

**PROPOSED SENTENCING  
DRAFT**

**CRIMINAL JUSTICE  
RECODIFICATION  
COMMITTEE**

**PRELIMINARY DRAFT**

**APRIL 25, 2016**

**Chapter 2929**





## OHIO CRIMINAL JUSTICE RECODIFICATION COMMITTEE

HONORABLE FRED PEPPLE, CHAIRMAN  
MR. TIMOTHY YOUNG, VICE-CHAIRMAN

### Memorandum

**To:** Members, Ohio Criminal Justice Recodification Committee

**From:** Chairman Fred Pepple

**Date:** April 25, 2016

**RE:** Sentencing Draft

Over the past 10 months, Vice Chair Tim Young, Prosecutor Ron O'Brien, Director Gary Mohr, and I have worked on a proposal for a new Chapter 2929—the Ohio sentencing statutes.

I want to thank Director Mohr, Prosecutor O'Brien, and especially Ohio Public Defender Tim Young and their many staff members who have worked so diligently on this effort. I also want to thank Ohio Criminal Sentencing Commission Executive Director Sara Andrews for her guidance and support. I also would like to thank Professor Douglas Berman from The Ohio State University Moritz College of Law for his input and guidance.

This proposal is just that—our proposal—and it has attempted to balance the interests of all sides' perspectives. It is based upon the evidence that all parties have brought to the table. Also, I would like to acknowledge the valuable insight, data, and research provided from many interested groups, including the Buckeye Institute, the ACLU, the Center for Prison Reform, and the U.S. Justice Action Network.

Enclosed please find the draft of Chapter 2929. I wanted you to have this prior to the proposal being presented so that you might have the time to review and absorb the proposal. Please give your feedback to the staff attorneys, Blaise Katter and Matthew Thompson, so that the workgroup may consider them before that presentation.

Chapters 2925 and 2929 will, no doubt, have the largest interest, as these areas have been acknowledged by conservatives and liberals to address areas of needed reform that are getting bipartisan support. The reforms that our committee recommends may prove helpful to them, as a balanced approach that acknowledges the importance of the various interests impacted by this proposal.

Our task has been a monumental one in reviewing the entire criminal code. Thanks to all who have worked so hard and done so much. The 2925 workgroup will present their proposal to us on April 28, but there will not be any vote taken on any topics so that we can devote the committee's attention to their presentation. That workgroup is Judge Tim Rudduck, Director Mohr, and Sheriff Rodenberg. Please review and comment to help make these proposals are reflective of such a balanced approach.

Thank you for your continued hard work on these difficult issues.

## Recodification Committee

### Executive Summary of 2929 Sentencing Proposal

**Overview:** While the sentencing proposal is a return to indefinite sentencing, it is novel in its approach. In order to address two major concerns in sentencing, the proposal:

1. Maintains certainty in sentencing (commonly referred to as truth in sentencing).
2. Addresses proportionality among criminal acts and actors.

Providing certainty while addressing proportionality satisfies public safety and builds confidence in the justice system.

**Certainty of Sentence:** When imposing a sentence, the judge will announce the time the person will serve and will additionally impose  $\frac{1}{2}$  of that time as a remainder, or tail. If a person is sentenced to 4 years, he will serve 4 years, unless the judge grants judicial release or the person is a low-level, non-violent offender. The person will also be subject to an additional 2 years. A person who does his time without problems will be released at 4 years. A person who commits violent or disruptive acts while in prison would be subject to a parole review before release. If found to be a continuing risk to public safety, the offender could serve the additional 2 years, or portion thereof, as determined by the parole board. Unlike constitutional infirmities with bad time, this remainder of the sentence is announced as part of the original sentence by the judge.

**Proportionality:** Unlike prior indefinite sentencing models, the remainder of the sentence is determined by the initial sentence imposed by the judge. If two people are sentenced on second degree felonies, but one has caused much more harm and has a prior record, they should neither serve the same sentence nor be subject to the same remainder, or tail. Prior indefinite models had all offenders potentially serving the same tail, regardless of harm or prior record. Under this proposal, the tail is proportional to the severity of the crime as expressed through the initial sentence.

**Probation and Parole:** This proposal returns to terms that have long been used in our justice system. A judge may place an offender on probation or sentence the person to prison. Anyone released without serving the remainder, or tail, would be subject to mandatory parole supervision. Excessive, outlier sentences also would be subject to parole release.

**Early Release Authority:** To maintain truth in sentencing, the only early release mechanisms are judicial release, and 70% release on F-4, F-5 non-violent offenders.

**Appellate Review:** Appellate review would no longer be a talismanic review process, but would look to the substantive reasons for imposing a sentence and whether that sentence is proportional to other sentences with similar facts and circumstances of crimes committed.

## Summary of RC 2929 Sentencing Proposal

### **I. Maintain five levels of classified felonies**

- Aggravated Murder and Murder and other unclassified felonies are separate
- This means that if the sentencing provisions are unique to that charge, it is not a classified felony.
  - i. Example—Since DUI offenses do not fit the sentencing classified structure but have been given unique sentences, they are not classified and sentencing shall be as set forth in the statute violated.
  - ii. Specifications and mandatory portions of sentences that otherwise fit into the sentencing structure ARE classified felonies.

