1-2)], plus [R.C. 2941.1413]; [R.C. 2929.24(E)], plus [R.C. 2941.1416].
- Any OVI-related aggravated vehicular homicide (AVH) and aggravated vehicular assault (AVA) [R.C. 2903.06 and .08].
- Certain other involuntary manslaughters, AVHs, vehicular homicides, AVAs when specified [R.C. 2929.13(F)(14)]; [R.C. 2903.04, .06, and .08].
 - 3 years for AVH with three or more prior OVIs or equivalent offenses [R.C. 2941.1415]; [R.C. 2929.14(B)(6)].

⁴ In *State v. Bevely*, [142 Ohio St.3d 41, 2015-Ohio-475](#), the Supreme Court of Ohio held that a mandatory prison term based upon corroborating evidence is unconstitutional.

⁵ Certain F-3 drug offenses are subject to a 5-year mandatory term. See *State v. Pribble*, 158 Ohio St.3d 490, [2019-Ohio-4808](#)

K . HUMAN TRAFFICKING

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

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

L . FELONY DOMESTIC VIOLENCE

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

M . ILLEGAL CONVEYANCE

When prison or detention employee takes weapons, ammunition, ~~or~~ drugs or cellular telephones into the facility

[R.C. 2929.13(F)(12)]; [R.C. 2921.36].

N . OTHER SPECIFICATIONS IN R . C . 2941

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

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

- Six years for automatic or muffled/silenced firearm [R.C. 2941.144] (nine years with prior, cannot combine with three- or one-year gun specification);
- Three years, if firearm used, displayed, brandished, or otherwise indicated [R.C. 2941.145] (54 months with prior);
- One year, if firearm possessed, but not used, displayed, brandished, or otherwise indicated [R.C. 2941.141] (18 months with prior);
- Five years, if a drive-by shooting, in addition to gun specification above [R.C. 2941.146];
- Two years, if wearing or carrying body armor [R.C. 2941.1411];
- One, two, or three years for participating in a criminal gang [R.C. 2941.142]; [R.C. 2929.14(G)];
- Two years for aggravated murder, murder, or a violent F-1, F-2, or F-3 in a school zone [R.C. 2941.143]; [R.C. 2929.14(H)(1)];
- Six years for causing permanent, serious disfigurement or permanent, substantial incapacity when using an accelerant to commit felonious assault [R.C. 2941.1425], [R.C. 2929.14(B)(9)]; and
- Six years for causing permanent, disabling harm to a victim under 10 years old [R.C. 2941.1426]; [R.C. 2929.14(B)(10)].

INDEFINITE & DEFINITE SENTENCING

Felony offenses may be subject to a life sentence, a non-life indefinite sentence, or a definite sentence.

A . LIFE-SENTENCE OFFENSES

Offender is sentenced to a term of years up to life with release determinations by parole board. More information on the Ohio Parole Board is available on the DRC [website](#).

- Aggravated murder (if death sentence not imposed) and murder (LWOP or ten years to life) [R.C. 2903.01 - .02]; [R.C. 2929.02 - .03];
- Rape of a person <13 (LWOP); other rape or sexual battery; or GSI of a person <13, with an SVP spec (two years to life) [R.C. 2907.02]; [R.C. 2971.03(A)]; and [R.C. 2941.147 spec]; and

- Aggravated murder, murder, involuntary manslaughter as a felony, felonious assault, and kidnapping with SVP and sexual motivation (SM) specs (LWOP for murders, two years to life for others) [R.C. 2971.03(A)]; [R.C. 2941.147 (SM spec)]; [R.C. 2941.148 (SVP spec)].

B . NON-LIFE FELONY INDEFINITE SENTENCE

F-1 and F2 offenses committed on or after March 22, 2019 that are not subject to life imprisonment. Judges impose both a minimum and maximum prison term. Release is presumed at the expiration of the minimum prison term. See the [SB 201 Resources](#) for further guidance.

- **Minimum Prison Term:** judges select a minimum prison term from the R.C. 2929.14(A) range:
 - For offenses that specify a different prison term, that prison term is considered the minimum prison term; or
 - For offenses that carry a mandatory prison term, the minimum prison term is a mandatory prison term.
- **Maximum Prison Term:** Generally calculated as the minimum prison term plus 50-percent of itself [R.C. 2929.144(B)(1)].
 - **Concurrent sentences:** the maximum prison term is equal to the longest minimum prison term imposed, plus 50-percent of the longest minimum prison term for the most serious qualifying felony being sentenced [R.C. 2929.144(B)(3)].
 - **Consecutive sentences:** the maximum prison term is the sum of all consecutive indefinite minimum prison terms imposed, plus any consecutive definite prison terms imposed, plus an additional 50-percent of the longest minimum prison term, or definite prison term for the most serious felony being sentenced [R.C. 2929.144(B)(2)].

Note: Non-mandatory qualifying offenses are eligible for community control if presumption is overcome. Judges would then reserve an indefinite sentence.

C . DEFINITE SENTENCE

Offender sentenced to a definite prison term under R.C. 2929.14(A), unless offense specifies a different prison term. Release at the expiration of prison term, subject to reductions covered in Release & Sentence Reduction Mechanisms below.

- F-3, F-4, and F-5 offenses, as well as non-life F-1 and F-2 offenses committed before March 22, 2019.

SENTENCING CONSIDERATIONS & ADVISEMENTS

Courts are required to consider a number of factors at sentencing, and numerous advisements must be made to defendants depending on the nature of the convictions involved. The USE and its instructions guide practitioners through all necessary considerations and advisement, ensuring they are covered both on the record and in the court's journal entry.

A . PRESENTENCE INVESTIGATION (PSI)

No offender may be placed on a term of community control without a written PSI being considered by the court, unless both the defendant and the state waive the requirement. The court may order a PSI notwithstanding an agreement to waive the report [R.C. 2951.03(A)(1)].

B . RISK ASSESSMENT

The court, its probation officers and other entities must use the single validated risk assessment tool selected by the DRC if the court orders an assessment of an offender for sentencing or other purposes [R.C. 5120.114(A)].

C . SENTENCING HEARING

A hearing is necessary before imposing sentence for a felony [R.C. 2929.19(A)].

Requirements in every case:

- Financial sanctions: before imposing certain financial sanction(s), court must consider offender's present and future ability to pay [R.C. 2929.19(B)(5)].
(See "[Financial Sanctions](#)" on p. 16)
- Jail time credit: notify the offender of the number of days they have been confined for the offense and include in sentencing entry [R.C. 2929.19(B)(2)(g)].
- Registration advisements: provide any necessary advisements regarding registration or database enrollment offenses:
 - SORN notice: provide notices required by SORN law [R.C. Chapter 2950], including duty to register [R.C. 2929.19(B)(3)];
 - Arson registry notice: notify of duty to register to arson offender who has not been sentenced to confinement in any institution [R.C. 2909.15]; and
 - Violent offender database (VOD) notice: notify of duty to enroll in VOD [R.C. 2903.41-44].
- Post-release control (PRC): notify the defendant that, upon release from any prison term imposed, they will/may be subject to supervision by the Adult Parole Authority for a period determined by the type and nature of their convictions(s) and the Parole Board. Those terms of PRC are [R.C. 2967.28]:
 - ANY Felony sex offense – A mandatory five-year term of PRC.
 - F1 offenses – A mandatory five-year term of PRC.
 - A mandatory minimum 2 years PRC, up to a maximum of 5 years.
 - F2 offense – A mandatory three-year term of PRC.
 - A mandatory minimum 18 months PRC, up to a maximum of 3 years.
 - F3 offense of violence – A mandatory three-year term of PRC.
 - A mandatory minimum 1 year PRC, up to a maximum of 3 years.
 - All other F3, F4, and F5 offenses – Up to 3 years of PRC at the discretion of the Parole Board.
 - Up to 2 years of PRC at the discretion of the Parole Board.

The defendant has a potential post-release control obligation on each felony count but may be subject to only one post-release control period (the longest) upon release from prison [R.C. 2967.28(G)].

The sentencing court must also notify the defendant that if they violate their post-release control supervision conditions, the Parole Board may impose prison terms of up to nine months as a sanction for the violation, and that the total cumulative prison time imposed for such violations cannot exceed 50% of the stated prison term or stated minimum prison term originally imposed.

- Further notify the defendant that if they commit a new felony while on PRC, the sentencing court in the new felony case may impose a prison term for the violation of the remaining PRC period or 12 months, whichever is greater, consecutively to prison term for the new crime [R.C. 2929.141].

Bureau of Criminal Investigation (BCI)/Ohio Law Enforcement Automated Data System (LEADS)/National Instant Criminal Background Check System (NICS) Reporting/National Crime Information Center (NCIC): Courts must report:

See the [Supreme Court of Ohio's guidance](#).

- Final disposition of criminal cases.
- Orders for mental health evaluation or treatment for offenses of violence [R.C. 2929.44 and Sup. R. 95]
- Not Guilty by Reason of Insanity (NGRI) or incompetency findings, and orders for conditional release of such defendants [R.C. 2945.402 and Sup. R. 95].
- Sex/Child Victim Offender registration, Arson Offender registration, and/or Violent Offender Database enrollment.
- Court orders granting relief from a firearm disability.
- Court orders a modifying or vacating a sentence.
- Orders sealing or expunging criminal convictions.
- Charges not being filed as shared by the Prosecuting Attorney.
- Protection orders issued by the court pursuant [Sup.R. 10](#) in conjunction with the Clerk of Court.
- Capias/Warrants issued in conjunction with the Clerk of Courts and local law enforcement pursuant to [Crim.R. 9\(A\)](#).

Fingerprinting of the defendant, if not done at arrest, arraignment, or first appearance [R.C. 2301.10]. See the [Supreme Court of Ohio's guidance](#).

Requirements when Imposing Community Control [R.C. 2929.19(B)(4)]:

- Directly sentence the defendant to a term of community-control and impose sanction(s) and:
 - Notify that, if violated, court may impose longer time, more restrictive sanction, or a prison term from the range of terms available for the offense;
 - If local incarceration imposed, specify, if appropriate, that offender must reimburse costs of confinement [R.C. 2929.19(B)(6)]; and
 - At the initial sentencing hearing when a judge places a defendant on a period of community control, the judge must inform the defendant that a violation of community control could result in a prison term being run consecutively to any other term of incarceration.

Requirements When Imposing a Prison Term [R.C. 2929.19(B)(2)]:

- Prison term(s): state a prison term for each convicted offense (subject to merger), plus any gun specification, RVO, MDO, consecutives, etc.

- For offenses subject to non-life indefinite sentencing, impose minimum terms on each qualifying count and the maximum term on the record.
 - Indefinite sentencing advisements: see specific required advisements in R.C. 2929.19(B)(2)(c).

D . MERGER DOCTRINE

In cases with multiple counts, courts must consider whether sentences for allied offenses of similar import must be merged (a separate decision from consecutive/concurrent sentencing) [R.C. 2941.25].

E . CONSECUTIVE PRISON TERMS

General rule: there is a presumption that sentences will run concurrently unless the court makes findings that consecutive sentences are necessary to protect the public or to punish the offender, and that they are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public [R.C. 2929.14(C)(4)].

The court must also find any of the following:

- Crimes committed while awaiting trial/sentencing, under sanction, or under post-release control;
- Two or more of the multiple offenses committed as a single course of conduct; and harm so great or unusual that a single term does not adequately reflect seriousness of the conduct; or
- Offender’s criminal history shows that consecutive terms are needed to protect the public.

Defendant may appeal consecutive sentences exceeding the maximum penalty for the worst offense involved [R.C. 2953.08(C)].

Consecutive prison terms required: [R.C. 2929.14(C)(1-3)]:

- Specifications: sentence for gun and other specifications served before underlying offense [R.C.2929.14(C)(1)(a-c)];
- Certain crimes committed by an inmate or escapee from a detention facility (e.g., riot, many escapes, etc.) [R.C. 2929.14(C)(2)];
- Aggravated robbery of a deadly weapon from a law enforcement officer [R.C. 2911.01(B)]; [R.C. 2929.14(C)(3)];
- Theft of a firearm (grand theft) where a prison term is imposed [R.C. 2913.02(B)(4)]; [R.C. 2929.14(C)(3)];
- Sexually violent predators [R.C. 2971.03(E)];and
- Felony failure to comply: fleeing in a vehicle from an officer, causing substantial injury or risk of it [R.C. 2921.331(C-D)]; [R.C. 2929.14(C)(3)].

F . SENTENCING JUVENILES

~~Recent~~ U.S. Supreme Court decisions prohibit mandatory life-without-parole sentences for juvenile offenders. The Supreme Court of Ohio has extended this decision to include sentences that exceed a juvenile’s life expectancy for nonhomicide offenses, and has held that courts must consider the youth of the offender in sentencing juveniles as adults.⁶

6 See also *State v. Patrick*, Slip Opinion No. [2020-Ohio-6803](#) (Dec. 22, 2020) (finding that a trial court must articulate its consideration of the youth of a juvenile offender as a mitigating factor before imposing a life sentence, even if that sentence included eligibility for parole.)

