

**IN THE SUPREME COURT OF OHIO
2018**

STATE OF OHIO,

Case No. 2018-0705

Plaintiff-Appellant,

On Appeal from the
Franklin County Court of Appeals,
Tenth Appellate District

-vs-

ZACHARY C. ALLEN,

Court of Appeals
Case No. 17AP-296

Defendant-Appellee.

REPLY BRIEF OF PLAINTIFF-APPELLANT

RON O'BRIEN 0017245
Franklin County Prosecuting Attorney
373 South High Street-13th Fl.
Columbus, Ohio 43215
614/525-3555

And

BARBARA A. FARNBACHER 0036862
(Counsel of Record)
Assistant Prosecuting Attorney
bfarnbacher@franklincountyohio.gov

COUNSEL FOR PLAINTIFF-APPELLANT

YEURA R. VENTERS 0014879
Franklin County Public Defender
373 South High Street-12th Fl.
Columbus, Ohio 43215
614/525-3960

and

ROBERT D. ESSEX 0061661
(Counsel of Record)
Assistant Public Defender

COUNSEL FOR DEFENDANT-APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF FACTS 1

ARGUMENT 1

 PROPOSITION OF LAW: 1

 A bank which cashes a forged check, suffers an economic loss, and
 is a "victim," under R.C. 2929.18. When a defendant is convicted
 of forgery, he may be ordered to pay restitution to a bank which
 cashed the forged check defendant presented. 1

CONCLUSION..... 10

CERTIFICATE OF SERVICE 10

Appendix:

 R.C. 1304.30..... A-1

 R.C. 2901.01..... A-2

 R.C. 2929.01..... A-6

 R.C. 2929.11..... A-13

TABLE OF AUTHORITIES

Cases

Belvedere Condominium Unit Owners’ Assn. v. R.E. Roark, Companies, Inc., et al., 67 Ohio St.3d 274, 617 N.E.2d 1075 (1993) 6, 7

Capital Care Network of Toledo v. Ohio Dept. of Health, 153 Ohio St.3d 362, 2018-Ohio-440 .. 6

Dombroski v. WellPoint, Inc., et al., 119 Ohio St.3d 506, 2008-Ohio-4827 6

Donovan v. Williams Enterprises, Inc., 744 F.2d 170 (D.C.Cir.1984)..... 8

Hormel v. Helvering, 312 U.S. 552, 61 S.Ct. 719, 85 L.Ed. 1037 (1941)..... 8

In re M.D., 38 Ohio St.3d 149, 527 N.E.2d 286 (1988) 6

In re Adoption of P.L.H., 151 Ohio St.3d 554, 2017-Ohio-5824..... 6

In re Osweiler, 346 F.2d 617 (C.C.P.A.1965) 7

Kelly v. Robinson, 479 U.S. 36, 107 S.Ct. 353, 93 L.Ed.2d 216 (1986)..... 2

Miller Chevrolet v. Willoughby Hills, 38 Ohio St.2d 298, 313 N.E.2d 400 (1974) 10

Sanders v. Clemco Industries, 823 F.2d 214 (8th Cir.1987)..... 8

State v. 1981 Dodge Ram Van, 36 Ohio St.3d 168, 522 N.E.2d 524 (1988) 6, 10

State v. Aguirre, 144 Ohio St.3d 179, 2014-Ohio-4603 3

State v. Allen, 2018-Ohio-1529, 101 N.E.3d 734 (10th Dist.)..... 5, 6, 8

State v. Bartholomew, 119 Ohio St.3d 359, 2008-Ohio-4080 4

State v. Burns, 6th Dist. Nos. L-11-1192, L-11-1198, 2012-Ohio-4191 4

State v. McKenney, 8th Dist. No. 79033, 2001 WL 587493 (May 31, 2001)..... 2

State v. Morgan, 153 Ohio St.3d 196, 2017-Ohio-7565 6, 7

State v. Terry, 186 Ohio App.3d 670, 929 N.E.2d 1111 (4th Dist.) 9

State v. Thornton, 2017-Ohio-4037, 91 N.E.3d 359 (1st Dist.)..... 4

State v. Warner, 55 Ohio St.3d 31, 564 N.E.2d 18 (1990) 9

State v. Whiting, 2nd Dist. No. 20168, 2004-Ohio-5284..... 5

| | |
|---|------|
| <i>United States v. Castellanos</i> , 608 F.3d 1010 (8th Cir. 2010) | 8 |
| <i>Universal Title Ins. Co. v. United States</i> , 942 F.2d 1311 (8th Cir. 1991)..... | 7, 8 |
| <i>Weitz Co. v. Lloyd’s of London</i> , 574 F.3d 885 (8th Cir. 2009)..... | 8 |

Statutes

| | |
|--------------------|---------|
| R.C. 1304.30 | 5, 8, 9 |
| R.C. 2901.01 | 3 |
| R.C. 2929.01 | 2, 3 |
| R.C. 2929.11 | 2, 4 |
| R.C. 2929.18 | passim |

STATEMENT OF FACTS

The State relies on the Statement of Facts contained in its previously filed Brief.