<b>FELONY</b>	<b>RANGES</b>
1st degree felony	3-11 year range
2nd degree felony	2-8 year range
3rd degree felony	1-5 year range
4th degree felony	12-30 month range
5th degree felony	9-15 month range

### **II. Classified felonies will have indeterminate sentences**

- Specifications will be served first
- Mandatory portions of counts with mandatory sentences will be served next
- Non-mandatory time will be served last
- Term of prison will be sentenced in each felony and pronounced at that time
- “Stated minimum prison term” will be stated for each count.
- Terms shall run concurrently unless specifically ordered run consecutive with each other or consecutive to a prison term being served for another case or court, with the case number and court listed in the entry if consecutive
- “Aggregate minimum prison term” shall be the aggregate of all terms, taking into account consecutive or concurrent status of multiple counts, if applicable
- “Maximum prison term” shall be the “aggregate minimum prison term” plus fifty (50%) per cent of the “stated minimum prison term” of the most serious offense being sentenced.
- The sentence may include an ORDER that the offender have no contact with the victim or family member of the victim.
- The sentence may include restitution to the full amount of the loss to the victims and/or the benefit derived by the offender, no matter who the victims are.
- The sentence may include a fine, but must be based only upon what the offender may reasonably afford to pay. Offender must provide full financial disclosure and the court must consider and make a determination of ability to pay at time of imposition of any fine.

- Maximum fines are substantially increased. Minimum fines are abolished in light of ability to pay hearing requirements.
- The sentence must include court costs. Collection of costs may be stayed pending serving of any incarceration.
- The court may permit the clerk to enter into payment plans with the offender reasonably calculated to take into account the offender's ability to pay all financial obligations, including restitution, fines and costs.
- No "good time credit" but failure to participate in programing may extend sentence.
- In addition to sentencing an offender to prison, the court may sentence any such offender to a fine as to each felony being sentenced, as follows:

If the level of offense is a:	the maximum fine is:
1 <sup>st</sup> Degree Felony	\$100,000.00
2 <sup>nd</sup> Degree Felony	\$ 50,000.00
3 <sup>rd</sup> Degree Felony	\$ 20,000.00
4 <sup>th</sup> Degree Felony	\$ 7,500.00
5 <sup>th</sup> Degree Felony	\$ 5,000.00

### III. Probation

- If granted probation, the term of probation may not to exceed:
  - i. F-1 10 years
  - ii. F-2 or F-3 5 years
  - iii. F-4 3 years
  - iv. F-5 2 years
- Terms of probation must include basics not to violate the law or abscond
- Court may impose a split sentence of up to 120 days local jail
- Court may impose requirement to complete CBCF not to exceed 180 days
- Terms may include long list of potential treatment or other conditions
- Terms may include any other terms reasonably connected to either the nature and circumstances of the crime or the mental or physical circumstances of the offender and/or the victims and designed to impact either rehabilitation of the offender, deter the offender and others from committing future offenses, and protecting the victims and the public.
- Time does not run if incarcerated for any reason
- Court may let offender off probation early, but only if all financial obligations are paid and after notice to the state and an opportunity for victims to be heard.
- If probation violated, court may execute original prison sentence with appropriate credit, or may reinstate probation up to the original maximum probation period, with conditions as determined by the court, including a new split sentence of up to an additional 120 days, or CBCF treatment regardless of prior CBCF treatment, and any other conditions of probation terms reasonably connected to either the nature and circumstances of the crime or the mental or physical circumstances of the offender and/or the victims and designed

to impact either rehabilitation of the offender, deter the offender and others from committing future offenses, and protecting the victims and the public, as determined at the time of the violation hearing. Total local incarceration may not exceed maximum prison term.

- If probation is violated under circumstances where the offender’s maximum probation period expires within one year, court may also extend period of probation for up to one additional year from the violation date even if it goes beyond the five-year limit.
- If the offender is on parole at the time of commission of a new felony, the court on the new felony may impose the remaining time on the old felony, but not mandatory
- If the offender is on parole at the time of commission of a new felony anywhere, the parole board may impose the remaining time on the old felony, even if new felony is in another state or in federal court
- When maximum prison term has been served, offender is freed without supervision.
- Inmates will be released upon completion of the “aggregate minimum prison term” unless extended by the parole board based upon the risk posed by the offender as demonstrated by the offender’s prison conduct, treatment participation or lack thereof, and other factors determined by OAPA guidelines.
  - i. No parole hearing unless initial determination is made to extend sentence beyond stated aggregate minimum prison term
  - ii. If after review, cause exists to extend, then matter referred for hearing
  - iii. If extended, right to full board hearing to review the extension with counsel
  - iv. Inmates must be released upon their serving the maximum prison term; such inmates “maxing out” are not subject to parole.