Ohio bars life-without-parole sentences for all juvenile offenders, including those who commit homicide offenses.⁷ Courts are mandated to sentence juvenile offenders with consideration of factors relative to the hallmarks of youth [R.C. 2929.19(B)(1)(a)]:

- The offender’s age at the time of the offense and that age’s hallmark features, including intellectual capacity, immaturity, impetuosity, and a failure to appreciate risks/consequences;
- The offender’s family and home environment at the time of the offense, their inability to control their surroundings, their history of trauma, and their school/special education history;
- The circumstances of the offense, including the extent of the offender’s participation and the way familial/peer pressures may have impacted their conduct;
- Whether the offender might have been charged/convicted of a lesser offense if not for the incompetencies of youth, such as the offender’s inability to deal with police officers and prosecutors during interrogation, plea agreement, or their inability to assist their attorney; and
- Examples of the offender’s rehabilitation, including any subsequent growth or increase in maturity during confinement.

Special parole eligibility is established for current and future youth serving extended sentences as adults. Courts may still issue any permissible sentence they see fit, but the youth will be eligible for parole after 18, 25, or 30 years depending on the nature of their convictions. [R.C. 2907.02(B), 2909.24, 2929.02(A-B), 2929.03(A), (C-E)(H), 2929.06, 2929.07(A), and 2971.03(A)(1-2)(4-5)].

G . REVERSE BINDOVERS

Under certain circumstances, the court sentencing an offender who was transferred from a juvenile court where the ultimate conviction is for an offense that would not be subject to mandatory bindover, the court must transfer the case back to juvenile court for disposition [R.C. 2152.121].

H . CONCURRENT SUPERVISION

For the rules governing supervision of offenders subject to supervision by more than one court, see R.C. 2951.022.

REGISTRATION REQUIREMENTS

Several categories of offenses subject defendants to additional responsibilities – Sex or Child Victim Offender registration, Arson Offender registration, or enrollment in the Violent Offender Database. Courts must impose these duties as part of the sentence, and forms are provided for by the Ohio Attorney General’s Office to inform defendants of those duties. Additional information on these offenses is available as part of the USE instructions [and other Ohio Criminal Sentencing Commission \(OCSC\) Reference Guides](#).

~~sentence, even if that sentence included eligibility for parole).~~

⁷ See [133 GA SB 256](#).

A . SEX OFFENDER/CHILD VICTIM OFFENDER REGISTRATION

Offenders convicted of sex offenses or child victim-oriented offense are subject to Ohio Sex Offender Registration and Notification (SORN) duties and required to register with the sheriff in the county where they reside or are employed with specific duties and time periods classified by the nature of the offense committed [R.C. Chapter 2950].

- Tier 3 Offender: Must report every 90 days for life.
 - Tier 3 offenders are subject to additional community notification requirements [R.C. 2950.11].
- Tier 2 Offender: Must report every 180 days for 25 years (Juveniles report for 20 years, unless modified).
- Tier 1 Offender: Must report every 12 months for 15 years (Juveniles report for 10 years, unless modified).

The Ohio Attorney General provides a necessary form explaining registration duties that must be signed by the offender and the sentencing court.

Failure to comply with SORN duties can result in additional criminal charges filed against the offender.

B . ARSON OFFENDER REGISTRY

- Offenders convicted of “Arson Related Offenses” as defined in [R.C. 2909.13(A)] are subject to a requirement to register with the sheriff in the county where they reside [R.C. 2909.14, R.C. 2909.15].
 - Offenders must re-register annually, and upon a change in residence or employment, for life, unless a judge limits the requirements to no less than 10 years at the request of law enforcement [R.C. 2909.15(D)].
- The Ohio Attorney General provides a necessary form explaining registration duties that must be signed by the offender and the sentencing court.
- Failure to comply with arson registry duties can result in additional criminal charges filed against the offender.

C . VIOLENT OFFENDER DATABASE (VOD) ENROLLMENT

- Offenders convicted of one of the following offenses after March 20, 2019, or who were serving a prison term for one of those offenses, are presumed to be required to enroll in a violent offender database upon their release from prison with the sheriff in the county where they reside [R.C. 2903.41-.44].
 - Aggravated Murder, Murder, Voluntary Manslaughter, Kidnapping, F-2 Abduction, or an attempt, complicity, or conspiracy to commit one of those offenses.
 - Offenders must re-register annually, or upon change of residence or employment, for 10 years after their release from prison, subject to extension upon motion of the prosecuting attorney.
- Offenders must be notified of these duties prior to sentencing and a process is provided for the defendant to move to rebut the presumption they will be required to enroll in the VOD [R.C. 2903.43(A)(2)].
- The Ohio Attorney General provides a necessary form explaining VOD duties that must be signed by the offender and the sentencing court.

- Failure to comply with VOD duties can result in additional criminal charges filed against the offender.
- See [SB 231 VOD Database Guide](#) for additional details.

FINANCIAL SANCTIONS

Criminal convictions may also subject the defendant to various financial sanctions. For more detailed information on the various types of financial sanctions, refer to the Uniform Sentencing Entry and instructions.

A . FINANCIAL SANCTIONS GENERALLY

- Present and future ability to pay must be considered when imposing fines, restitution, and many types of costs, the costs of supervision, confinement costs, the costs of an immobilizing or disabling device, and reimbursement for controlled substance tests or arson investigation costs.
 - Courts may hold a hearing on present and future ability to pay, if necessary [R.C. 2929.18(E)];
 - Ability to pay considerations are not required to impose the costs of prosecution and any jury fees under R.C. 2947.23⁸; and
 - Courts must impose the costs of prosecution and jury fees under R.C. 2947.23, but may waive, modify, or suspend those costs at their discretion [R.C. 2947.23(C)].
- Appointed counsel fees: the court may find that the defendant is able to pay some or all of the costs their legal representation. Pursuant to the decision in *State v. Taylor*, [Slip Opinion No. 2020-OHIO-6786](#) this fee is civil in nature and not part of the criminal sentence imposed for the offense(s) in the case [R.C. 2941.51(D)].
 - Best practice would be to impose appointed counsel fees by separate entry, but the Court also opined that if they are assessed in the sentencing entry it should be noted that they are a civil assessment.
 - Sample language is provided in the uniform sentencing entry (USE) ~~and a separate assessment form is included as part of the “Good Civics” entries package.~~

B . CRIME-SPECIFIC FINANCIAL SANCTIONS

- Drug offense fines [R.C. Chapter 2925 and R.C. 2929.18(B)]:
 - F-1, F-2, F-3 drug offenses: mandatory fine at least 50-percent of the maximum conventional fine [R.C. 2929.18(B)(1)]. F-1, F-2, F-3 drug trafficking: “additional” fine equals value of offender’s property involved in or realized from the offense, or, if no property or undetermined value, additional fine under the R.C. 2929.18(A)(3) ranges; capped at conventional fine maximum [R.C. 2929.18(B)(4-7)], (also see million-dollar fine below).
- Up to \$1 million for aggravated murder, murder, or F-1, or for F-1, F-2, or F-3 drug offense, if three or more victims in instant or all such past crimes [R.C. 2929.32].
- Felony OVI, mandatory fine specified by offense level [R.C. 2929.18(B)(3)]; [R.C. 4511.19(G)(1)(d) or (e)].
- Arson: mandatory investigation and prosecution costs reimbursement [R.C. 2929.71].

⁸ See *State v. Taylor*, 161 Ohio St.3d 319, [2020-Ohio-3514](#) (Decided July 2, 2020).

- Forfeitures [R.C. Chapter 2981] and Title 45:
 - Asset forfeiture, particularly in corrupt activity, drug, gang, and Medicaid fraud cases [R.C. Chapter 2981]; and
 - Motor vehicle forfeiture for certain OVI, DUSs, and wrongful entrustments [R.C. 4510.11, R.C. 4511.19, and 4511.203], etc.

RELEASE & SENTENCE-REDUCTION MECHANISMS

A . JUDICIAL RELEASE

Eligibility: any non-mandatory term, except certain offenses by public office holders [R.C. 2929.20(A)(1)(b)].

- If serving an eligible term consecutive to a mandatory term, eligible after serving the mandatory term.
- A PSI is not necessary to grant judicial release.

Filing deadlines [R.C. 2929.20(C)]:

- If less than two years, can file any time after entering prison or after mandatory term(s) expires;
- If two to less than five years, can file 180 days after entering prison or 180 days after mandatory term(s) expires;
- If five years, can file after serving four years of stated prison term or four years after mandatory term expires;
- If greater than five but less than 10 years, can file after serving five years of their stated prison term or five years after mandatory term expires; and
- If greater than 10 years, can file after serving 50-percent of stated prison term or five years after expiration of mandatory term, whichever is later.

Hearings: the court may deny judicial release without a hearing, but must schedule a hearing to grant the petition.

- If denied at a hearing, offender cannot re-file.
- Court must make findings under R.C. 2929.20(J) to grant judicial release on an eligible F-1 or F-2. The state may appeal under R.C. 2953.08(B)(3).

B . RISK-REDUCTION SENTENCE

When imposing the sentence, the court may recommend a “risk-reduction sentence” under which the inmate may be released by DRC after serving 80-percent of their term [R.C. 2929.143]; [R.C. 5120.036].

- Murder offenses, violent F-1 or F-2 offenses, or sexually-oriented offenses are not eligible;
- Sentence cannot include a mandatory term; and
- Offender must agree to assessment and to participate in any recommended programming.

C . 80-PERCENT RELEASE

The director of the department of rehabilitation and correction may recommend to the sentencing court by submitting, in writing, a notice of submission to the court that the court strongly consider releasing from prison any offender who is confined in a state

correctional institution, who is serving a stated prison term of one year or more, and who is eligible. [R.C. 2929.20]

Criteria for an Offender to be Eligible for 80-Percent Release: [R.C. 2929.20(A)(3)(a)]

- Must be serving a term of one year or more.
- Must not be serving a disqualifying prison term pursuant to R.C. 2929.20(A)(10).
- Must not be serving a stated prison term that consists solely of one or more restricting prison terms pursuant to R.C. 2929.20(A)(12).
- If the offender is serving a stated prison term that includes one or more restricting prison terms and one or more eligible prison terms, the offender must fully serve the restricting prison term and 80-percent of the stated prison term that remains [R.C. 2929.20(A)(3)(a)(i)].

Procedure After the Ohio Department of Rehabilitation and Corrections Recommends 80-Percent Release: [R.C. 2929.20(O)]

- The director shall include with any notice submitted to the sentencing court an institutional summary report that covers the offender's participation while confined in a state correctional institution in school, training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the offender while so confined. The director shall include with the notice any other documentation requested by the court, if available.
- The department shall also promptly give to the prosecuting attorney of the county in which the offender was indicted a copy of the written notice of submission and recommendation, a copy of the institutional summary report, and any other information provided to the court. The department shall give a copy of the institutional summary report to any law enforcement agency that requests the report.
- The department shall promptly give written notice of the submission to any victim of the offender or victim's representative of any victim of the offender.
- The director's submission to the court constitutes a recommendation by the director that the court strongly consider a judicial release of the offender consistent with the purposes and principles of sentencing.
- The director's submission to the court establishes a rebuttable presumption that the offender shall be released in accordance with the 80-percent release recommendation.
- After the notice is submitted, the sentencing court then must schedule a hearing to consider the recommendation for release. The hearing shall be held in open court and must be scheduled not less than 30 nor more than 60 days after the notice is submitted. The court must inform the department and the prosecuting attorney of the date, time, and location of the hearing. The prosecuting attorney must provide notice to the victim pursuant to the Ohio Constitution and comply with R.C. 2929.20(E).
 - At the hearing, if the court finds that the offender satisfies the criteria for being an 80-percent qualifying offender, the court shall grant the offender judicial release unless the prosecuting attorney proves to the court, by a preponderance of the evidence, that the legitimate interests of the government in maintaining the offender's confinement outweigh the interests of the offender in being released. [R.C. 2929.20(O)(6)]

- The court shall enter its ruling within 10 days after the hearing is conducted. If the court does not enter a ruling on the notice within 10 days after the hearing is conducted, the department may release the offender. [R.C. 2929.20(O)(6)]

D . EARNED CREDIT

An inmate may earn credit for productive participation in education, vocational training, employment in prison industries, substance abuse treatment, or other constructive DRC programs [R.C. 2967.19~~43~~].