ARGUMENT

Proposition of Law:

A bank which cashes a forged check, suffers an economic loss, and is a "victim," under R.C. 2929.18. When a defendant is convicted of forgery, he may be ordered to pay restitution to a bank which cashed the forged check defendant presented.

This case presents the Court with an important issue regarding the correct application of Ohio's felony restitution statute, R.C. 2929.18(A)(1). When a criminal defendant is convicted of forgery, for presenting forged checks to multiple banks and taking money that does not belong to him/her, the trial court may order the defendant to pay restitution to the banks which cashed the forged checks the defendant presented, under R.C. 2929.18(A)(1). Here, defendant claimed that the banks were not proper recipients of an order to pay restitution, under R.C. 2929.18(A)(1), because, even though the banks paid defendant for the forged checks he presented to the tellers, and even though defendant took money that did not belong to him and exited the bank branches, and even though the banks suffered the economic losses incurred as a direct result of defendant's criminal behavior, they were not "victims," under R.C. 2929.18(A)(1).

Defendant has argued that the banks were not victims of the forgery offenses but were "third parties," because the banks reimbursed the customers' accounts. But, as will be further explained *infra*, this Court does not need to resolve the "third party" issue to correctly resolve the issue presented here regarding whether a person who suffers an economic loss is a "victim" of an offense, under R.C. 2929.18(A)(1).

Defendant claims that the State relies on policy arguments to support its position that the banks were victims of defendant's forgery offenses. Certainly, compelling policy considerations

favor the State, including, for example, the recent enactment of Marsy’s Law, which the State has acknowledged does not apply here, along with the purposes and principles underlying felony sentencing. *See* R.C. 2929.11(A) (court shall consider need for “making restitution to the victim of the offense, the public, or both”); *see also Kelly v. Robinson*, 479 U.S. 36, 49, n.10, 107 S.Ct. 353, 93 L.Ed.2d 216 (1986); *State v. McKenney*, 8th Dist. No. 79033, 2001 WL 587493, *2 (May 31, 2001). Nonetheless, the State relies on the unambiguous statutory language of R.C. 2929.18(A)(1) and 2929.01(L) to support its position, that the banks were victims of defendant’s crimes and therefore proper recipients of restitution, under R.C. 2929.18(A)(1), because the banks suffered the economic losses resulting from defendant’s multiple forgeries.

As pertinent here, R.C. 2929.18(A) provides:

* * * [T]he court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section. * * * Financial sanctions that may be imposed pursuant to this section include, but are not limited to the following: (1) Restitution by the offender to the victim of the offender’s crime or any survivor of the victim, in an amount based on the victim’s economic loss. * * *

And R.C. 2929.01(L) defines economic loss as:

[A]ny economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. “Economic loss” does not include non-economic loss or any punitive or exemplary damages.

Defendant states that there is no dispute that multiple entities may suffer losses as a result of an offender’s commission of a crime. (Brief of Appellee, at p. 7) Defendant’s admission in this regard should be dispositive of the issue presented in this case, because R.C. 2929.18(A)(1) permits restitution to “the victim of the offender’s crime or any survivor of the victim” R.C. 2929.18(A)(1), for “any economic detriment suffered * * * as a direct and proximate result of the

commission of the offense * * * .” (Emphasis added.) R.C. 2929.01(L). When a person¹ suffers an economic loss as a result of an offender’s commission of a crime, that person is adversely affected by the crime and is a victim. Thus, in this case, the banks were victims of the forgeries defendant committed. As there is no serious dispute that the banks suffered the economic losses incurred as a result of defendant’s criminal behavior of presenting forged checks and leaving multiple banks with money that did not belong to him, they were victims, under R.C. 2929.18(A)(1), and his contention, that he cannot be required to pay restitution, must be rejected.