**IV. Misdemeanors maintain five levels of classified misdemeanors**

- Unclassified misdemeanors are separate
- This means that if the sentencing provisions are unique to that charge, it is not a classified misdemeanor.
  - i. Example—Since DUI offenses do not fit the sentencing classified structure but have been given unique sentences, they are not classified and sentencing shall be as set forth in the statute violated.
- Whoever is found guilty of a misdemeanor shall be sentenced as follows:

	If the level of offense is a:	The maximum incarceration is:	And the maximum fine is:
	1 <sup>st</sup> Degree Misdemeanor	180 days	\$ 2,500.00
	2 <sup>nd</sup> Degree Misdemeanor	90 days	\$ 1,000.00
	3 <sup>rd</sup> Degree Misdemeanor	60 days	\$ 750.00
	4 <sup>th</sup> Degree Misdemeanor	30 days	\$ 500.00
	Minor Misdemeanor	0 days	\$ 300.00
	Unclassified Misdemeanor	As specified	As specified

- After determining whether to impose a jail sentence, the court may suspend imposition of any jail sentence and grant probation, provided it is not precluded by specific eligibility requirements. The specific sentence suspended is not subject to later increase due to any subsequent violation.
- Terms shall run concurrently unless specifically ordered run consecutive with each other or consecutive to a term being served for another case or court, with the case number and court listed in the entry if consecutive; but in any event, not to exceed eighteen (18) months
- Misdemeanors shall be served concurrent with felonies
- If the felony sentence ordered served exceeds the misdemeanor sentences, both shall be served concurrently in prison
- If the misdemeanor sentences ordered served exceed the felony sentence, both shall be served in local jail
- If granted probation, the term of probation may not to exceed two years.
- The sentence may include a fine, but must be based only upon what the offender may reasonably afford to pay. Offender must provide full financial disclosure and the court must consider and make a determination of ability to pay at time of imposition of any fine.
- Maximum fines are substantially increased. Minimum fines are abolished in light of ability to pay hearing requirements.
- The sentence must include court costs. Collection of costs may be stayed pending serving of any incarceration. The court may permit the clerk to enter into payment plans with the offender reasonably calculated to take into account the offender's ability to pay all financial obligations, including restitution, fines and costs.

**V. Misdemeanors and Felonies**

- If the offender is sentenced to probation in two or more courts, the probationer shall be supervised by only one probation officer, as follows:
  - i. By the probation department supervising the offender on the most serious offense being served;
  - ii. If the charges are for the same level of offense, by the probation department that has the last date of termination of supervision among the sentences being served;
  - iii. By agreement of the sentencing courts on all offenses being supervised, by the probation department as agreed to by those sentencing courts, which agreement shall be recited in the sentencing entries and shall supersede paragraphs (i) and (ii).

**VI. Sentencing Judgment Entries**

- No findings required for sentencing, but reasons for imposing sentence is encouraged.
- Consecutive must be clearly ordered, but no findings required while reasons are encouraged.
- Consecutive sentences give rise to appeal as of right if aggregate sentence exceeds certain limits based upon most serious level of offense sentenced.
- Appeal with leave of court for proportionality challenge of sentence.
- No findings required to suspend felonies, but reasons are encouraged.
- Suspensions of sentence on Felony 1 and 2 give rise to appeal of right to state.
- Post release control is abolished, replaced with parole. No notice to defendant of parole conditions, as built into parole statutes and "not less than \_\_\_ nor more than \_\_\_" suffices.

- Statute will include a sample journal entry that will suffice if followed, but is not mandatory.
- PSI & Victim Impact Statement go up with record on appeal of sentence for proportionality.

**VII. Organizational fines are greatly increased.**

If the level of offense is:      The organizational fine is:

Agg. Murder or Murder	Up to \$1,000,000 or the value of the organization, whichever is greater.
1 <sup>st</sup> Degree Felony	Up to \$500,000 or one-half the value of the organization, whichever is greater.
2 <sup>nd</sup> Degree Felony	Up to \$250,000 or one-tenth the value of the organization, whichever is greater.
3 <sup>rd</sup> Degree Felony	Up to \$50,000.
4 <sup>th</sup> Degree Felony	Up to \$35,000.
5 <sup>th</sup> Degree Felony	Up to \$25,000.
Unclassified Felony	As specified in the statute.
1 <sup>st</sup> Degree Misdemeanor	Up to \$10,000.
2 <sup>nd</sup> Degree Misdemeanor	Up to \$5,000.
3 <sup>rd</sup> Degree Misdemeanor	Up to \$2,500.
4 <sup>th</sup> Degree Misdemeanor	Up to \$1,500.
Minor Misdemeanor	Up to \$1,000.
Unclassified Misdemeanor	As specified in the statute.

For any offense listed in the revised code as a classified misdemeanor or a classified felony, but specifying within the relevant statute as carrying a different penalty from that listed in this section, the specific language of the relevant statute shall control.

**VIII. Judicial Release**

- Modified to allow judicial release eligibility after 30 days for sentences under 3 years stated minimum; 3 years or over stated minimum, judicial release eligibility after 50 percent.
- Certain offenders not eligible—Agg. Murder, Murder or Rape (complicity, conspiracy or attempt) prior or now; offender commits any felony while in prison; or if filed judicial release motion within the previous six months. No judicial release on mandatory sentences.