- Determination on the number of days that may be earned is based upon the most serious offense for which the offender is being confined.
- Earned credit may not exceed 158-percent of the total prison term. *(Note: Effective April 4, 2024, the earned credit maximum increases to 15 percent of the total prison term.)*
- An award of the lesser of 90 days' credit or a 10-percent reduction of the stated prison term is possible for completion of programming listed in R.C. 2967.193(A)(2). These may be earned multiple times.
- Administrative rules of the earned credit program are laid out in Ohio Adm. Code 5120-2-06. For additional information, see [DRC Earned Credit policy](#).

E . TRANSITIONAL CONTROL

Eligible inmates may be transitioned into the community during the final 180 days of their sentence [R.C. 2967.26].

- Sentencing court may disapprove of transition for offenders serving a prison term of less than one year.
- Offenders on transitional-control status must stay in a facility or housing approved by DRC, and may be subject to electronic monitoring.

F . EARNED REDUCTION OF MINIMUM TERM

Offenders serving an indefinite non-life felony sentence may receive a 5- to 15-percent reduction of their minimum term for “exceptional conduct or adjustment to incarceration” at the request of DRC and with approval of the sentencing court [R.C. 2967.271(F)(7)]. See the [SB 201 Resources](#) for further guidance.

G . SUBSTANCE ABUSE DISORDER TREATMENT

DRC may place certain prisoners into community-based substance abuse treatment for those individuals who suffer from a substance abuse disorder [R.C. 5120.035].

- Qualified offenders must be serving a prison term for an F-4 or F-5 and must not have a prior conviction for a felony offense of violence, or for a misdemeanor offense within the past five years. For other qualifications, see R.C. 5120.035(A)(4).
- Time must be served at a facility properly licensed as a halfway house or community residential center, [R.C. 2967.14].

H . MEDICAL RELEASE

The DRC director may recommend that an inmate who is terminally ill, medically incapacitated, or in imminent danger of death be released as if on parole [R.C. 2967.05].

- DRC recommendation must include certification by attending physician.
- Inmates serving a sentence of death, life without parole, for aggravated murder or murder, for a F-1 or F-2 under R.C. Chapter 2971, or for a mandatory prison term for an offense of violence or a R.C. Chapter 2941 specification are ineligible.

I. OVERCROWDING EMERGENCY

When the total prison population exceeds capacity, the DRC director may notify the Correctional Institution Inspection Committee (CIIC) of an overcrowding emergency. The CIIC must review the situation and make a recommendation to the governor to reduce prison terms for eligible offenders by 30, 60, or 90 days. The governor then may declare an emergency on a recommendation from the CIIC [R.C. 2967.18].

- See R.C. 2967.18(E) for sentences ineligible for the reduction.
- Released offenders still may be subject to post-release control.

J. EXECUTIVE CLEMENCY

The governor may, upon recommendation of the parole board, grant relief from a criminal conviction through pardons, commutations, or reprieves. Recommendations may come from the parole board [R.C. 2967.03].

- Pardons may be conditional or unconditional, alleviating some or all of the consequences of criminal convictions.
- Commutations also may be conditional or unconditional, reducing the penalty of a criminal conviction.
- Reprieves temporarily postpone the imposition or execution of a sentence. A temporary, definite reprieve of a sentence of death may be granted without notice or application [R.C. 2967.08].
- Applications for pardons must be filed in accordance with R.C. 2967.07.

K. SHOCK PROBATION/PAROLE

Offenders with an offense date prior to July 1, 1996 may be eligible for shock probation [Former R.C. 2947.061] or shock parole [Former R.C. 2967.31].

- Shock probation currently is referenced in R.C. 2929.201. Shock probation was available for non-repeat, non-dangerous offenders within 30-60 days of incarceration for certain non-aggravated F-1, F-2, or F-3 offenses, or after six months for certain aggravated F-1, F-2, or F-3 offenses.
- Shock parole is a power granted to the parole board to grant parole to eligible offenders who had not previously served a prison term of greater than 30 days. See Ohio Adm.Code 5120:1-1-06 for additional information.

L. INTENSIVE PROGRAM PRISON

Intensive Program Prison (IPP) Recommendation: at sentencing, the court may recommend for or against boot camp or intensive program prison. [R.C. 2929.19(D)]; [R.C. 2929.14(I)]. DRC has rescinded the administrative rules regarding this program. It is no longer in use.

FELONY SENTENCING TABLE

Felony Level	Sentencing Guidance [R.C. 2929.13(B) - (E)] ¹	Prison Terms [R.C. 2929.14(A)]	Maximum Fines ⁴ [R.C. 2929.18(A) (2) - (3)]	Repeat Violent Offender Enhancement [R.C. 2929.14(B)(2)]; [R.C. 2941.149]	PRC Requirements [R.C. 2967.28(B) - (C)]
F-1	Presumption for prison (Also applies to “in favor” drug offenses)	3, 4, 5, 6, 7, 8, 9, 10, or 11 years	\$20,000	1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years	Mandatory minimum 2 years, up to maximum 5 years. Mandatory for 5 years for sex offenses.
F-2		2, 3, 4, 5, 6, 7, or 8 years	\$15,000	For F-2 involving att. serious harm or for involuntary manslaughter: 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years; otherwise none	Mandatory minimum 18 months, up to maximum 3 years. Mandatory for 5 years for sex offenses.
F-3	Generally no guidance, other than PURPOSES AND PRINCIPLES (Also applies to “Div.(C)” drug offenses). Presumption for prison for specified offenses. ^{2,7}	9, 12, 18, 24, 30, or 36 months or ⁵ 12, 18, 24, 30, 36, 42, 48, 54, or 60 months	\$10,000	None	Mandatory minimum 1 year, up to maximum 3 years for offenses of violence. Discretionary up to 2 years for non-violent F-3 offenses. Mandatory for 5 years for sex offenses.
F-4 ⁷	Community control mandatory if R.C. 2929.13(B)(1)(a) applies, but discretion to impose prison term if any of the R.C. 2929.13(B)(1)(b) factors apply. ⁶	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months	\$5,000	None	Discretionary up to 2 years. Mandatory for 5 years for sex offenses.
F-5 ⁷	If neither apply, no guidance other than R.C. 2929.11 and R.C. 2929.12 Purposes and Principles of Felony Sentencing.	6, 7, 8, 9, 10, 11, or 12 months	\$2,500		

¹ **Exceptions (always check the offense statute for specific penalties):**

- **Indeterminate (Life) sentences** for aggravated murder, murder, human trafficking, and certain sex offenses and crimes with sexual motivation.
- **Indefinite Sentences** – Non-life F-1 and F-2 offenses committed after March 22, 2019 receive both a minimum term generally selected from the ranges above, unless the offense specifies a different punishment, as well as a maximum term calculated pursuant to R.C. 2929.144.
- **Drug Offenses** – Penalties track degree of offense, but the sentencing guidance may be different than for other offenses at that felony level. See [Drug Offense Quick Reference](#).

² **F-3 Offenses with Presumption of Prison Term:** Theft of firearm [R.C. 2913.02(B)(4)], certain GSI offenses [R.C. 2907.05(A)(4) or (B)] and F-3 importuning [R.C. 2907.07(F)]. [See Domestic Violence \(R.C. 2919.25\) Mandatory Terms.](#)

³ **Post-Release Control** [R.C. 2967.28(D)(3)]: The board or court shall review the releasee’s behavior and may reduce or extend the duration. The reduction shall not be a period less than the length of the original stated prison term, and in no case shall the board or court permit the releasee to leave the state without permission of the court or the parole or probation officer.

⁴ **Maximum Fines:** Covers conventional and day fines. There are exceptions in drug trafficking cases [R.C. 2929.18(B)(4-7)]. Some offenses call for a superfine of up to \$1 million [R.C. 2929.32]. For organizational offenders, see [R.C. 2929.31]. In addition to any other fine that is or may be imposed under this section, the court imposing sentence for a felony that is a sexually oriented offense or a child-victim-oriented offense as defined in R.C. 2950.01 may impose a fine of \$50-\$500 [R.C. 2929.18(B)(9)].

⁵ **Higher F-3s:** The longer-sentence range applies to aggravated vehicular homicides and assaults, sexual battery, GSI, sex - with a minor, and robbery or burglary with two or more separate aggravated or non- aggravated robberies or burglaries [See R.C. 2929.14(A)(3)(a)], and certain F-3 drug offenses [See, e.g., R.C. 2925.041(C)(1)].

⁶ **F-4s & F-5s:** [R.C. 2929.13(B)(1)(a) and (b)] apply to F-4 and F-5 offenses that are not “offenses of violence” [R.C. 2901.01(A)(9)] or “qualifying assault offenses” [R.C. 2929.13(K)(4)] and to “Division B” drug offenses [statute indicates that sentencing is guided by R.C. 2929.13(B)]



Felony Sentencing Bench Card

Purposes and Principles

Overriding Purposes:

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

Principles:

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

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

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

Factors to Consider in Every Case.

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

Offender’s Conduct Is More Serious [R.C. 2929.12(B)]

- Injury exacerbated by victim’s physical or mental condition or age.
- Victim suffered serious physical, psychological, or economic harm.
- Victim died by suicide as a result of the offense
- Offender held public office or position of trust and the offense related to the office or position.
- Offender’s occupation obliged the offender to prevent the offense or to bring those committing it to justice.
- Offender’s reputation, occupation, or office facilitated the offense or is likely to influence others’ conduct.
- Offender’s relationship with the victim facilitated the offense.
- Offender acted for hire or as part of organized criminal activity.
- Offender was motivated by prejudice based on race, ethnicity, gender, sexual orientation, or religion.
- In a domestic violence or assault case, offender is a parent or other custodian, victim was a family or household member, & offense was committed in the vicinity of one or more children other than the victim.

Offender’s Conduct Is Less Serious [R.C. 2929.12(C)]

- Victim induced or facilitated the offense.
- Offender acted under strong provocation.
- Offender did not cause or expect to cause physical harm to person or property.
- Substantial grounds exist to mitigate the offender’s conduct, even if they don’t constitute a defense.

Offender’s Recidivism Is More Likely [R.C. 2929.12(D)]

- Offense while on bail, awaiting sentencing, on community control or post-release control (PRC), or after PRC unfavorably terminated.
- Offender has a history of criminal convictions or juvenile delinquency adjudications.
- Offender has not responded favorably to sanctions previously imposed in adult or juvenile court.

- Offender shows pattern of alcohol/drug use related to offense & doesn't acknowledge it or refuses treatment.
- Offender shows no genuine remorse.

Offender's Recidivism Is Less Likely [R.C. 2929.12(E)]:

- Offender has no prior juvenile delinquency adjudication.
- Offender has no prior adult conviction.
- Offender led a law-abiding life for a significant number of years.
- Offense was committed under circumstances unlikely to recur.
- Offender shows genuine remorse.

Offender's Veteran Status As Mitigating Factor [R.C. 2929.12(F)]

Alford Plea [R.C. 2929.12(G)]

- Court is not to consider whether offender shows genuine remorse.

Considerations and Advisements

Presentence Investigation [R.C. 2951.03(A)(1)]

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

Merger (Allied Offenses of Similar Import) [R.C. 2941.25]

Allied offenses of similar import must be merged.

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

Consecutive Sentences [R.C. 2929.14(C)(4)]

Presumption for concurrent sentences unless the court finds both:

- Consecutive sentences are necessary to protect the public or to punish the offender; and
- Consecutive sentences are not disproportionate to the seriousness of the offenders conduct and the danger posed to the public.

The court must also find any of the following:

- Crimes were committed while awaiting trial/sentencing, under sanction, or under post-release control.

- Two or more of the multiple offenses committed as a single course of conduct; and harm so great or unusual that a single term does not adequately reflect seriousness of the conduct.
- Offender's criminal history shows that consecutive terms are needed to protect the public.

Consecutive Sentences Required [R.C. 2929.14(C)(1-3)]:

- Specifications: sentence for gun, body armor, and discharging at peace officer specifications are served before underlying offense. [R.C. 2929.14(C)(1)(a-c)]
- Certain crimes committed by an inmate or escapee from a detention facility (e.g. riot, many escapes, etc.). [R.C. 2929.14(C)(2)]
- Aggravated robbery of a deadly weapon from a law enforcement officer. [R.C. 2911.01(B) and R.C. 2929.14(C)(3)]
- Theft of a firearm (grand theft) where a prison term is imposed. [R.C. 2913.02(B)(4) and R.C. 2929.13(C)(3)]
- Sexually violent predator specification. [R.C. 2971.03(E)]
- Felony failure to comply, fleeing in a vehicle from an officer, causing substantial injury or risk of injury. [R.C. 2921.33(C-D) and R.C. 2929.14(C)(3)]

Community Control [R.C. 2929.15]

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

Residential Community Sanctions

[R.C. 2929.16 and R.C. 2929.01]

Including, but not limited to:

- Community-based correctional facility (CBCF) for up to 6 months.
- Jail or minimum-security jail for up to 6 months (or up to 1 year for certain F-4 OVI's).
- Halfway house: no stated time limit.
- Alternative residential facility: another place for employment, training, education, treatment, etc.