Defendant incongruously claims that a person can suffer an economic loss from the commission of a crime and not be a victim, under R.C. 2929.18(A)(1). (Brief of Appellee, at p. 3) He relies on “well established” precedent stating that an offender may not be ordered to pay restitution to an insurance company as support. But his reliance on this precedent is misplaced, and his argument thus fails, because R.C. 2929.18(A)(1)² previously barred restitution to insurers, while at the same time specifically permitting restitution to “third parties.” Thus, case law addressing the issue of restitution to insurers, which was expressly prohibited by the statute, does not support defendant’s position, that a person can suffer an economic loss and not be a victim. These cases are inapposite, and defendant’s claim, that a person who suffers an economic loss from the commission of a crime is not a victim, under R.C. 2929.18(A)(1), based on this precedent, lacks merit and must be rejected.

¹ A person includes a corporation. R.C. 2901.01(B)(1)(a)(i) (* * * as used in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense, person includes * * * corporation * * * .”)

² In 2004, the legislature amended the statute to remove both the express prohibition against ordering restitution to insurers and the language *permitting* restitution to third parties. This amendment has been construed as retaining the prohibition against ordering restitution to insurers. *See State v. Aguirre*, 144 Ohio St.3d 179, 2014-Ohio-4603, ¶1.

Defendant has claimed that the banks were “third parties” to whom restitution was barred, under R.C. 2929.18(A)(1). Again, this Court does not need to reach the “third party” issue, because the banks were victims of defendant’s forgeries: because they suffered the economic losses as a result of defendant’s crimes; because they were harmed by the defendant’s crimes based on those economic losses; because they were the objects of defendant’s crimes, based on his conduct of entering multiple banks around central Ohio, presenting forged checks to multiple bank tellers, then taking money that did not belong to him and leaving; because they were required to reimburse customers’ accounts; and because they had property interests in customers’ accounts. While R.C. 2929.18(A)(1) should not be interpreted to bar all restitution to “third parties,” see *State v. Bartholomew*, 119 Ohio St.3d 359, 2008-Ohio-4080, ¶¶14, 15; *State v. Burns*, 6th Dist. Nos. L-11-1192, L-11-1198, 2012-Ohio-4191, ¶20; *State v. Thornton*, 2017-Ohio-4037, ¶23, 91 N.E.3d 359 (1st Dist.) (Mock, J., concurring); R.C. 2929.11(A), a resolution of that issue is not dispositive to this case, because the banks were victims here.

Defendant cites precedent that relies solely on whether the indictment includes the name of a victim to determine the identity of the victim for purposes of R.C. 2929.18(A)(1). That precedent is not persuasive, where, as here, there is no dispute regarding who actually suffered the economic losses. Again, because the banks suffered the economic losses, because they were harmed by defendant’s commission of the offenses based on those losses, because they were the objects of the forgery offenses defendant committed, the banks were victims of these offenses, regardless of whether they were specifically named in the indictment.

Defendant claims that the appellate court “clearly” did not find that there could only be one victim of a criminal offense. (*See* Brief of Appellee, at p. 5) This contention fails, because the appellate court concluded that the only victims of defendant’s forgeries were the account

holders, not the banks. *See State v. Allen*, 2018-Ohio-1529, ¶¶16-17, 101 N.E.3d 734 (10th Dist.). The only reasonable inference to draw from the court’s conclusion, that the account holders, “not the banks,” *id.* at ¶16, were the victims of defendant’s forgeries, is that there can only be one victim of a forgery offense. That conclusion, that the customers were the only victims of defendant’s forgeries, simply does not hold true when, as here, the banks later reimbursed the customers’ accounts and suffered the economic losses resulting from defendant’s crimes. Further, in light of the banks’ statutory duty to reimburse customers’ accounts and their liability to customers for paying forged checks, under R.C. 1304.30(A), the “third party” “reimbursement” analysis relied upon to support the conclusion that the banks were not victims in this case is seriously flawed.

Defendant also takes issue with the precedent the State cites to support its position that restitution was properly imposed for defendant’s felony forgery convictions. *See, e.g., State v. Whiting*, 2nd Dist. No. 20168, 2004-Ohio-5284, ¶8 (upholding restitution to bank for forgery conviction, but reducing amount). While it is apparent that there exists authority on both sides of this issue in the lower courts, as defendant conceded below, the lack of consensus among Ohio jurists simply exemplifies the need for this Court to resolve the issue in this case. As the State’s position is better supported by the language of R.C. 2929.18(A)(1) and 2929.01(L), by important policy considerations governing felony sentencing, and by the facts of the case, defendant’s position, that banks are not victims of his multiple felony forgery offenses, must be rejected.