**IX. Parole Review**

- Limited parole board review for extended prison sentences
- Parole review at 70% for F4 and F5

## **X. Appeal of Sentence**

- Eliminates “form over substance” appeals
- Allows for substantive proportionality review in limited circumstances:
  - i. Defendant may have appeal of right for extremely long sentences
  - ii. State gets appeal of right for too lenient sentencing
- Allows court of appeals tools to substantively review sentences appealed under this section

**§ 2929.11. Purposes and principles of sentencing**

(A) A court that sentences an offender shall be guided by the overriding purposes of sentencing to protect the public from future crime by the offender and others and to punish the offender.

(B) To achieve those purposes, the sentencing court shall consider the nature and circumstances of the offense; the victim impact; the history, character and condition of the offender; and the need for incapacitating the offender, rehabilitating the offender, deterring the offender and others from future crime, and making restitution to the victim of the offense, the public, or both.

(C) A sentence imposed shall be reasonably calculated to achieve the two overriding purposes of sentencing set forth in division (A), 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.

(D) Divisions (A) through (C) apply to all sentencing for all criminal violations of this state or any political subdivision thereof, as this section is intended to operate uniformly throughout the state and constitute general laws within the meaning of Article XVIII, §3 of the Ohio Constitution.

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

**§ 2929.12. Sentencing consideration for non-capital offenses to include all relevant factors.**

(A) The sentencing court has discretion to determine the most effective way to comply with the purposes and principles of sentencing. In exercising that discretion (other than for a charge carrying a potential death sentence), the sentencing court shall consider the circumstances of the offense and the offender and all relevant sentencing factors, including but not limited to:

- (1) The physical, mental, psychological, and economic harm, if any, suffered by the victim;
- (2) The physical, psychological, mental condition, financial condition and age of the victim.
- (3) The offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.
- (4) The offender does or does not show genuine remorse for the offense.
- (5) The offender had a deadly weapon on or about his person or under his control at the time of the offense.
- (6) The offender expected to cause physical harm to any person or property and had the ability to appreciate the risks and consequences of the conduct.
- (7) The offender caused physical harm to a person during the offense or in fleeing thereafter.

- (8) The victim did or did not induce or facilitate the offense.
- (9) There was no specific victim of the offense other than the society generally.
- (10) The offender acted under strong provocation.
- (11) The offender committed the offense for hire or as part of an organized or gang activity.
- (12) The offender committed the offense while serving a jail or prison term.
- (13) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.
- (14) The offender held a public office or position of trust in the community, and the offense related to that office or position.
- (15) The physical and mental condition, impetuosity, intellectual capacity and age of the offender.
- (16) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.
- (17) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.
- (18) The offender's relationship with the victim facilitated the offense.
- (19) The offender committed the offense for hire or as a part of an organized criminal activity.
- (20) The offender committed the offense in the vicinity of one or more children.
- (21) The offender's prior juvenile delinquent, unruly and adult criminal records.
- (22) The offender's capacity for rehabilitation;
- (23) The offender's prior juvenile and adult treatment and sentencing records and adjustment, including whether the offender was under probation or sanctions at the time of commission of the offense, or had been in the past.
- (24) The offender had led a law-abiding life for a significant number of years.
- (25) The offender has demonstrated a pattern of drug or alcohol abuse; whether offender is in denial about his addiction(s), and whether the offender refuses treatment for the drug or alcohol abuse.
- (26) The offense was committed under circumstances not likely to recur.
- (27) The offender's level of participation in the offense;
- (28) The offender was on probation, parole, community control, post release control, transitional control, under a suspended sentence, pre-trial release, or out on bond at the time of commission of the offense(s).
- (29) The offender's United States military service record resulted in a condition that contributed to the offender committing the offense(s).
- (30) The offender's family and community environment;
- (31) The offender's financial circumstances, including all relevant financial records, income tax returns, profit and loss statements, net worth statements, supporting documentation, including expectancies, inheritances, or investments indirectly held for or benefiting the offender.
- (32) The offender's ability to earn in the future.

- (33) The risk the offender poses to the victim, to himself and to the public.
- (34) The appropriateness of using the various resources of the local and state facilities and agencies in matters involving incarceration, supervision and treatment of the offender.
- (35) All other relevant aggravating or mitigating circumstances.

(B) In addition, in offenses committed by an offender prior to the offender's 18th birthday, the court shall consider the reports of a presentence investigation under RC 2951.03 or RC 2947.06(B), to include a mental health evaluation conducted by a mental health professional licensed to treat adolescents in Ohio. The presentence investigation must include the defendant's developmental history, medical history, history of substance use and treatment, social history, mental health history and treatment history, and a psychological evaluation.

(C) The sentencing judge shall set forth the rationale either on the record or in the sentencing journal entry, or both, for imposing the rendered sentence. It shall be presumed that the sentencing judge considered all relevant aggravating and mitigating circumstances surrounding the offender, the victim(s), the crime(s), and the public interest in determining the appropriate sentence as long as the rationale provided does not indicate that such factors were applied incorrectly.