Non-Residential Sanctions [R.C. 2929.17 and R.C. 2929.01]

Including, but not limited to:

- Day reporting: report to an approved location to participate in work, training, treatment, etc.
- House arrest and/or electronic monitoring and/or continuous alcohol monitoring.
- Community service for up to 500 hours, which may be imposed on indigent & non-indigent persons.
- Drug treatment: inpatient, outpatient, or both; court determines level of security.
- Drug and alcohol use monitoring, including random drug testing.
- Intensive probation supervision: frequent contact with supervising officer, etc.
- Basic probation supervision: contact with a supervising officer subject to conditions set by the court.
- Monitored time: defendant is under court control subject to no conditions other than leading a law-abiding life.
- Curfew: be at a designated place at a specific time.
- Employment: obtain or retain a job.
- Education or training.
- Victim-defendant mediation, with the victim's prior consent.
- License violation report: inform an agency granting a business or professional license of the violation.
- Counseling generally. In particular, if a parent or custodian sentenced for domestic violence or assault involving a family or household member committed in the vicinity of a child other than the victim.
- Sex defendant treatment program (for a defendant convicted of unlawful sexual conduct with a minor committed while the defendant is <21. [R.C. 2929.17(O)]

Mandatory Community Control

F-4s, F-5s, and "Division B" Drug Offenses [R.C. 2929.13(B)(1)(a)]:

The court shall sentence the offender to community control (CC), subject to R.C. 2929.13(B)(1)(b) below, if the most serious charge is an F-4 or F-5 that is not an offense of violence [R.C. 2901.01(A)(9)] or qualifying assault offense [R.C. 2929.13(K)(4)] and the defendant:

- Previously has not been convicted of or pled to a Felony.
- The most serious charge against the defendant at the time of sentencing is an F-4 or F-5.
- Previously has not been convicted of a misdemeanor offense of violence within 2 years prior to the offense for which sentence is being imposed.

Discretionary Prison Term (If Not mandatory CC)

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

1. Physical harm to a person.
2. Attempt or actual threat of physical harm to a person with a deadly weapon.
3. Attempt or actual threat of physical harm to a person and prior conviction for causing such harm.
4. Offense related to public office/position held; position obligated offender to prevent it or to bring others to justice; or offender's reputation/position facilitated the crime or likely to influence others.
5. Offense was for hire or part of organized criminal activity.
6. Offense was a sex offense.
7. Offender served a prior prison term or was in prison at time of offense.
8. Offense was committed while offender was under community control or on bail or bond.
9. Offender committed the offense while possessing a firearm.

No Presumptive Sentence

F-3s generally or “Division C” drug offenses: courts are directed to fashion an appropriate sentence based on the purposes and principles of sentencing. [R.C. 2929.13(C)]

Mandatory Prison Terms [R.C. 2929.13(F)]

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

Aggravated Murder or Murder

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

F-1 Or F-2 With Specified Prior Convictions

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

Assault On Police Officer

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

- Seven-year specification if offender shot at peace or corrections officer while committing or attempting a homicide or assault offense. [R.C. 2941.1412 and R.C. 2929.14(B)(1)(f)(i)]; and
- Five-year specification for aggravated vehicular homicide (AVH) with peace-officer victim. [R.C. 2941.1414 and R.C. 2929.14(B)(5)]

Assault On Pregnant Woman

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

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

Repeat Violent Offender Specification (RVO)

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

Discretionary RVO time: if court elects the maximum from range for underlying offense and Life without Parole (LWOP) is not imposed, it may add one to 10 more years if the court finds under R.C. 2929.14(B)(2)(a)(i-v) that the prison term for the underlying offense is:

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

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

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

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

Violent F-3 Offenses With Prior Convictions

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

Certain Sex Offenses

- Any offense with a sexually violent predator (SVP) specification at least two years to life for specification, consecutive to underlying offense. [R.C. 2929.13(F)(2), (11), and (15) and R.C. 2971.03]
- Any rape. [R.C. 2929.13(F)(2)]
- Attempted rape, if victim <13 and, if completed, defendant would be classified as a sexual predator. [R.C. 2929.13(F)(2)]
- Five to 25 years for attempted statutory rape if offender ≥16 and victim <13. [R.C. 2941.1418, R.C. 2971.03(A)(3)(e)(ii) or (B)(2)(a) R.C. 2929.14(E)]
- Ten years to life for attempted statutory rape if the victim is <10, OR if offender ≥16 and compelled victim <13 to submit by force or threat of force. [R.C. 2941.1419, R.C. 2971.03(A)(3)(e)(iii) or (B)(2)(b)]
- Fifteen years to life for attempted rape, if offender has prior attempted statutory rape. [R.C. 2941.1420, R.C. 2971.03(A)(3)(e)(iv) or (B)(2)(c)]
- Sexual battery
 - After Aug. 3, 2006, if victim <13. [R.C. 2929.13(F)(3)(c)(ii); or
 - Before Aug. 3, 2006, if victim <13, with prior rape, Felonious Sexual Penetration, Gross Sexual Imposition, or sexual battery. [R.C. 2929.13(F)(3)(c)(i)]
- Gross Sexual Imposition if victim <13. [R.C. 2929.13(F)(3)(a-b)]

- Importuning, with victim <13, if offender has prior sex offense or child-victim-oriented offense. [R.C. 2929.13(F)(4); R.C. 2907.07(A), (C), and (F)]
- Sex Offender Registration and Notification (SORN): repeat failure to register is a mandatory sentence of at least three years. [R.C. 2950.99(A)(2)(b)]

Certain Drug Offenses

F-1, F-2, and F-3 Drug Offenses: Generally mandatory from range when required by statute.

[R.C. 2929.13(F)(5) and R.C. Chapter 2925]

- F-2 marijuana/hashish trafficking, possession, or cultivation. [R.C. 2925.03-.04 and .11]
 - 20 to <40k. marijuana, 1 to <2 k. solid hashish, or 200 to <400 g liquid hashish: five, six, seven, or eight years.
 - ≥40 k. marijuana, ≥2 k. solid hashish, or ≥400 g liquid hashish: eight years;
 - If in vicinity of school/juvenile: F-1 maximum.
- Major Drug Offenders (MDO): Defined in R.C. 2929.01(W).
 - F-1 maximum for specified, high-quantity amounts. [R.C. 2941.1410(A)]
 - Additional three- to eight-year specification when drug involved is a fentanyl-related compound. [R.C. 2941.1410(B)]

Corrupt Activity

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

Certain Traffic Offenses

- Felony operating vehicle under the influence (OVI) when local incarceration is not imposed and for five priors in 20 years specified. [R.C. 4511.19, R.C. 2941.1413]
- At least 60 days or at least 120 days, as specified for felony OVI. [R.C. 4511.19(G), R.C. 2929.13(G)(1-2)]
- Six months or one, two, three, four, or five years on 6th OVI in 20 years. [R.C. 2929.13(G)(1-2), R.C. 2941.1413, R.C. 2929.24(E), R.C. 2941.1416]
- Any OVI-related aggravated vehicular homicide (AVH) and aggravated vehicular assault (AVA). [R.C. 2903.06 and .08]
- Certain other involuntary manslaughters, AVHs, vehicular homicides, AVAs when specified. [R.C. 2929.13(F)(14), R.C. 2903.04, .06, and .08]
- Three years for AVH with three or more prior OVIs or equivalent offenses. [R.C. 2941.1415, R.C. 2929.14(B)(6)]

Human Trafficking

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

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

Felony Domestic Violence

When offender knew the victim was pregnant and/or caused serious physical harm to unborn child.

[R.C. 2929.13(F)(17) and R.C. 2919.25(D)(3-6)].

Illegal Conveyance

When prison or detention employee takes weapons, ammunition, ~~or~~ drugs or cellular phones into the facility.

[R.C. 2929.13(F)(12) and R.C. 2921.36]

Specifications in R.C. 2941.

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

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

- Six years for automatic or muffled/silenced firearm (nine years with prior, cannot combine with three- or one-year gun specification). [R.C. 2941.144]
- Three years, if firearm used, displayed, brandished, or otherwise indicated (54 months with prior). [R.C. 2941.145]
- One year, if firearm possessed, but not used, displayed, brandished, or otherwise indicated (18 months with prior). [R.C. 2941.141]
- Five years, if a drive-by shooting, in addition to gun specification above. [R.C. 2941.146]
- Two years, if wearing or carrying body armor. [R.C. 2941.1411]
- One, two, or three years for participating in a criminal gang. [R.C. 2941.142 and R.C. 2929.14(G)]
- Two years for aggravated murder, murder, or a violent F-1, F-2, or F-3 in a school zone. [R.C. 2941.143 and R.C. 2929.14(H)(1)]
- Six years for causing permanent, serious disfigurement or permanent, substantial incapacity when using an accelerant to commit felonious assault. [R.C. 2941.1425 and R.C. 2929.14(B)(9)]
- Six years for causing permanent, disabling harm to a victim <10. [R.C. 2941.1426 and R.C. 2929.14(B)(10)].

Indefinite And Definite Sentences

Life-Sentence Offenses

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

- Aggravated murder (if death sentence is not imposed) can be a sentence of 20-life, 25-life, 30-life, or life without parole. [R.C. 2929.03]
- Murder carries a sentence of 15-life. [R.C. 2929.02]
- Rape (victim <10) [R.C. 2907.02 and R.C. 2971.03]
- Aggravated murder, murder, involuntary manslaughter as a felony, felonious assault, and kidnapping with sexually violent predator (SVP) and sexual motivation (SM) specs (LWOP for murders, 2 years to life for others). [R.C. 2971.03(A), R.C. 2941.147 (Sexual Motivation), R.C. 2941.148 (Sexually Violent Predator)]

Indefinite Sentence [R.C. 2929.144]

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

- Minimum prison term, selected from R.C. 2929.14(A) ranges:
 - F1: 3, 4, 5, 6, 7, 8, 9, 10 or 11 years
 - F2: 2, 3, 4, 5, 6, 7 or 8 years

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

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

- Maximum prison term:
 - Minimum term plus 50%.
 - Concurrent sentences: the maximum term is equal to the longest minimum term imposed, plus 50% of the longest minimum term for the most serious qualifying felony being sentenced. [R.C. 2929.144(B)(3)]
 - Consecutive sentences: the maximum term is the sum of all consecutive indefinite minimum prison terms, plus any consecutive definite prison terms, plus an additional 50% of the longest minimum prison term, or definite term for the most serious felony being sentenced. [R.C. 2929.144(B)(2)]

Definite Sentence [R.C. 2929.14]

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

Post Release Control [R.C. 2967.28]

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

- ANY Felony sex offense: mandatory 5-year term.
- F1 offenses: mandatory 2 – 5-year term.
- F2 offense: mandatory 18 months – 3-year term.
- F3 offense of violence: 1 year – 3-year term.
- All other F3, F4 and F5: up to 2 years at discretion of parole board.

Registration Requirements

- Sex Offender Registration Notice (SORN). [R.C. 2950]
 - For offenses prior to Jan. 1, 2008, classify under Megan’s Law.
- Arson registry notice [R.C. 2909.15]
- Violent offender database (VOD) [R.C. 2903.41-44]

Fines, Restitution And Court Costs

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

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

Fines, generally: [R.C. 2929.18]

- F1 not more than \$20,000.
- F2 not more than \$15,000.
- F3 not more than \$10,000.
- F4 not more than \$5,000.
- F5 not more than \$2,500.

Restitution [R.C. 2929.18(A)(1)]

Restitution may be ordered when economic losses are suffered by the victim as a direct and proximate result of the commission of the offense.

Costs of Prosecution and Jury Fees. [R.C. 2947.23]

Appointed Counsel Fees [R.C. 2941.51(D)]

Civil assessment (should be noted in entry if not done separately).

Crime-Specific Fines

Drug Offense Fines: [R.C. Chapter 2925 and R.C. 2929.18(B)]

F-1, F-2, F-3 Drug Offenses: mandatory fine of at least 50-percent of the maximum conventional fine [R.C. 2929.18(B)(1)].