Defendant asserts that two of the arguments offered to support the State’s position that the banks were victims, under R.C. 2929.18(A)(1), were not raised in the court of appeals regarding the banks’ liability to its customers and the banks’ property interests. Given the appellate court’s reliance on the banks’ reimbursement of its customers’ accounts to support its

finding that the banks were not victims, but were “third parties,” *Allen*, 2018-Ohio-1529, ¶¶16-17, these additional arguments are implicit in the broader issue presented, regarding whether the banks were victims of defendant’s forgeries, and are properly presented for this Court’s consideration here. See *Belvedere Condominium Unit Owners’ Assn. v. R.E. Roark, Companies, Inc., et al.*, 67 Ohio St.3d 274, 617 N.E.2d 1075 (1993), modified on other grounds, *Dombroski v. WellPoint, Inc., et al.*, 119 Ohio St.3d 506, 2008-Ohio-4827.

Certainly, this Court has discretion to consider additional arguments, because, when an issue of law not argued in the lower court is implicit in another issue, it may be considered and resolved on appeal. *Belvedere*, 67 Ohio St.3d at 279.

As a general rule, this court will not consider arguments that were not raised in the courts below. See *State v. 1981 Dodge Ram Van* (1988), 36 Ohio St.3d 168, 170, 522 N.E.2d 524, 526. The waiver doctrine, however, is not absolute. *Id.* at 169-170, 522 N.E.2d at 526; *In re M.D.* (1988), 38 Ohio St.3d 149, 527 N.E.2d 286. When an issue of law that was not argued below is implicit in another issue that was argued and is presented by an appeal, we may consider and resolve that implicit issue. To put it another way, if we must resolve a legal issue that was not raised below in order to reach a legal issue that was raised, we will do so.

Belvedere, 67 Ohio St.3d at 279. See also *Capital Care Network of Toledo v. Ohio Dept. of Health*, 153 Ohio St.3d 362, 2018-Ohio-440, ¶92 (citing *Belvedere*); *In re Adoption of P.L.H.*, 151 Ohio St.3d 554, 2017-Ohio-5824, ¶¶21-22 (same); *State v. Morgan*, 153 Ohio St.3d 196, 2017-Ohio-7565, ¶34 (same). Indeed, this Court recognized its duty to consider additional arguments raised on appeal when necessary to resolve the legal issue presented, stating:

Part of our role in the court system is to decide cases involving issues of broad public interest in such a way that the law can be applied in an orderly and predictable manner. Predictability is highly valued in American jurisprudence. To assume an answer to an unsettled issue would be to ignore our responsibilities and intentionally leave the law unsettled and unpredictable.

Belvedere, 67 Ohio St.3d at 279.

Here, the legal issue presented concerns whether a bank is a victim of a forgery offense, under R.C. 2929.18(A)(1), when it sustains the economic loss of an offender's crime, or a third party, as defendant contended. The State has provided multiple reasons supporting its position that the banks were victims of defendant's forgery offenses, to whom restitution was properly ordered, under R.C. 2929.18(A)(1). Given the flawed "third party" "reimbursement" analysis employed by the appellate court, the two additional arguments presented, regarding the banks' liability to customers for paying forged checks and their property interests, are implicit in the issue presented and will lead to a correct resolution of this case. *See, e.g., Belvedere*, 67 Ohio St.3d at 279 (issue raised regarding whether developer breached fiduciary duty first required resolution of whether developer owed fiduciary duty); *Morgan*, 153 Ohio St.3d at 202 (issue raised regarding review of alleged plain error in juvenile delinquency proceeding first required resolution of applicable plain error standard).

The Eighth Circuit Court of Appeals has applied a similar analysis. In *Universal Title Ins. Co. v. United States*, 942 F.2d 1311 (8th Cir. 1991), the federal district court determined that the plaintiff was entitled to equitable subrogation. On appeal, the government presented additional arguments challenging that conclusion, all of which were within the broader issue raised regarding equitable subrogation. The Eighth Circuit Court of Appeals recognized the propriety of addressing these additional arguments, stating:

Although, as a general rule, we do not consider issues not presented to the district court, "a blanket statement condemning new arguments is far too broad." *In re Osweiler*, 346 F.2d 617, 621 (C.C.P.A.1965).

The real question should be whether the new argument is such as to raise a new issue.... [W]e think it would be in disharmony with one of the primary purposes of appellate review were we to refuse to consider each nuance or shift in approach urged by a party simply because it was not similarly urged below.