#### **2929.13 Stated Minimum Prison Terms.**

(A) Whoever is found guilty of a felony other than a charge carrying a potential death sentence or a potential life sentence, shall be sentenced as follows:

- (1) For a first degree felony, an indefinite prison term, with a stated minimum term of not less than three and up to eleven years, and a maximum term as determined under division (D), below;
- (2) For a second degree felony, an indefinite prison term, with a stated minimum term of not less than two and up to eight years, and a maximum term as determined under division (D), below;
- (3) For a third degree felony, an indefinite prison term, with a stated minimum term of not less than one and up to five years, and a maximum term as determined under division (D), below;
- (4) For a fourth degree felony, an indefinite prison term, with a stated minimum term of not less than twelve and up to thirty months, and a maximum term as determined under division (D), below;
- (5) For a fifth degree felony of, an indefinite prison term, with a stated minimum term of not less than nine and up to fifteen months, and a maximum term as determined under division (D), below;
- (6) For an unclassified felony other than aggravated murder and murder, a sentence as set forth in the specific section of law criminalizing such conduct. If not otherwise specified, an unclassified felony other than aggravated murder and murder shall carry an indefinite prison term, with a stated minimum term of not less than nine and up to fifteen months, and a maximum

term as determined under division (D), below. For any offense listed in the revised code as a classified felony, but specifying within the relevant statute as carrying a different penalty from that listed in this section, the specific language of the relevant statute shall control.

(7) When sentencing an offender to a prison term under this section, the court may also order the offender to refrain from contacting the victim in the case during the pendency of the offender's prison term and parole.

#### **Mandatory sentences**

(8)

(a) If an offender is found guilty of a felony that specifies in the specific statute that the sentence is to be a mandatory sentence, the sentencing court shall impose the mandatory portion of the stated minimum prison term as a mandatory sentence.

(b) That portion of the stated minimum term that is imposed as a mandatory sentence shall not be subject to modification upon probation, reduction by judicial release, reduction by any other program, and the defendant shall not have that portion of the sentence reduced by any credit program, whether good time credit or otherwise.

(c) The mandatory portion of all stated minimum terms shall be served prior to serving the non-mandatory portion of all stated minimum terms imposed upon the offender.

#### **Sentences for Multiple Felony Charges.**

(B) In addition to the sentence that may be imposed under R.C. 2929.203:

(1) The sentencing court may order multiple prison terms to be served concurrently or consecutively to each other, or to sentences imposed by any Ohio court, court of another state or a federal court, and in any combination thereof.

(2) If multiple prison terms are imposed on an offender, or if a prison term is imposed on an offender who is already subject to a sentence of imprisonment imposed by an Ohio court, a court of another state, or a federal court, then the terms shall run concurrently unless specified otherwise by the sentencing court; PROVIDED, however, that spec time that a defendant is serving for all Ohio courts shall be run consecutive to all other sentences, and shall be served first.

(3) In determining whether to sentence the prison terms consecutively, the court shall consider all appropriate sentencing factors, including whether consecutive service is necessary to protect the public from future crime or to adequately punish the offender, and whether the sentences are disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. In addition, the court shall consider:

(a) Whether the offender committed offenses while awaiting trial or sentencing, while on probation or parole or their prior equivalent;

- (b) Multiple offenses were committed as part of one or more courses of conduct, and the harm caused by the multiple offenses;
- (c) Whether the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.
- (4) When consecutive prison terms are imposed, the term to be served is the aggregate of all of the terms so imposed.

**Sentences for Specifications.**

(C)

- (1) In addition to the above sentence, an offender found guilty of any specification set forth in Chapter 2941 shall be sentenced to the additional prison term as set forth in each such specification, referred to as "spec time". Any such additional prison terms under such specifications attached to any one count in the indictment shall run concurrent to each other, but shall run consecutively to the underlying felony that the specification is attached to, and shall be served prior to all mandatory and non-mandatory minimum stated prison terms imposed upon the offender.
- (2) In multiple count bills of indictment or information, a court shall not impose more than one set of "spec time" prison terms on an offender under division (C)(1) for felonies committed as part of the same act or transaction except as provided in (C)(3),(4) or (5), below.
- (3) In multiple count bills of indictment of information, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to any specification referred to in (C)(1) in connection with two or more of those felonies, the sentencing court may impose on the offender the prison term specified under division (C)(1) for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty.
- (4) If an offender is found guilty of a specification that requires that the prison term for the underlying offense be served as a term of mandatory prison time, the court shall sentence the underlying offense as a mandatory term, in addition to any "spec time" added for any and all other specifications proven.
- (5) If an offender is found guilty of a specification that requires forfeiture of property or any other collateral sanction, the court shall impose such forfeiture or collateral sanction in addition to the sentence of the underlying felony plus any additional specifications proven.
- (6) In sentencing a defendant for specifications arising out of a separate act or transaction giving rise to a separate count, bill of indictment or bill of information in that or any other court, a court may run "spec time" consecutively, but such time shall be concurrent to "spec time" from such other sentences unless specified by the court to be run consecutively to "spec time" otherwise being served or sentenced.