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

Up to \$1 million: applies when:

1. Aggravated murder, murder, F1 or F1/F2/F3 drug offense; and
2. Three or more victims in the current case; OR
3. Previous conviction for offenses listed above and three or more victims across all cases. [R.C. 2929.32]

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

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

Forfeitures [R.C. Chapter 2981 and Title 45]

Asset forfeiture may be considered in corrupt activity, drug, gang, and Medicaid fraud cases [R.C. Chapter 2981]

Motor vehicle forfeiture for certain OVIs, DUSs, and wrongful entrustments. [R.C. 4510.11, R.C. 4511.19, and R.C. 4511.203]

Jail Time Credit [R.C. 2929.19(B)(2)(g)]

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

Technical Violation Community Control Violator Caps

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

- The violation consists of a new criminal offense that is a felony or that is a misdemeanor other than a minor misdemeanor, and the violation is committed while under the community control sanction.
- The violation consists of or includes the offender’s articulated or demonstrated refusal to participate in the community control sanction imposed on the offender or any of its conditions, and the refusal demonstrates to the court that the offender has abandoned the objects of the community control sanction or condition.
- The 90- or 180-day prison term imposed for a F-5 or F-4 technical violation cannot exceed the time remaining on the defendant’s community control sanction or the reserved prison term for the charge. Time served for the technical violation must be credited against the defendant’s remaining time on community control. If the defendant was serving a residential sanction of community control pursuant to R.C. 2929.16 at the time of the technical violation, the time served for the technical violation must be credited against their remaining time on community control, their remaining time on the residential sanction, and the reserved prison term in the case [R.C. 2929.15(B)(2)(b)(ii)].
- Defendants sent to prison for a technical violation sentence on an F-4 or F-5 shall be returned to community control in the sentencing court at the completion of the sentence if there is any remaining time to be served on the community control sanction. This return to community control will be at the discretion of the sentencing court.

Targeted Community Alternatives to Prison (TCAP)

TCAP is a voluntary program statewide following the passage of 133 GA HB 166. In participating counties, F-4 and F-5 offenders who are sentenced to a prison term cannot be sent to prison and instead must serve the sentence locally, unless [R.C. 2929.34(B)(3)]:

- The offense was an offense of violence, a sex offense, a trafficking offense, or other mandatory prison term; or
- The offender has a prior conviction for a sex offense or felony offense of violence; or
- The sentence is to be served concurrently to a prison-eligible felony offense.

Sentencing Youth – Mitigating Factors [R.C. 2929.19(B)(1)(b)(i)-(v)]

If the offense was committed when defendant <18:

- The chronological age of the offender at the time of the offense and that age’s hallmark features, including intellectual capacity, immaturity, impetuosity, and a failure to appreciate risks and consequences;
- The family and home environment of the offender at the time of the offense, the offender’s inability to control the offender’s surroundings, a history of trauma regarding the offender, and the offender’s school and special education history;
- The circumstances of the offense, including the extent of the offender’s participation in the conduct and the way familial and peer pressures may have impacted the offender’s conduct;
- Whether the offender might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth, such as the offender’s inability to deal with police officers and prosecutors during the offender’s interrogation or possible plea agreement or the offender’s inability to assist the offender’s own attorney;
- Examples of the offender’s rehabilitation, including any subsequent growth or increase in maturity during confinement.

Adult Competency Reference Guide

What is Competency¹¹ to Stand Trial?

A defendant is not competent to stand trial if either or both of these are true: (1) the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or (2) the defendant is incapable of assisting in the defendant's own defense. [R.C. 2945.37(G)]

- An individual who is found incompetent may not be tried or convicted unless and until the individual attains competency.
- An individual must be competent before waiving the right to counsel or entering a guilty or no-contest plea.

How is Competency Different from a Not Guilty by Reason of Insanity Plea?

Competency to stand trial is a determination by the judge about a defendant's present mental condition and about the defendant's capacity to understand the proceedings and assist in the defendant's own defense. [R.C. 2945.37(G)]

A plea of not guilty by reason of insanity (NGRI) asserts an affirmative defense regarding defendant's mental condition at the time of the offense and focuses on the defendant's capacity to know the wrongfulness of the defendant's actions at that time. [R.C. 2901.01(A)(14)]

Competency to Stand Trial and NGRI are separate and independent issues in a case. While both issues may be raised in the same case and the court can request joint evaluations, if both are raised the trial court will likely want to resolve the competency issue prior to addressing the NGRI issue. If only one issue is present in a case, then that is the only evaluation that needs to be conducted.

Raising the Issue of Competency

Defendants are presumed to be competent. [R.C. 2945.37(G)]

- This is a rebuttable presumption. The court is the final arbiter as to the defendant's competency.

Who Can Raise Competency? [R.C. 2945.37(B)]

The defense or the prosecutor or the court itself can each raise the issue of competency by motion in adult court.

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Appeal Of Competency Determinations

A finding that a defendant is incompetent to stand trial accompanied by an order that the defendant undergo inpatient competency-restoration treatment is a final appealable order. [State v. Upshaw, 100 Ohio St.3d 189, 2006-Ohio-4253.](#)

Other types of competency orders are subject to review under R.C. 2505.02(B)(4) to determine if the orders constitute final appealable orders. [In re JW, 2010-Ohio-707 \(11th Dist.\).](#)

Updated: ~~March~~ February



When Can Competency be Raised? [R.C. 2945.37(B)]

The issue of competency can be raised before or after a trial begins. If raised before trial, the court must hold a hearing on the issue. If competency is raised after a trial begins, the court may choose to hold a competency hearing and should if good cause is shown.

- Types of factors relevant to good-cause finding (not exclusive)²:
- Medical reports related to competency.
- Evidence of irrational behavior.
- The defendant’s demeanor during trial.
- Doubts about the defendant’s competency raised by defense counsel.

Competency Hearings

At any hearing on the issue of competency, the defendant must be represented by counsel. [R.C. 2945.37(D)] See State v. Bock, 28 Ohio St.3d 108 (1986) for the holding that failure to hold a hearing may be considered harmless error where there are insufficient “indicia of incompetency” present on the record.

Timing of Hearing [R.C. 2945.37(C)]

Any competency hearing must be held within:

- 30 days after the issue of competency is raised, or;
- If the defendant is referred for an evaluation before the hearing, within 10 days after the filing of the evaluation report, or;
- If the initial examiner’s report recommends further evaluation for intellectual disability, 10 days after the filing of that additional, separate report.

The hearing may be continued by the court for good cause shown. In the case of multiple evaluations, the statute is silent as to whether the 10-day time period starts when one evaluation or all evaluations are filed. Given the good-cause exception, courts are likely safe to wait to schedule the hearing until all evaluations are complete.³

Levels of Movement⁴ and Forensic Status

Once a defendant has been committed to an Ohio ~~DB~~~~Department of Mental Health and Addiction Services (OMHAS)~~ facility, depending on the defendant’s forensic status, various levels of movement are permitted within the facility:

- Level 1 – restricted to unit placement.
- Level 2 – supervised on-grounds movement.
- Level 3 – unsupervised on-grounds movement.
- Level 4 – supervised off-grounds movement.
- Level 5 – unsupervised off-grounds movement.
- Trial Visit – unsupervised community contact with expectation to return.
- Conditional release – treatment in community for a period of time, not to exceed maximum term of imprisonment for most serious offense.
- Medical movement - emergency and non-emergency. Hospitals may move an individual from Level One to Level Two with an attending psychiatrist’s order. Approval of levels 3-5 and conditional release may be granted only by court order. [R.C. 2945.401(D)(1)]

... continued on following page



How is Competency Determined?

Courts have authority to order competency evaluations under R.C. 2945.371, and the prosecution or defense may submit relevant evidence at the hearing.

The court cannot find incompetency solely based on the defendant's: [R.C. 2945.37(F)]

- Current or previous treatment for mental illness under R.C. Chapter 5122.
- Institutionalization or treatment for intellectual disability under R.C. Chapter 5123.
- Or because the defendant is receiving medication, even if incompetence may occur without the medication.

[R.C. 2945.37(G)]: Any finding of incompetency must be grounded in the court's finding that by a preponderance of the evidence and due to a present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings OR is incapable of assisting in the defendant's own defense.

Waiver of Competency Hearing

A stipulation by the parties to the expertise of the examiner and the contents of the examiner's report may alleviate the requirement for a formal hearing.⁵

Statutory Speedy Trial Tolling

From the date the defense files a motion challenging competency to stand trial, the right-to-a-speedy-trial clock is tolled. [R.C. 2945.72(B)] The clock begins again only after the trial court makes a competency determination, regardless of whether the examiner fails to issue a report within the prescribed time limits.⁶

Court-Ordered Competency Evaluations [R.C. 2945.371]

Courts may order one or more professional evaluations of the defendant's competency for the court's consideration in making a competency determination.

Who Conducts the Evaluation? [R.C. 2945.371]

If the court orders an evaluation, it must be conducted by an "examiner" as defined by R.C. 2945.37(A)(2) of the court's choosing. The examiner must be a qualified psychiatrist or clinical psychologist or be one employed by Ohio Department of Behavioral Health (Ohio DBH) to conduct such examinations.

Levels of Movement and Forensic Status, Continued

Forensic Status

1. Jail transfers and police holds - (Level 1).
2. Competency/sanity evaluation [R.C. 2945.371(H)(3) and (4)] - (Level 1).
3. Incompetent, restorable [R.C. 2945.38(B)] - (Levels 1-2).
4. Incompetent, unrestorable, probate court jurisdiction [R.C. 2945.38(H)(4)] - (Levels 1-5).
5. Maintain competency [R.C. 2945.38(A)] - (Levels 1-2).
6. Incompetent, unrestorable, criminal court jurisdiction [R.C. 2945.39(A)] - (Levels 1-5).
7. Not Guilty by Reason of Insanity [R.C. 2945.40] - (Levels 1-5).
8. Mentally-ill probationer or parolee [R.C. 2967.22 and Chapter 5122] - (Levels 1-5).



In Municipal Courts:

Except as provided in R.C. 2945.371, evaluations must be performed through community resources and not at any hospital operated by the Ohio Department of [Behavioral Mental Health-\(Ohio DBH\)and Addiction Services](#). [R.C. 2945.37(H)]

Is Participation with Court-Ordered Competency Evaluations Mandatory?

Yes. If a court orders an examination, the defendant must submit to the evaluation. [R.C. 2945.371(C)] An incarcerated or uncooperative defendant charged with a felony or an offense of violence, or who has been determined to be in need of immediate hospitalization, may be held for evaluation for a reasonable time not to exceed 20 days at a facility operated or certified by the [Ohio DBHDepartment of Mental Health and Addiction Services](#) or the Department of Developmental Disabilities. [R.C. 2945.371(C-D)]

- Municipal courts may make such an order only at the request of a certified forensic center examiner, unless the defendant requires immediate hospitalization or is charged with an offense of violence. [R.C. 2945.371(D)(2)]

A defendant who has not been released on bail or recognizance may be evaluated at the defendant's place of detention. [R.C. 2945.371(D)(1)]

What is the timeframe and format for an evaluation?

An examiner must send a report to the court within 30 days after the court orders the evaluation under R.C. 2945.371(H). Those evaluations may take place electronically. [R.C. 2945.37(H) and R.C. 2945.371(A)]

What must be included in the evaluation report? [R.C. 2945.371(H)]

The report must lay out the examiner's findings as well as the facts upon which the findings were based. Findings and recommendations in the report should include:

- Is the defendant capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's own defense?
- If the defendant is not competent, in the examiner's opinion, does the defendant have a mental illness or intellectual disability?
- If there is an intellectual disability, is the defendant subject to institutionalization by court order?⁷
- If the defendant is not competent, what is the likelihood⁸ that the defendant can be restored to competency in one year⁹?
- If the defendant is not competent, what is the least restrictive placement or commitment alternative that can provide the means for restoration without endangering the safety of the community?



Can statements made to examiners during competency evaluations or hearings be used against the defendant?

No. Statements made by the defendant during evaluations or hearings cannot be used to determine guilt. [R.C. 2945.371(J)]

What about a second opinion?

Courts may order multiple evaluations in adult cases, including by examiners recommended by the prosecution or the defendant. [R.C. 2945.371(A) & (B)]. There is no statutory right to a second competency evaluation, or to an evaluation by a doctor of the parties' choosing, and denial of such a request is reviewed on an abuse-of-discretion standard. On review, the record will be reviewed to determine if sufficient indicia of competency existed, with deference given to the trial court.¹⁰

A second-opinion evaluation should be ordered in the same manner as the first. Use of the 20-day- observation provisions under R.C. 2945.371(C-D) is not the correct avenue and often causes a longer wait for an evaluation to be conducted.

Defendants may request an independent evaluation of an NGRI claim by an evaluator of the defendant's choice, with the cost paid at public expense for indigent defendants. [R.C. 2945.371(B)]

Who pays the cost of the evaluations?

Competency examiners are paid a reasonable amount. Costs are borne by the court¹¹ and may be taxed as costs in the case. [R.C. 2945.371(L)]

Competency Determinations

Once a hearing on competency has been conducted, and any and all evaluations are in evidence, the court then makes the final determination as to competency. What are the types of competency determinations?

1. Competent to stand trial: [R.C. 2945.38(A)]

After consideration of all evidence, the court determines that the defendant is competent to stand trial.¹²

Result: Defendant is competent to stand trial. Case proceeds as normal.