Id. We also have the discretion to consider an issue for the first time on appeal

“where the proper resolution is beyond any doubt, or ‘where injustice might otherwise result,’ ” *Sanders v. Clemco Industries*, 823 F.2d 214, 217 (8th Cir.1987) (quoting *Hormel v. Helvering*, 312 U.S. 552, 557, 61 S.Ct. 719, 721, 85 L.Ed. 1037 (1941)), or when the argument involves a purely legal issue in which no additional evidence or argument would affect the outcome of the case, *Donovan v. Williams Enterprises, Inc.*, 744 F.2d 170, 176 (D.C.Cir.1984).

Universal Title, 942 F.2d at 1314-1315. “Not every new argument, or shift in approach constitutes the raising of a new issue.” *United States v. Castellanos*, 608 F.3d 1010, 1018 (8th Cir. 2010), citing *Weitz Co. v. Lloyd’s of London*, 574 F.3d 885, 890-91 (8th Cir. 2009), and *Universal Title*, 942 F.2d at 1314-15.

Here, the issue presented and fully litigated in the lower courts concerned whether the banks were victims of defendant’s forgeries, under R.C. 2929.18(A)(1). Given the appellate court’s analysis, relying on reimbursement to the customers’ accounts to support its conclusion that the banks were not victims but were “third parties,” *Allen*, 2018-Ohio-1529, ¶¶16-17, the two additional arguments raised, regarding the banks’ liability and their property interests, as support for the State’s position that the banks were indeed victims of defendant’s forgeries are properly presented to this Court for consideration.

Defendant challenges the State’s reliance on R.C. 1304.30(A), requiring a bank to reimburse a customer’s account for paying a forged check, i.e., an item that is not properly payable, asserting that R.C. 1304.30(A) has “no relevance” to “criminal law subject matter jurisdiction.” (Brief of Appellee, at p. 10) This argument is not persuasive, because defendant was charged forgery for uttering or possessing with intent to utter a writing he knew to have been forged, with purpose to defraud or knowing that he was facilitating a fraud. (Trial R. 4) Concepts and principles contained in Chapter 13, particularly those concerning commercial paper, are relevant to reviewing the appellate court’s conclusion that the banks were not victims of defendant’s crime, and R.C. 1304.30(A) provides persuasive additional support for rejecting

the lower court's unreasonable conclusion that the banks were not victims of defendant's crimes, but were "third parties."

Defendant's contention that R.C. 1304.30(A) is inapposite, because it is contained in a different chapter of the Revised Code, easily fails, as this Court has recognized the persuasiveness of concepts contained in the U.C.C. in certain criminal prosecutions. *State v. Warner*, 55 Ohio St.3d 31, 45-48, 564 N.E.2d 18 (1990). "Although the Uniform Commercial Code is not directly applicable to this case due to the nature of the transfer, analogous use of its concepts supports the proposition that wire transfers are written instruments for purpose of R.C. 1153.01." *Id.* (multiple citations omitted). *See also State v. Terry*, 186 Ohio App.3d 670, ¶¶37-39, 929 N.E.2d 1111 (4th Dist.) (Chapter 13 applies in passing bad checks prosecution). Defendant's contention that R.C. 1304.30(A) is inapposite to this forgery case because it is contained in a different chapter of the Revised Code lacks merit.

Also, this contention illustrates the absurdity of defendant's position, that the banks were not victims here, even though they suffered the economic losses incurred by his criminal behavior, as he cannot seriously claim that the banks were not victims, when they were statutorily required to reimburse their customers' accounts and were strictly liable for paying the forged checks defendant presented.

The trial court properly ordered defendant to pay restitution to the victims of the forgeries he committed, which were the banks that suffered the economic losses incurred as a result of defendant's commission of these crimes. The appellate court's decision reversing the trial court's restitution order cannot withstand scrutiny, particularly when defendant does not dispute that the banks sustained the economic losses and instead relies on a strained third-party

reimbursement theory. The State therefore respectfully urges this Court to reverse the appellate court's decision and reinstate the restitution order originally imposed by the trial court.