**Total Maximum Prison Term.**

(D) In addition, the sentencing court will compute the total stated minimum term for all of the offenses being sentenced, being the “aggregated stated minimum term”, and shall sentence the offender to a maximum term equal to the aggregated stated minimum term plus fifty (50%) of the longest minimum stated prison term for the most serious felony being sentenced. This maximum term shall be imposed by the court at sentencing and stated in the sentencing entry.

**Fines**

(E) In addition to sentencing an offender to prison and subject RC 2929.16, the court may sentence any such offender to a fine as to each felony being sentenced, as follows:

If the level of offense is a:	the maximum fine is:
1st Degree Felony	\$100,000.00
2nd Degree Felony	\$ 50,000.00
3rd Degree Felony	\$ 20,000.00
4th Degree Felony	\$ 7,500.00
5th Degree Felony	\$ 5,000.00
Unclassified Felony other than Agg. Murder or Murder	As specified in statute or \$5,000

**Release upon parole; periods of monitoring or supervision.**

(F)

(1) Upon completion of serving all “spec time” and all mandatory prison terms, and upon completion of serving all minimum stated prison terms, the offender shall be released upon parole, unless the parole board determines that such inmate should be detained to continue to serve the imposed sentence. Procedures for such determination and further review shall be governed by RC 2967 and the department’s established procedures.

(2) Offenders may be detained by the department only until completion of their total maximum term.

(3) Parolees released prior to their total maximum term shall be supervised or monitored pursuant to RC 2967 and departmental procedures established thereunder, for periods of supervision or monitoring based upon the most serious charge they are serving, as follows:

(a) Aggravated Murder, Murder, any First Degree Felony, any felony sex offense under chapter 2907, engaging in pattern of corrupt activity under RC 2923.32, participating in criminal gang activity under RC 2923.42, soliciting or providing support for act of terrorism under RC 2909.22, making terroristic threat under RC 2909.23, or terrorism under RC 2909.24, for a term of ten (10) years;

(b) Any other Second Degree or Third Degree felony, for a term of three (3) years;

(c) Any other Fourth Degree, Fifth Degree or unclassified felony other than aggravated murder or murder, for a term of one year.

**When Felonies and Misdemeanors are both being served.**

(G)

(1) A defendant sentenced for misdemeanor and felony levels of crimes, where the felony sentence is equal to or exceeds the misdemeanor sentence and the offender is sent to prison, the offender shall be transferred to the Department of Rehabilitation and Corrections, and except as provided in (G)(2) and (G)(3), the misdemeanor sentence shall run concurrently with the felony sentence. If the misdemeanor sentence exceeds the felony sentence, the offender shall serve the felony sentence concurrently with the misdemeanors in the local jail where the misdemeanor sentence is being served.

(2) The court may sentence a misdemeanor jail term consecutive to a felony term of imprisonment, if the misdemeanor is a violation of the following sections: R.C. 2907.322, 2921.34, or 2923.131.

(3) The court shall sentence a misdemeanor violation of R.C. 4510.11, 4510.14, 4510.16, 4510.21, or 4511.19 consecutive to a prison term that is imposed for a felony violation of R.C. 2903.06, 2903.07, 2903.08, or 4511.19.

(4) A court may impose sentences for multiple misdemeanors concurrently or consecutively to each other, but concurrent with felonies. When consecutive sentences are imposed for misdemeanors, the term to be served is the aggregate of the consecutive terms imposed, except that the aggregate term to be served shall not exceed eighteen months.

**RC 2929.14 Sentences for Misdemeanors**

(A) Whoever is found guilty of a misdemeanor shall be sentenced as follows:

1 <sup>st</sup> Degree Misdemeanor	180 days	\$ 2,500.00
2 <sup>nd</sup> Degree Misdemeanor	90 days	\$ 1,000.00
3 <sup>rd</sup> Degree Misdemeanor	60 days	\$ 750.00
4 <sup>th</sup> Degree Misdemeanor	30 days	\$ 500.00
Minor Misdemeanor	0 days	\$ 300.00
Unclassified Misdemeanor	As specified	As specified

For any offense listed in the revised code as a classified misdemeanor, but specifying within the relevant statute as carrying a different penalty from that listed in this section, the specific language of the relevant statute shall control.

(B)

(1) In addition to the above sentence, an offender found guilty of any specification set forth in Chapter 2941 shall be sentenced in accordance with the penalties set forth in each such specification.

(2) If a jail sentence is mandatory as prescribed by statute, the court shall specify that portion of the sentence that shall be served as a mandatory sentence.

### **Sentences for Multiple Misdemeanor Charges.**

(C)

(1) The sentencing court may order multiple jail terms to be served concurrently or consecutively to each other, or to sentences imposed by any Ohio court, court of another state or a federal court, and in any combination thereof; PROVIDED, however, that the multiple jail terms must be run concurrent to any felony term of imprisonment being served by the offender; and FURTHER PROVIDED that the multiple jail terms not exceed eighteen (18) months.