2. Incompetent, but restorable: [R.C. 2945.38(B)(1)(a)(i)]

The court finds that defendant is currently incompetent but that there is a substantial probability¹³ that competency will be restored within **R.C. 2945.38(C) timelines** ~~1-year~~ if provided treatment.¹⁴

Result: Court orders defendant to treatment to restore competency. See time limits on ~~following~~ page 7.

Forced Medication Hearings [R.C. 2945.38(B)(1)(c)]

A treatment center may petition the court for involuntary administration of drugs if it determines they are needed to restore the defendant's competency and the defendant lacks the capacity or refuses to consent.

Time Frame for hearings:

Misdemeanor: The hearing is within 5 days of the filing of the petition.

Felony: The hearing is within 10 days of the filing of the petition.

Elements: When authorizing for the purpose of competency restoration, the court determines that treatment is:

1. Medically appropriate.
2. Substantially unlikely to have side effects that may undermine the fairness of the trial.
3. Necessary to further important governmental trial related interests, considering less-intrusive alternatives.

Sell v. United States, 539 U.S. 166 (2003).

Tolling Effect: The 1-year time period for restoring a defendant's competency is tolled during any appeal of an order granting involuntary administration of medication. *State v. Barker*, 2007-Ohio-4612 (2nd Dist.).



The court should choose the least restrictive option available, consistent with public safety and treatment needs.

3. Incompetent, additional time needed to determine if restorable:¹⁵

For felony offenses – The defendant is currently incompetent, and the court is unable to determine if a substantial probability exists that competency can be restored within 1 year if treatment is provided. [R.C. 2945.38(B)(1)(a)(ii)]

Result: The court may order up to 4 months of continued evaluation and treatment of the defendant to determine if competency can be restored. An additional hearing will be necessary in accordance with timelines [on page 7. below.](#)

For misdemeanor offenses of violence – The defendant is currently incompetent, and the court is unable to determine if a substantial probability exists that competency will be restored within the applicable time period provided by R.C. 2945.38(C) if treatment is provided. [R.C. 2945.38(B)(1)(a)(iii)]

Result: The court may order continued evaluation and treatment of the defendant to determine if competency can be restored up to the statutory limits provided in R.C. 2945.38(C). An additional hearing will be necessary in accordance with timelines [page 8. below.](#)

For all other misdemeanor offenses – The defendant is currently incompetent, and the court is unable to determine if a substantial probability exists that competency can be restored within the applicable time period provided by R.C. 2945.38(C) if treatment is provided. [R.C. 2945.38(B)(1)(a)(iv)]

Result: The court must dismiss the charges and proceed under R.C. 2945.38(B)(1)(a)(v)(I): discharge the defendant unless the prosecutor files a probate affidavit alleging that the defendant is a mentally-ill person subject to court order or a person with an intellectual disability subject to institutionalization by court order.

4. Incompetent, unrestorable: For Felony Cases:

Currently incompetent and there is not a substantial probability that competency can be restored within [R.C. 2945.38\(C\) timelines. 1 year.](#) [R.C. 2945.38(B)(2)]

Result: The Court must dismiss the charges and discharge the defendant unless:

- The Court or prosecution files an affidavit in probate court for civil commitment¹⁶ of the defendant under R.C. 2945.38(B)(2).
- The Court on its own or at the request of the prosecutor may retain jurisdiction over the defendant under R.C. 2945.38(B)(2) or R.C. 2945.39(A)(2).¹⁷

Legal Guardians and Criminal Competency Proceedings

Courts may encounter criminal defendants who have had a legal guardian appointed for them by a probate court. It is important to note that a criminal competency determination is separate and distinct from that of the probate court, and the defendant’s probate guardian does not have statutory authority to intervene in a criminal case. [See *State v. Brooks*, 1992 Ohio App. LEXIS 357, 1992 WL 15961 (9th Dist.) and *State v. Calabrese*, 2017-Ohio-7316 (8th Dist.). See also R.C. 2111.13.]



For Misdemeanor Cases:

Currently incompetent and there is not a substantial probability that competency will be restored within statutory timeframe.

[R.C. 2945.38(B)(1)(a)(v)(I)]

- *Result: The Court must dismiss the charges and discharge the defendant unless: the Court or prosecution files an affidavit in probate court for civil commitment¹⁸ of the defendant under R.C. 2945.38(B)(1)(a)(v)(I).¹⁹*

Does a defendant receive credit for confinement time while under evaluation, treatment, or commitment for competency?

If a defendant is convicted and sentenced to incarceration, the defendant must receive credit for the total number of days confined for any evaluation, treatment, and commitment. [R.C. 2945.38(I) and R.C. 2967.191]

What effect does a dismissal for incompetency have on future prosecution for the offense(s)?

A dismissal due to incompetency does not bar future prosecution for those offenses. Prosecutor may re-indict the defendant for the same charges if the defendant is restored within the statute of limitations. [R.C. 2945.38(H)(4)]

Maximum Length of Competency-Restoration Treatment [R.C. 2945.38]

When a criminal defendant is incompetent to stand trial, the court must determine whether there is a substantial probability that the defendant can be restored within this timeframe set by R.C. 2945.38(C):

Time Clock for Competency-Restoration

Treatment Courts have generally held that the time clock for the competency restoration begins once the treatment has started, and not when the judge makes the order.

- See [City of Cleveland v. Allen, 2009-Ohio-860 \(8th Dist.\)](#), [State v. Barker, 2007-Ohio-4612 \(2nd Dist.\)](#).

Decompensation and Restoration Timelines

What happens when a defendant is restored to competency within the statutory timeframe, but then the defendant’s circumstances change, and the defendant is found no longer competent to stand trial?

- The timeline resets and a new distinct restoration period is begun consistent with the R.C. 2945.38(C) timelines. [R.C. 2945.38(M)]
- State v. Hudkins, 2022 Ohio 249 (12th Dist.) held that the

Offense	Maximum Time Allowed in Treatment
<ul style="list-style-type: none"> • Aggravated murder • Murder • First- or second-degree felony offenses of violence • First- or second-degree attempt, complicity, or conspiracy in committing an offense above 	1-year
<ul style="list-style-type: none"> • All other felonies 	6-months
<ul style="list-style-type: none"> • First- or second-degree misdemeanors 	60 days
<ul style="list-style-type: none"> • All other misdemeanors 	30 days

time period for restorative treatment does not begin anew or “restart” when there is a period of competency in between incompetency findings.



- ~~• *State v. Henderson*, 2014 Ohio 2991 (5th Dist.) held that an entirely new restoration period commenced and the deadline for continuing jurisdiction was extended.~~
- ~~• *Hudkins* distinguished *Henderson* by finding that Henderson was a unique and unusual fact pattern, and therefore no certified question was submitted to the Supreme Court.~~

Competency-Treatment-Review Hearings

When an individual is not competent to stand trial but has been found to be restorable and is undergoing treatment, the Revised Code dictates timeframes for required written reporting by treatment providers and deadlines for hearings after those reports are received.

When must treatment providers report to the court? [R.C. 2945.38(F)]

Whenever the treatment provider believes that the defendant is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense and:

- At a minimum, after each 6 months of treatment.
- For a felony offense, 14 days before expiration of the maximum time for treatment or 14 days before the expiration of the maximum time for continuing evaluation and treatment.
- For a misdemeanor offense, 10 days before the expiration of the maximum time for treatment.
- Whenever the treatment provider believes that there is not a substantial probability that the defendant can be restored even if the defendant is provided with a course of treatment.

When must additional competency hearings be conducted? [R.C. 2945.38(H)]

Additional competency hearings are conducted during the following times:

- Within 10 days after the treatment center advises that there is no substantial probability that the defendant will regain competency within one year.
- Within 10 days after the expiration of the maximum time allowed for the longest possible sentence defendant is facing.
- Within 10 days after expiration of the maximum time allowed for continued evaluation.
- Within 30 days after the defendant requests a hearing after receiving 6 months or more of treatment.
- Within 30 days after a treatment provider advises that the defendant is competent.



What determinations can be made at an additional competency hearing? [R.C. 2945.38(H)(1)-(4)]

- Defendant's competency has been restored.
- Defendant remains incompetent, but a substantial probability of restoration exists and time is still left to achieve it. The court can order the defendant to continue treatment.
- Defendant is incompetent and a substantial probability that competency can be restored exists, but time has expired for restoration. The court then has the same options as with an incompetent, unrestorable defendant above.
- Defendant is incompetent and even with treatment there is not a substantial probability that competency will be restored within 1 year. The court then has the same options as with an incompetent, unrestorable defendant above.

Motion to Retain Jurisdiction [R.C. 2945.38, 2945.39, 2945.401]

When is a hearing to maintain jurisdiction allowed?

A motion for the trial court to maintain jurisdiction over an incompetent, unrestorable defendant is permitted only when:

1. A defendant is charged with aggravated murder, murder, first- or second-degree felony offenses of violence, or first or second-degree attempt, complicity, or conspiracy in committing one of those offenses, AND
2. The defendant has been found to be incompetent and either cannot be restored or the time period to restore competency has expired.

Who requests a hearing to maintain jurisdiction?

The prosecutor may request one, or the court may schedule one on its own.

What are the elements for maintaining jurisdiction?

The prosecutor has the burden to prove by clear and convincing evidence that the defendant both committed the offense and is a mentally ill person subject to court order and/or an intellectually disabled person subject to institutionalization by court order.²⁰

What if the state fails to meet its burden?

The case must be dismissed and the defendant discharged unless the court or prosecutor file for civil commitment of the defendant. That dismissal is not a bar to future prosecution should the defendant be restored to competency. [R.C. 2945.39(C)]

Common Pleas vs Probate Court Competency Definitions

It is important to note that competency to stand trial is a separate and distinct determination from the definition of incompetency in probate court. R.C. 2111.021(D) defines "incompetent" for probate court statutes as:

1. Any person who is so mentally impaired, as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide;
2. Any person confined to a correctional institution within this state.



Is a commitment ordered through this process considered a civil commitment?

Yes. An involuntary commitment under R.C. 2945.39 does not violate equal protection or due process because it is a civil commitment that does not grant the same constitutional protections as criminal prosecutions do.²¹

How long can a defendant be involuntarily committed? [R.C. 2945.401(J)]

A defendant will remain under the court’s jurisdiction and involuntarily committed until:

- The trial court finds that the defendant is no longer a mentally ill person subject to court order or a person with an intellectual disability subject to institutionalization by court order,
- The expiration of the maximum sentence²² that the defendant could have received if the defendant was convicted of the highest offense that was charged, or
- After another competency hearing, the trial court finds the defendant competent and orders termination of the commitment.

What are the reporting requirements? [R.C. 2945.401(C)]

The facility in which the defendant is committed must report to the trial court as to whether defendant remains subject to court order and/or whether defendant remains incompetent at the following times:

- After the initial 6 months of treatment,
- Every two years after the initial report is made,
- When the facility recommends termination of the defendant’s commitment or recommends for the first time any nonsecured status for the defendant.

What factors are relevant when evaluating whether to terminate commitment or change the commitment to nonsecured status? [R.C. 2945.401(E)]

The court must consider:

- Whether the defendant currently represents a substantial risk of physical harm to self or others.
- Psychiatric and medical testimony regarding the defendant’s current mental and physical conditions.
- Whether the defendant has the insight to continue treatment as prescribed or seek assistance when needed.

Relevant Case Law

[Rance v. Watson, Slip Opinion No. 2022-Ohio-1822](#). Competency provisions of R.C. 2945.37(B) were not triggered where the trial court’s statements showed that the judge ordered a psychological report, pursuant to R.C. 2947.06, as part of the presentence investigation, not as an inquiry into defendant’s competency to stand trial.

[State v. Ferguson, 108 Ohio St.3d 451, 2006-Ohio-1502](#). Competency evaluation by a clinical psychologist properly considered the psychotropic medications the defendant had taken or was taking, his medical diagnoses, his suicide attempts, and his hospitalizations. Greater scrutiny is not required in conducting a competency evaluation merely because a defendant seeks to receive the death penalty.

[Weaver v. Gill, 633 F.2d 737 \(6th Cir. 1980\)](#). A defendant is not entitled to the assistance of counsel or to *Miranda* warnings at a psychiatric examination into his competency to stand trial where the results of the examination are not used against him at trial.

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- Grounds upon which the state relies for the proposed commitment.
- The defendant’s history relevant to following rules and laws.
- Evidence that the defendant’s mental illness is in remission and the probability that the defendant will continue treatment to maintain remissive state.

Who has the burden of proof in hearings regarding terminating or changing a commitment? [R.C. 2945.401(G)]

Re: facility’s recommendation of termination of commitment:

To maintain the court’s jurisdiction, the prosecutor must show by clear and convincing evidence that the defendant remains mentally ill or intellectually disabled subject to court order.

Re: facility’s recommendation to a less restrictive status:

The prosecutor must show by clear and convincing evidence that the proposed changes are a threat to public safety or a threat to any person.