CONCLUSION

For the foregoing reasons, and for the reasons previously stated in Plaintiff-Appellant's brief, the State respectfully requests that this Court reverse the judgment of the Tenth District Court of Appeals reversing the restitution order imposed by the trial court.³

Respectfully submitted,

RON O'BRIEN 0017245
Prosecuting Attorney

/s/ Barbara A. Farnbacher
Barbara A. Farnbacher 0036862
Assistant Prosecuting Attorney
373 South High Street, 13th Floor
Columbus, Ohio 43215
614-525-3555
bfarnbacher@franklincountyohio.gov

CERTIFICATE OF SERVICE

This is to certify that on November 8th, 2018 a copy of the foregoing was delivered via electronic mail, to ROBERT D. ESSEX, 373 South High Street, 12th Floor, Columbus OH 43215, at rdessex@franklincountyohio.gov, Counsel for Defendant-Appellant.

/s/ Barbara A. Farnbacher
Barbara A. Farnbacher 0036862
Assistant Prosecuting Attorney

³ If this Court *sua sponte* contemplates a decision upon an issue not briefed, the State respectfully requests notice of that intention and requests an opportunity to brief the issue before this Court makes its decision. *Miller Chevrolet v. Willoughby Hills*, 38 Ohio St.2d 298, 301 & n. 3, 313 N.E.2d 400 (1974); *State v. 1981 Dodge Ram Van*, 36 Ohio St.3d 168, 170, 522 N.E.2d 524 (1988).

1304.30 When bank may charge customer's account - UCC 4-401.

(A) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(B) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(C) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though the payment was made before the date of the check, unless the customer has given notice to the bank of the postdating and describes the check with reasonable certainty. The notice is effective for the period stated in division (B) of section 1304.32 of the Revised Code for stop payment orders and must be received at a time and in a manner that affords the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in section 1304.29 of the Revised Code. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 1304.31 of the Revised Code.

(D) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to either of the following:

(1) Original terms of the altered item;

(2) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

Effective Date: 08-19-1994 .

2901.01 General provisions definitions.

(A) As used in the Revised Code:

(1) "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

(2) "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.

(3) "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

(4) "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.

(5) "Serious physical harm to persons" means any of the following:

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

(6) "Serious physical harm to property" means any physical harm to property that does either of the following:

(a) Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;

(b) Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.

(7) "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(8) "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

(9) "Offense of violence" means any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of division (A)(1) of section 2903.34, of division (A)(1), (2), or (3) of section 2911.12, or of division (B)(1), (2), (3), or (4) of section 2919.22 of the Revised Code or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in division (A)(9)(a) of this section;

(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense under division (A)(9)(a), (b), or (c) of this section.

(10)

(a) "Property" means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. "Financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.

(b) As used in division (A)(10) of this section, "trade secret" has the same meaning as in section 1333.61 of the Revised Code, and "telecommunications service" and "information service" have the same meanings as in section 2913.01 of the Revised Code.

(c) As used in divisions (A)(10) and (13) of this section, "cable television service," "computer," "computer software," "computer system," "computer network," "data," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(11) "Law enforcement officer" means any of the following:

(a) A sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or state highway patrol trooper;

(b) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;

(c) A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;

(d) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;

(e) A person lawfully called pursuant to section 311.07 of the Revised Code to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;

(f) A person appointed by a mayor pursuant to section 737.01 of the Revised Code as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

(g) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(h) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;

(i) A veterans' home police officer appointed under section 5907.02 of the Revised Code;

(j) A member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code;

(k) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code;

(l) The house of representatives sergeant at arms if the house of representatives sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code and an assistant house of representatives sergeant at arms;

(m) The senate sergeant at arms and an assistant senate sergeant at arms;

(n) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

(12) "Privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

(13) "Contraband" means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:

(a) Any controlled substance, as defined in section 3719.01 of the Revised Code, or any device or paraphernalia;

(b) Any unlawful gambling device or paraphernalia;

(c) Any dangerous ordnance or obscene material.

(14) A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in section 2901.05 of the Revised Code, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts.

(B)

(1)

(a) Subject to division (B)(2) of this section, as used in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense, "person" includes all of the following:

(i) An individual, corporation, business trust, estate, trust, partnership, and association;

(ii) An unborn human who is viable.

(b) As used in any section contained in Title XXIX of the Revised Code that does not set forth a criminal offense, "person" includes an individual, corporation, business trust, estate, trust, partnership, and association.

(c) As used in division (B)(1)(a) of this section:

(i) "Unborn human" means an individual organism of the species *Homo sapiens* from fertilization until live birth.

(ii) "Viable" means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.