(2) If multiple jail terms are imposed on an offender, or if a jail term is imposed on an offender who is already subject to a sentence of imprisonment imposed by an Ohio court, a court of another state, or a federal court, then the terms shall run concurrently unless specified otherwise by the sentencing court.

(3) In determining whether to sentence the jail terms consecutively, the court shall consider all appropriate sentencing factors, including whether consecutive service is necessary to protect the public from future crime or to adequately punish the offender, and whether the sentences are disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. In addition, the court shall consider:

(a) Whether the offender committed offenses while awaiting trial or sentencing, while on probation or parole or their prior equivalent;

(b) Multiple offenses were committed as part of one or more courses of conduct, and the harm caused by the multiple offenses;

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

When consecutive prison terms are imposed, the term to be served is the aggregate of all of the terms so imposed, not to exceed eighteen (18) months.

### **2929.15 Restitution**

(A)(1) In addition to any sentence imposed for felony or misdemeanor, the sentencing court may order the offender to pay restitution to the victim or the victim's survivors, their insurers, public institutions and agencies, including without limitation the Ohio Victims of Crime Compensation Fund, Medicaid, and the Ohio Workers' Compensation Fund, Ohio Department of Jobs and Family Services, Ohio Department of Taxation, for any and all economic loss proximately caused by the offender during the course of criminal conduct that led to the criminal conviction, together with a 5% surcharge by the office of the court's clerk if the court orders the restitution

to be paid through the clerk's office; and may reduce the same to judgment in favor of the state, which judgment shall be enforceable by the office of the attorney responsible for prosecuting the offense, or by the victim or the executor/administrator of the victim's estate.

(2) The court may base the amount of restitution on evidence provided by the victim or an amount recommended by the victim or the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the actual economic loss suffered by the victim as a direct and proximate result of the commission of the offense.

(3) Unless the prosecuting attorney, the victim or survivor and the defendant stipulate to an agreed amount of restitution and to whom it shall be paid, the court shall hold a hearing to determine that amount. The court may refer the matter for mediation prior to conducting the hearing, or may proceed to conduct the hearing with due notice to the parties. The prosecutor, defendant and counsel, and victim or survivor and counsel, if any, shall have the right to be present and represented by counsel at the hearing.

(4) Restitution collected by the Clerk shall be distributed to the victim pursuant to the order of the sentencing court, first to the victim and then to any other agency which holds a restitution order against the offender. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

(B) If a court sentences an offender to a prison or jail term under this chapter and orders restitution, and the offender serves such sentence in a county jail that has established a county jail industry program pursuant to RC 5147.30 , or a work release program, or a facility that permits the offender to work and be paid, the administrator of such jail or prison program may cause a reasonable portion of the offender's earnings to be paid to the clerk to be applied towards restitution, fines and costs, in that order, as determined by the applicable program's rules.

#### **§ 2929.151. Offenses while serving in a position of honor, trust, or profit; recovery of benefits**

(A) In addition to any other sentence, forfeiture or sanction which may be imposed upon the offender, if an offender is being sentenced for:

Bribery under RC 2921.02 if the thing or benefit derived exceeds \$1,000 in value, or

Theft in office of at least \$1,000 under RC 2921.41, or

Engaging in a Pattern of Corrupt Activity under RC 2923.32, or

Any violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to such offense(s), or

Any conspiracy to commit, attempt to commit, or complicity in committing any such violation(s) and if the offender committed such offense while serving in a position of honor, trust, or profit;

and if the offender, at the time of the commission of the offense:

- was a member of any public retirement system or
- a participant in an alternative retirement plan, or

- a contributor to a public retirement system receiving or eligible to receive a benefit from any such plan, and prior to the final disposition of the case, the offender was granted a disability benefit by a public retirement system or an alternative retirement plan provider; then, prior to sentencing an offender subject to this section, the court shall hold a hearing regarding the condition for which the offender was granted a disability benefit. Not later than ten days prior to the scheduled date of the hearing, the court shall give written notice of the hearing to the offender, the prosecutor who handled the case, and the appropriate public retirement system, alternative retirement plan provider, or, if more than one is providing a disability benefit, the applicable combination of these. The hearing shall be limited to a consideration of whether the offender's disabling condition arose out of the commission of the offense the offender was convicted of or pleaded guilty to.

The system or provider shall submit to the court the offender's medical reports and recommendations, and the offender's disability application. If the court determines based on those documents that the disabling condition arose out of the commission of the offense the offender was convicted of or pleaded guilty to, the court shall order the system or provider to terminate the disability benefit.

(2) Any disability benefit paid the offender prior to its termination may be recovered in accordance with RC 145.563, RC 742.64, RC 3305.22, RC 3307.47, RC 3309.70, or RC 5505.34.

(D) For purposes of this section, any violation or offense committed by the defendant as a part of a course of conduct or involved multiple acts is "committed on or after the effective date of this section" if the course of conduct continues, one or more of the multiple acts occurs, or the offender's accountability for the course of conduct or for one or more of the multiple acts continues on or after the effective date of this section.