What are a defendant’s rights at hearings regarding commitment terminations or changes? [R.C. 2945.40(C)(1)-(5)]

Defendant has a right:

- To attend hearings.
- To counsel.
- To independent expert evaluation.
- To subpoena witnesses and documents.
- To present evidence.
- To cross-examine witnesses.
- To testify or not be compelled to testify.
- To have copies of any relevant medical or mental health document in the custody of the state, unless release of such a document would create substantial risk of harm to any person.

Relevant Case Law, Continued

[State v. Montgomery, 148 Ohio St.3d 347, 2016-Ohio-5487.](#)

Three-judge panel in a capital case did not err by failing to sua sponte order defendant to undergo a competency evaluation, as no request was made to evaluate defendant’s competency before or during the plea hearing, and defendant’s behavior throughout the plea colloquy and hearing was not outrageous, irrational, or confused.

[State v. Craig, 159 Ohio St.3d 398, 2020-Ohio-455.](#)

When a criminal defendant is convicted and sentenced on fewer than all counts of a multicount indictment and the state is prevented from retrying the defendant on the remaining counts after a mistrial due to a later finding that the defendant is incompetent to stand trial, the incompetency finding operates to sever the charges, and the defendant may appeal his conviction and sentence.

[State v. Hix, 38 Ohio St.3d 129, 527 N.E.2d 784 \(1988\).](#)

A defendant does not have the right to an independent psychiatric examiner, pursuant to [R.C. 2945.39\(C\)](#), unless the trial court has ordered more than one psychiatric evaluation and the trial court has refused to appoint an examiner recommended by the defendant.

Endnotes

- 1 See *State v. Bock*, 28 Ohio St. 3d 108, 110 (1986) – “Incompetency must not be equated with mere mental or emotional instability or even with outright insanity. A defendant may be emotionally disturbed or even psychotic and still be capable of understanding the charges against him and of assisting his counsel.”
- 2 *State v. Chapin*, 67 Ohio St. 2d 437, 439 (1981) citing *Pate v. Robinson*, 383 U.S. 375 (1966), and *Drope v. Missouri*, 420 U.S. 162 (1975).
- 3 These statutory timelines have been held to be “directory rather than mandatory.” See *State v. Brown*, 2018-Ohio-2635 (4th Dist.) ¶26, citing *State v. Hilyard*, 2005-Ohio-4957 (4th Dist.).
- 4 See Appendix D <https://mha.ohio.gov/static/AboutUs/MediaCenter/PublicationsandFactSheets/ohio-forensic-manual.pdf> or for more guidance contact **Ohio DBH&MHAS** Director of Forensic Services, Lisa Gordish, PsyD, lisa.gordish@mha.ohio.gov.
- 5 *State v. Lewis*, 2017-Ohio-461, ¶29 (8th Dist.)
- 6 *State v. Palmer*, 84 Ohio St.3d 103 (1998)
- 7 A “person with an intellectual disability subject to institutionalization by court order” is defined by R.C. 5123.01(O) as “a person eighteen years of age or older with at least a moderate level of intellectual disability and in relation to whom, because of the person’s disability, either of the following conditions exists:
 - a. The person represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person’s most basic physical needs and that provision for those needs is not available in the community.
 - b. The person needs and is susceptible to significant habilitation in an institution.” Under R.C. 2945.371(I), a defendant who suffers from an intellectual disability, and who, in the opinion of the competency examiner appears to be subject to institutionalization by court order, must have a separate intellectual disability evaluation performed before a final competency hearing is held under R.C. 2945.37(B-H).
- 8 R.C. 2945.371 uses different language than R.C. 2945.38. Under these statutes, the trial court makes a finding of “substantial probability” of restoration, whereas the examiner’s report opines on “likelihood” of restoration.
- 9 A defendant may be required to undergo treatment for the purpose of restoration of competency to stand trial for a period of 6 months to ~~3~~4 years, depending on the severity of the felony offense, and 30 days to 60 days depending on the severity of the misdemeanor offense. R.C. 2945.38(C).
- 10 See *State v. Neyland*, 139 Ohio St.3d 353, 2014-Ohio-1914, ¶59, citing *State v. Cowans*, 87 Ohio St.3d 68, 84, 1999-Ohio-250.
- 11 **Ohio DBH&MHAS** has been funding initial competency evaluations in common-pleas courts.
- 12 Adult defendants found competent who are receiving medication to maintain competence may be ordered by the court to submit to continued administration of the medication (see “Forced Medication Hearings” on page 5).
- 13 R.C. 2945.371 uses different language than R.C. 2945.38. Under these statutes the trial court makes a finding of “substantial probability” of restoration, whereas the examiner’s report opines on “likelihood” of restoration.
- 14 A defendant may be required to undergo treatment for the purpose of restoration of competency to stand trial for a period of 6 months to ~~3~~4 years, depending upon the severity of the felony offense, and 30 days to 60 days depending on the severity of the misdemeanor offense. R.C. 2945.38(C).
- 15 R.C. 2945.38(B) (1) (a) (ii) – this additional 4-month evaluation period is available only for defendants facing felony charges.
- 16 As provided for under R.C. Chapters 5122 or 5123.
- 17 Only applies to R.C. 2945.38(C)(1) offenses: aggravated murder, murder, first- or second-degree felony offenses of violence, or first- or second-degree attempt, complicity, or conspiracy in committing one of those offenses.



Endnotes, Continued

- 18 As provided for under R.C. Chapters 5122 or 5123.
- 19 There is a discrepancy in R.C. 2945.38(B)(1)(a)(v) (II). The accepted interpretation and usual practice is to choose dismissal or file the affidavit for probate.
- 20 For an in-depth review of the elements required in a continuing-jurisdiction finding, as well as its distinctions from the competency finding itself, see [State v. Decker, 2017-Ohio-4266](#) (10th Dist.). *Decker* was reconsidered on ineffective-assistance grounds in [State v. Decker, 2020-Ohio-1464](#).

- [State v. Williams, 126 Ohio St.3d 65, 2010-Ohio-2453](#).
- 22 R.C. 2945.401(J)(1)(b) places the limit at the maximum prison term that the defendant could have received for the most serious offense charged. The statute is unclear if this is the “maximum term” under Ohio’s non-life felony indefinite sentencing scheme instituted by 132 GA SB 201 in 2019.

CHART FOR PAGE 7

OFFENSE	MAXIMUM TIME ALLOWED IN TREATMENT*
Aggravated Murder or Murder	3 years
Offense of Violence punishable by death or life imprisonment	3 years
Complicity in aggravated murder, murder, or an offense of violence punishable by death or life imprisonment if the complicity is a first degree felony (F1) or second degree felony (F2)	3 years
Complicity in committing an F1 or F2 felony offense of violence, if the complicity is an F1 or F2 offense	1 year
An offense of violence that is a felony of the first degree (F1) or felony of the second degree (F2)	1 year
A conspiracy to commit or attempt to commit aggravated murder, murder, an offense of violence punishable by death or life imprisonment, or an F1 or F2 felony offense of violence if the conspiracy or attempt is an F1 or F2	1 year
A felony other than a felony listed above	6 months
An offense that is a first degree misdemeanor (M1) or second degree misdemeanor (M2)	60 days
An offense that is a third degree misdemeanor M3 or fourth degree misdemeanor M4, a minor misdemeanor or an unclassified misdemeanor	30 days

* The judge may make a finding that the defendant is not restorable *before* the maximum time elapses. [R.C. 2945.39(A)]

Juvenile Justice Terminology Guide



DRAFT

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Juvenile Justice Terminology

Youth are developmentally different from adults and require responses grounded in adolescent brain science, trauma awareness, and rehabilitation. As such, children in Ohio’s juvenile justice system are treated differently than adults in the criminal justice system. Juvenile justice in Ohio focuses on graduated sanctions and services to “provide for the care, protection, and mental and physical development of children;” “protect the public interest and safety;” “hold the offender accountable for the offender’s actions;” “restore the victim;” and “rehabilitate the offender.”¹ Terminology in the juvenile system does not always track terminology in the adult system. This list of juvenile justice terminology highlights those terms that may not be familiar to the average person.



Adjudicatory Hearing: A hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected or dependent or otherwise within the jurisdiction of the court.²

Amenability: Before considering a discretionary transfer, the juvenile judge orders “an investigation into the child’s social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child by a public or private agency or a person qualified to make the examination.” The juvenile judge considers specific factors to determine whether the child is transferred to adult court or is amenable to staying in juvenile court.³

Admission or Denial: The court asks the child to admit or deny the allegations contained in the complaint. A child who admits the allegations waives their right to an adjudicatory hearing.⁴



1 R.C. 2152.01.

2 Juv. R. 2(B). Chapter 2152 of the Revised Code also uses the term “adjudication” to mean the determination of the adjudicatory hearing.

3 R.C. 2152.12.

4 Juv. R. 29(C).



Bindover: The term used to describe the transfer of jurisdiction from juvenile court to adult court for prosecution.⁵

- **Discretionary Bindover:** A discretionary transfer or bindover means that the child may be transferred to adult court upon the finding of probable cause and amenability. If the child is not subject to a mandatory transfer, a discretionary transfer is based on whether the child is 14 or older at the time of the offense, the level of felony, and additional factors.⁶
- **Mandatory Bindover:** A mandatory transfer or bindover means that the child must be transferred or bound over to adult court upon a finding of probable cause. Mandatory transfer is based on the age of the child at the time of the offense and whether the offense was a Category 1 or 2 offense⁷ (aggravated murder, murder, attempted aggravate murder, attempted murder, voluntary manslaughter, kidnapping, rape, aggravated arson, aggravated robbery, or involuntary manslaughter). Additional factors of prior commitment to the Ohio Department of Youth Services (ODYS) for Category 1 or 2 offenses and firearms come into play based on the age of the child.⁸

Child: A child is a person under eighteen. Once the child is in the juvenile justice system, the juvenile court has jurisdiction over the child until they reach twenty-one. Exceptions are made for a child who is transferred to adult court or who is a serious youthful offender.⁹

- **Abused Child:** An abused child includes any child who is the victim of sexual activity, endangered, or who shows evidence of non-accidental physical or mental injury or death.¹⁰
- **Delinquent Child:** A child who violates any law that would be a criminal offense if committed by an adult or who violates certain juvenile court orders.¹¹ The term “delinquent” is used in juvenile court instead of “guilty.” “A juvenile adjudication is not criminal conviction of a crime and should not be treated as one.”¹²
- **Dependent Child:** A dependent child includes any child who, through no fault of their parents, guardians or custodians, is homeless or destitute or lacks parental care.¹³

5 R.C. 2152.12.

6 R.C. 2152.10; 2152.12.

7 R.C. 2152.02.

8 R.C. 2152.10.

9 R.C. 2152.02(C).

10 R.C. 2151.031.

11 R.C. 2152.02(E); Juv. R. 2(K).

12 *State v. Hand*, 73 N.E.3d 448, 459 (Ohio 2016).

13 R.C. 2151.04.



- **Juvenile Traffic Offender:** A child who violates any traffic law, traffic ordinance, or traffic regulation.¹⁴
- **Neglected Child:** A neglected child includes any child who is abandoned, or because of omission lacks basic parental care or special medical care or suffers physical or mental injury.¹⁵
- **Unruly Child:** An unruly child is one who does “not submit to the reasonable control of the child’s parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;” is habitually truant from school, injures or endanger “the child’s own health or morals or the health or morals of others; or who violates a status offense, with some exceptions.¹⁶

Collateral Consequences: Collateral consequences are the ways a juvenile record can impact on a youth’s life beyond detention and probation. Examples include FBI background checks for employment, occupational licenses, school enrollment,¹⁷ driving until the child turns 21,¹⁸ immigration issues,¹⁹ enlisting in the military,²⁰ housing issues,²¹ gun ownership,²² and having to register as a sexual offender.²³

Community Control: A juvenile court may place the child under community control under any sanctions, services, and conditions.²⁴ Community control can include basic probation supervision, reporting to an approved location for work, education, training, treatment or other program, community service, completing high school or other education programs, drug or alcohol monitoring, curfew, monitored time, house arrest, suspension of a driver’s license, including probationary or temporary licenses/permits.

14 R.C. 2152.02.

15 R.C. 2151.03.

16 R.C. 2151.022.

17 R.C. 3313.662(A), (B).

18 R.C. 2152.19(A)(4)(1); In re R.K., 2004-Ohio-6918, 2004 WL 2931013, at *1 (Ohio Ct. App. 2004) (prohibiting a juvenile court from imposing a driver’s suspension beyond age 21; R.C. 4510.17(D), (G)(2)(a); 4510.31(A)(1); 4510.34.

19 8 U.S.C.A. 1227(a)(2); 1182(a).