(2) Notwithstanding division (B)(1)(a) of this section, in no case shall the portion of the definition of the term "person" that is set forth in division (B)(1)(a)(ii) of this section be applied or construed in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense in any of the following manners:

(a) Except as otherwise provided in division (B)(2)(a) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12,

2903.13, 2903.14, 2903.21, or 2903.22 of the Revised Code, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate section 2919.12, division (B) of section 2919.13, or section 2919.151, 2919.17, or 2919.18 of the Revised Code, may be punished as a violation of section 2919.12, division (B) of section 2919.13, or section 2919.151, 2919.17, or 2919.18 of the Revised Code, as applicable. Consent is sufficient under this division if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with section 2919.12 of the Revised Code.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

(i) Her delivery of a stillborn baby;

(ii) Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying;

(iii) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;

(iv) Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human;

(v) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

(C) As used in Title XXIX of the Revised Code:

(1) "School safety zone" consists of a school, school building, school premises, school activity, and school bus.

(2) "School," "school building," and "school premises" have the same meanings as in section 2925.01 of the Revised Code.

(3) "School activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under Chapter 3314. of the Revised Code; a governing board of an educational service center, or the governing body of a school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code.

(4) "School bus" has the same meaning as in section 4511.01 of the Revised Code.

Amended by 131st General Assembly File No. TBD, SB 227, §1, eff. 4/6/2017.

Amended by 129th General Assembly File No. 127, HB 487, §101.01, eff. 9/10/2012.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 58, SB 235, §1, eff. 3/24/2011.

Effective Date: 04-08-2003; 07-01-2007

2929.01 [Effective Until 10/31/2018] Penalties and sentencing general definitions.

As used in this chapter:

(A)

(1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

(C) "Cocaine," "hashish," "L.S.D.," and "unit dose" have the same meanings as in section 2925.01 of the Revised Code.

(D) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to sections 2301.51 to 2301.58 of the Revised Code.

(E) "Community control sanction" means a sanction that is not a prison term and that is described in section 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code or a sanction that is not a jail term and that is described in section 2929.26, 2929.27, or 2929.28 of the Revised Code. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

(F) "Controlled substance," "marihuana," "schedule I," and "schedule II" have the same meanings as in section 3719.01 of the Revised Code.

(G) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.

(H) "Day reporting" means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

(I) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(J) "Drug and alcohol use monitoring" means a program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(K) "Drug treatment program" means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and

treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

(L) "Economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Education or training" includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy curricula or their equivalent.

(N) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(O) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to section 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.

(P) "House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:

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

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

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

(Q) "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28 of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(R) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.

(S) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(T) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (E) or (G) of section 2929.24 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

(U) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(V) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to section 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's

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

(W) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of cocaine; at least one thousand unit doses or one hundred grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; at least fifty grams of a controlled substance analog; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(X) "Mandatory prison term" means any of the following:

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (18) of section 2929.13 and division (B) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code.

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Y) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

(Z) "Offender" means a person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor.

(AA) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(BB) "Prison term" includes either of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.143, 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073 of the Revised Code.

(CC) "Repeat violent offender" means a person about whom both of the following apply:

(1) The person is being sentenced for committing or for complicity in committing any of the following:

(a) Aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (CC)(1)(a) of this section.

(2) The person previously was convicted of or pleaded guilty to an offense described in division (CC)(1)(a) or (b) of this section.

(DD) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of sections 2929.14 to 2929.18 or 2929.24 to 2929.28 of the Revised Code.

(EE) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(FF) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142, or 2971.03 of the Revised Code or under section 2919.25 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 of the Revised Code. If an offender is serving a prison term as a risk reduction sentence under sections 2929.143 and 5120.036 of the Revised Code, "stated prison term" includes any period of time by which the prison term imposed upon the offender is shortened by the offender's successful completion of all assessment and treatment or programming pursuant to those sections.

(GG) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(HH) "Fourth degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree.

(II) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.

(JJ) "Designated homicide, assault, or kidnapping offense," "violent sex offense," "sexual motivation specification," "sexually violent offense," "sexually violent predator," and "sexually violent predator specification" have the same meanings as in section 2971.01 of the Revised Code.

(KK) "Sexually oriented offense," "child-victim oriented offense," and "tier III sex offender/child-victim offender" have the same meanings as in section 2950.01 of the Revised Code.

(LL) An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

(MM) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(NN) "Motor vehicle" and "manufactured home" have the same meanings as in section 4501.01 of the Revised Code.

(OO) "Detention" and "detention facility" have the same meanings as in section 2921.01 of the Revised Code.

(PP) "Third degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree.

(QQ) "Random drug testing" has the same meaning as in section 5120.63 of the Revised Code.

(RR) "Felony sex offense" has the same meaning as in section 2967.28 of the Revised Code.

(SS) "Body armor" has the same meaning as in section 2941.1411 of the Revised Code.

(TT) "Electronic monitoring" means monitoring through the use of an electronic monitoring device.

(UU) "Electronic monitoring device" means any of the following:

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (UU)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (UU)(1)(a) of this section, can transmit continuously those signals by a wireless or landline telephone connection to a central monitoring computer of the type described in division (UU)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the device has been turned off or altered without prior court approval or otherwise tampered with. The device is designed specifically for use in electronic monitoring, is not a converted wireless phone or another tracking device that is clearly not designed for electronic monitoring, and provides a means of text-based or voice communication with the person.

(c) The device has a central monitoring computer that can receive continuously the signals transmitted by a wireless or landline telephone connection by a receiver of the type described in division (UU)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (UU)(1)(a) of this section is attached.

(2) Any device that is not a device of the type described in division (UU)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

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

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

(VV) "Non-economic loss" means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

(WW) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(XX) "Continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(YY) A person is "adjudicated a sexually violent predator" if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included

in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

(ZZ) An offense is "committed in proximity to a school" if the offender commits the offense in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

(AAA) "Human trafficking" means a scheme or plan to which all of the following apply:

(1) Its object is one or more of the following:

(a) To subject a victim or victims to involuntary servitude, as defined in section 2905.31 of the Revised Code or to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented;

(b) To facilitate, encourage, or recruit a victim who is less than sixteen years of age or is a person with a developmental disability, or victims who are less than sixteen years of age or are persons with developmental disabilities, for any purpose listed in divisions (A)(2)(a) to (c) of section 2905.32 of the Revised Code;

(c) To facilitate, encourage, or recruit a victim who is sixteen or seventeen years of age, or victims who are sixteen or seventeen years of age, for any purpose listed in divisions (A)(2)(a) to (c) of section 2905.32 of the Revised Code, if the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of section 2907.03 of the Revised Code apply with respect to the person engaging in the conduct and the victim or victims.

(2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:

(a) Each of the felony offenses is a violation of section 2905.01, 2905.02, 2905.32, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.

(b) At least one of the felony offenses was committed in this state.

(c) The felony offenses are related to the same scheme or plan and are not isolated instances.

(BBB) "Material," "nudity," "obscene," "performance," and "sexual activity" have the same meanings as in section 2907.01 of the Revised Code.

(CCC) "Material that is obscene, sexually oriented, or nudity oriented" means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

(DDD) "Performance that is obscene, sexually oriented, or nudity oriented" means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

(EEE) "Accelerant" means a fuel or oxidizing agent, such as an ignitable liquid, used to initiate a fire or increase the rate of growth or spread of a fire.

Amended by 132nd General Assembly File No. TBD, HB 63, §1, eff. 10/17/2017.

Amended by 131st General Assembly File No. TBD, HB 158, §1, eff. 10/12/2016.

Amended by 131st General Assembly File No. TBD, HB 171, §1, eff. 9/14/2016.

Amended by 130th General Assembly File No. TBD, HB 130, §1, eff. 6/20/2014.

Amended by 129th General Assembly File No. 189, HB 334, §1, eff. 12/20/2012.

Amended by 129th General Assembly File No. 127, HB 487, §101.01, eff. 9/10/2012.

Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.

Amended by 128th General Assembly File No. 58, SB 235, §1, eff. 3/24/2011.

Amended by 128th General Assembly File No. 43, SB 162, §1, eff. 9/13/2010.

Effective Date: 12-23-2003; 06-01-2004; 09-23-2004; 04-29-2005; 08-03-2006; 10-12-2006; 01-02-2007; 04-04-2007; 2007 SB10 01-01-2008; 2008 SB220 09-30-2008; 2008 HB280 04-07-2009; 2008 HB130 04-07-2009

Related Legislative Provision: See 129th General Assembly File No. 29, HB 86, §3 .

Note: This section is set out twice. See also § 2929.01, as amended by 132nd General Assembly File No. TBD, SB 1, §1, eff. 10/31/2018.

2929.11 [Effective Until 10/29/2018] Purposes of felony sentencing.

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.

Effective Date: 07-01-1996 .

Note: *This section is set out twice. See also § 2929.11, as amended by 132nd General Assembly File No. TBD, SB 66, §1, eff. 10/29/2018.*