20 See generally, 32 C.F.R. 66.6 (listing the military’s basic enlistment rules). See also www.usa.gov/join-military

21 R.C. 24 C.F.R. 966.4(I)(5)(i)(B), (I)(5)(iii); 24 C.F.R. 982.553(a)(1)(ii)(C)-(a)(2)(i), 960.204(a)(3)-(4).

22 R.C. 2923.13(A)(2)-(3). See also R.C. 2901.01(9) (An offense of violence includes “offenses that involve physical harm to persons or a risk of serious physical harm to persons.”).

23 R.C. 109.57 (E)(2).

24 R.C. 2152.19(A)(4). For resources, see <https://dys.ohio.gov/courts-and-community>.





Complaint: A complaint is a document based on “information and belief” that alleges “that the child is a delinquent child” and alleges “the particular facts upon which the allegation that the child is a delinquent child... is based.”²⁵



Concurrent/Consecutive Sentencing: Concurrent sentencing is when a term of imprisonment is served at the same time as another term of imprisonment; consecutive sentencing requires the first term of imprisonment to be served before starting the second term.²⁶

Detention: “The temporary care of children pending adjudication or disposition, or execution of a court order, in a public or private facility designed to physically restrict the movement and activities of children.”²⁷

Dispositional Hearing: A hearing in which the court decides what action shall be taken concerning a delinquent child.²⁸

Diversion: “Diversion is the redirection of youth from the formal processing of juvenile court and occurs prior to the youth’s initial appearance before the judge. Rule 9 of the Rules of Juvenile Procedure calls for “formal court action” to be “avoided and other community resources utilized to ameliorate situations brought the attention of the court.”²⁹ “By creating informal alternatives to court processing, diversion interventions serve as an opportunity to reduce the criminogenic effects that entry into the juvenile justice system and incarceration have on long-term youth development such as increased recidivism, stigmatization, and increased criminal-justice costs.”³⁰



25 R.C. 2152.021 (A)(1).

26 R.C. 2929.41.

27 R.C. 2151.011(A)(13).

28 Juv. R. 2(O).

29 [Juvenile Diversion Toolkit for Judicial Use](#), 2 (citing Juv. R. 9(A)), 2021.

30 *Id.* at 6.



Diversion can be initiated by many entities to redirect youth from formal processing. Entities include communities, schools, resource and assessment centers, law enforcement, prosecutors and courts.³¹

Diversion can be initiated at many points as well, including pre-initial appearance, pre-trial, and post-adjudication. In 2025 the Supreme Court of Ohio Task Force on Judicial Diversion developed a working definition for pre-initial appearance diversion: “the redirection of youth in intervention services prior to an initial appearance before a judge or magistrate. This does not apply to any pre-trial or post-adjudication diversion.”³² The Task Force recommendations “aimed at providing uniformity and additional transparency in how juvenile courts administer pre-initial appearance diversion, with particular emphasis on complying with victim rights protections found in Marsy’s Law statutes. The recommendations also seek to build upon successful practices by encouraging the expansion of resource and assessment centers statewide through continued support by the ODYS and the Ohio General Assembly.”³³

Expunged: A court ordered process in which the legal record of an arrest or an adjudication that is already sealed is erased in the eyes of the law.³⁴

31 For more information, see Supreme Court of Ohio, *Juvenile Diversion: Toolkit for Judicial Use* (2021), <https://www.supremecourt.ohio.gov/docs/JCS/CFC/resources/juvenileDiversionToolkit.pdf>

32 *The Supreme Court of Ohio Task Force on Juvenile Diversion: Final Report and Recommendations*, (June 2025). <https://www.supremecourt.ohio.gov/docs/Boards/juvDiversionTF/FinalRR.pdf>

33 *Id.* at 23.

34 R.C. 2151.358.



Facilities:

- **Community Corrections Facility (CCF):** As of publication, there are ten DYS subsidized “Community Corrections Facilities. DYS is statutorily mandated to confine age eligible felony offenders up to age 21 who have been adjudicated and committed by one of Ohio’s 88 county juvenile courts.³⁵
- **Juvenile Correction Facility (JCF):** There are three DYS facilities that “are accredited by the American Correctional Association and provide a variety of services and treatment for youth including a fully-accredited high school, behavioral-health services, unit management, medical and dental care, recreation, religious services, community service opportunities, victim awareness, and reentry services.”³⁶ The facilities are Cuyahoga Hills JCF, Indian River JCF, and Circleville JCF.
- **Juvenile Detention Center (JDC):** Upon recommendation of the juvenile judge, Ohio counties must establish a single or joint county juvenile detention center to “detain alleged delinquent children until final disposition, to confine children who are adjudicated delinquent children” or juvenile traffic offenders.”³⁷
- **Juvenile Residential facility (Detention home):** Ohio counties may establish single county or joint county juvenile residential facilities for the training, treatment and rehabilitation of children who are adjudicated delinquent, abused, neglected, unruly or juvenile traffic offenders.³⁸

Guardian Ad Litem (GAL): A guardian ad litem is a person appointed by the court to assist the court in its determination of the best interests of a child.³⁹

Indigent: An individual who is unable to pay for a defense attorney. Children under 18 are presumed indigent, and those children accused of committing delinquent acts are guaranteed the right to a cost-free, court-appointed attorney.⁴⁰

Juvenile Court: A juvenile court has jurisdiction over a child who is adjudicated delinquent prior to age eighteen until the child turns twenty-one.⁴¹

35 <https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/JuvenileDisposition.pdf>

36 [Facilities | Department of Youth Services](#)

37 R.C. 2152.41; For a list of current Juvenile Detention Centers, see [SECTION I. DYS CONTACTS](#).

38 R.C. 2151.65. This includes forestry camps.

39 Sup. R. 48.01(C).

40 Juv. R. 4.

41 R.C. 2152.02(C).



Ohio Department of Youth Services (DYS): The Ohio Department of Youth Services (DYS) is the juvenile corrections system for the state of Ohio. DYS is statutorily mandated to confine age eligible felony offenders up to age 21, who have been adjudicated and committed by one of Ohio’s 88 county juvenile courts.⁴² ODYS engages youth in programming that is designed to address their criminological and behavioral needs.



Each of the DYS facilities also operates a year-round school that offers general high school curriculum and many vocational opportunities. DYS reaches thousands of youth in Ohio.

Beyond youth in facilities and those on parole, DYS funds and supports 625 community programs throughout the state offering more than 93,000 youth (based on annual program admissions) opportunities and services to encourage positive change. These range from prevention and diversion programs to residential treatment and community treatment in areas such as mental health, sex offending and substance abuse.⁴³

Parole: The supervision given to a child, for a limited period, following the child’s release from Ohio Department of Youth Services.⁴⁴

Probable Cause: Probable cause requires a reasonable belief, based on factual evidence, that the child committed the act charged. It is based in Fourth Amendment of the United States Constitution, and Article I, Section 14 of the Ohio Constitution.⁴⁵

42 For more information, please see Juvenile Disposition Benchcard at <https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/JuvenileDisposition.pdf>



43 [About DYS | Department of Youth Services](#)

44 [Parole | Department of Youth Services](#)

45 U.S. Const. Amend. IV; Ohio Const. Art. I, 14.



Probation: The court supervision given to a child, for a limited period, while the child is still in the community. County probation departments are part of the juvenile court.

Sealed: If a juvenile record is sealed, the court and police paperwork related to the juvenile case is set aside from other court and police files and only available to juvenile court judges and their staff, with some exceptions for prosecutors and police.⁴⁶

Serious Youthful Offender (SYO): A blended sentence disposition available in Juvenile Court for certain children, based on offense type and age at the time of an offense. Children with a SYO disposition are given a juvenile-court sentence, which remains in effect until the child reaches 21. In addition, they are given a suspended adult sentence, which could be served if the juvenile disposition is not successfully completed.⁴⁷

- **Discretionary serious youthful offender:** A person who is eligible for a discretionary SYO under section 2152.13 and who is not transferred to adult court under a mandatory or discretionary transfer.⁴⁸
- **Mandatory serious youthful offender:** A person who is eligible for a mandatory SYO under section 2152.13 and who is not transferred to adult court under a mandatory or discretionary transfer. Includes a person upon whom a juvenile court is required to impose such a sentence under division (B)(3) of section 2152.121 of the Revised Code.⁴⁹

Status Offenses: Status offenses are those offenses that would not be an offense if committed by an adult. These include truancy, violating curfew, running away from home and underage drinking. A child who violates one of the laws can be adjudicated as an unruly child.⁵⁰

Suspended Commitment: A juvenile judge may suspend a disposition that includes commitment, before or during the commitment, upon such conditions as the juvenile judge imposes.⁵¹ Suspended commitment allows the child to remain in the community under certain conditions set by the judge and encourages rehabilitation.

46 R.C. 2151.355(B), 2151.357 (E)(1)-(5).

47 R.C. 2152.02(W); R.C. 2152.121.

48 R.C. 2152.02.

49 R.C. 2152.02.

50 R.C. 2151.022.

51 R.C. 2151.49.

Agency and Available Data: ODRC

Agency	What is collected	Collection Method	Public Dashboard or Reports?
Ohio Department of Rehabilitation and Correction (ODRC)	<ul style="list-style-type: none"> ● Monthly staffing reports ● Annual PREA Report ● Monthly population reports ● Annual Report <ul style="list-style-type: none"> ○ Demographics ○ Staffing ○ Prison population and commitments ○ Releases from custody ○ Security levels ○ Population subject to Parole Board release discretion ○ Average length of stay ○ Commitment offenses ○ Violent incidents ○ Adult Parole Authority individuals under supervision ○ Bureau of Community Sanctions <ul style="list-style-type: none"> ▪ Funded programs ▪ Program statistics ○ Victim services ○ Cost metrics ● Institutional census <ul style="list-style-type: none"> ○ Census of ODRC institutional population with demographic and offense summary 	<ul style="list-style-type: none"> ● Data is collected and maintained by the Ohio Department of Rehabilitation and Correction. 	<ul style="list-style-type: none"> ● Reports are available on ODRC's website: https://drc.ohio.gov/about/resource/reports



Agency and Available Data: ODRC

This explanatory document is designed to highlight the available data for analysis to inform policymakers pursuant to the Ohio Criminal Sentencing Commission's duty to study the comprehensive criminal sentencing structure in the state of Ohio. Among other duties, the Commission is to study the fiscal and other impact of the sentencing structure on the corrections system, as well as review bills introduced in the general assembly that provide for a new criminal offense or that change the penalty for an existing criminal offense. As such, this primer is designed to understand data available at the statewide level for analysis as well as gaps in the data that would be useful for the duties of informing the general assembly and other policymakers.

Agency and Available Data: ODBH

Agency	What is collected	Collection Method	Public Dashboard or Reports?
Ohio Department of Behavioral Health (ODBH)	<ul style="list-style-type: none"> • Office of Criminal Justice and Recovery <ul style="list-style-type: none"> ○ Specialized Docket Subsidy Program <ul style="list-style-type: none"> ▪ \$11 million annual budget supports specialized dockets in 64 counties ○ Addiction Treatment Program <ul style="list-style-type: none"> ▪ \$5 million annual budget supports over 150 specialized dockets in 65 counties ▪ An additional \$200,000 are allocated to ADAMH Boards to provide treatment and recovery supports to individuals participating in a mental health docket • Treatment Alternatives to Street Crime (TASC) <ul style="list-style-type: none"> ○ Bridge between criminal justice and treatment systems • Behavioral Health and Criminal Justice Linkage Programs <ul style="list-style-type: none"> ○ \$3.8 million allocated in SFY24-25 to criminal justice and behavioral health linkage programs in 57 counties 	<ul style="list-style-type: none"> • Select administrative data is collected by the Department of Behavioral Health for funded programs 	<ul style="list-style-type: none"> • Reports and select statistics are made available on the ODBH website: https://dbh.ohio.gov/community-partners/criminal-justice

Agency and Available Data: ODBH

	<ul style="list-style-type: none"> • Behavioral Health Drug Reimbursement Program <ul style="list-style-type: none"> ○ Provides reimbursement to counties for the cost of psychotropic and opioid/alcohol treatment medications dispensed to inmates in county jails and CBCFs • Correctional Recovery Services Treatment Programs • Community Transition Program (CTP) <ul style="list-style-type: none"> ○ Offers transitional assistance for incarcerated individuals returning to the community 		
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This explanatory document is designed to highlight the available data for analysis to inform policymakers pursuant to the Ohio Criminal Sentencing Commission’s duty to study the comprehensive criminal sentencing structure in the state of Ohio. Among other duties, the Commission is to study the fiscal and other impact of the sentencing structure on the mental health intervention and treatment system, as well as review bills introduced in the general assembly that provide for a new criminal offense or that change the penalty for an existing criminal offense. As such, this primer is designed to understand data available at the statewide level for analysis as well as gaps in the data that would be useful for the duties of informing the general assembly and other policymakers.