### **2929.152 Forfeiture of retirement benefits on conviction.**

(A) If an offender is being sentenced for any felony offense listed in division (D) that was committed on or after May 13, 2008, if the offender committed the offense while serving in a position of honor, trust, or profit, and if the offender, at the time of the commission of the offense, was a member of any public retirement system or a participant in an alternative retirement plan, in addition to any other sanction it imposes but subject to division (B) of this section, the court shall order the forfeiture to the public retirement system or alternative retirement plan in which the offender was a member or participant of the offender's right to a retirement allowance, pension, disability benefit, or other right or benefit, other than payment of the offender's accumulated contributions, earned by reason of the offender's being a member of the public retirement system or alternative retirement plan. A forfeiture ordered under this division is part of, and shall be included in, the sentence of the offender. The court shall send a copy of the journal entry imposing sentence on the offender to the appropriate public retirement system or alternative retirement plan in which the offender was a member or participant.

(B) In any case in which a sentencing court is required to order forfeiture of an offender's right to a retirement allowance, pension, disability benefit, or other right or benefit under division (A) of this section, the offender may request a hearing regarding the forfeiture by delivering to the court prior to sentencing a written request for a hearing. If a request for a hearing is made by the offender prior to sentencing, the court shall conduct the hearing before sentencing. The court shall notify the offender, the prosecutor who handled the case in which the offender was convicted of or pleaded guilty to the offense for which the forfeiture order was imposed, and the appropriate public retirement system, or alternative retirement plan provider, whichever is applicable, or, if more than one is specified in the motion, the applicable combination of these, of the hearing. A hearing scheduled under this division shall be limited to a consideration of whether there is good cause based on evidence presented by the offender for the forfeiture order not to be issued. If the court determines based on evidence presented by the offender that there is good cause for the forfeiture order not to be issued, the court shall not issue the forfeiture order. If the offender does not request a hearing prior to sentencing or if the court conducts a hearing but does not determine based on evidence presented by the offender that there is good cause for the forfeiture order not to be issued, the court shall order the forfeiture described in division (A) of this section in accordance with that division and shall send a copy of the journal entry imposing sentence on the offender to the appropriate public retirement system or alternative retirement plan in which the offender was a member or participant.

(C) Upon receipt of a copy of the journal entry imposing sentence on an offender under division (A) or (B) of this section that contains an order of forfeiture of a type described in that division, the public retirement system or alternative retirement plan in which the offender was a member or participant shall comply with the forfeiture order on application for a refund of the accumulated contributions of the member or participant.

(D) Division (A) of this section applies regarding an offender who is convicted of or pleads guilty to any of the following offenses committed on or after May 13, 2008, that is a felony and who committed the offense while serving in a position of honor, trust, or profit:

(1) A violation of R.C.2921.02 or 2923.32 or a violation of section R.C. 2921.41 that is a 3rd degree felony;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (D)(1) of this section;

(3) A conspiracy to commit, attempt to commit, or complicity in committing any violation listed in division (D)(1) or described in division (D)(2) of this section.

(E) For purposes of divisions (A) and (D) of this section, a violation R.C. 2923.32 or any other violation or offense that includes as an element a course of conduct or the occurrence of multiple acts is "committed on or after May 13, 2008," if the course of conduct continues, one or more of the multiple acts occurs, or the subject person's accountability for the course of conduct or for one or more of the multiple acts continues, on or after May 13, 2008.

(F) As used in this section:

(1)

(a) For the period beginning May 13, 2008, and ending the day before the effective date of this amendment, "position of honor, trust, or profit" means any of the following:

(i) An elective office of the state or any political subdivision of the state;

(ii) A position on any board or commission of the state that is appointed by the governor or the attorney general;

(iii) A position as a public official or employee, as defined in section 102.01 of the Revised Code, who is required to file a disclosure statement under section 102.02 of the Revised Code;

(iv) A position as a prosecutor, as defined in section 2935.01 of the Revised Code;

(v) A position as a peace officer, as defined in section 2935.01 of the Revised Code, or as the superintendent or a trooper of the state highway patrol.

(b) On and after the effective date of this amendment, "position of honor, trust, or profit" has the same meaning as in division (F)(1)(a) of this section, except that it also includes a position in which, in the course of public employment, an employee has control over the expenditure of public funds of one hundred thousand dollars or more annually.

(2) "Public retirement system" and "alternative retirement plan" have the same meanings as in section 2907.15 of the Revised Code.

(3) "Accumulated contributions" means whichever of the following is applicable:

(a) Regarding an offender who is a member of the public employees retirement system, except as otherwise provided in division (F)(3)(a) of this section, "accumulated contributions" has the same meaning as in section 145.01 of the Revised Code. For a member participating in a PERS defined contribution plan, "accumulated contributions" means the contributions made under section 145.85 of the Revised Code and any earnings on those contributions. For a member participating in a PERS defined contribution plan that includes definitely determinable benefits, "accumulated contributions" means the contributions made under section 145.85 of the Revised Code, any earnings on those contributions, and additionally any amounts paid by the member to purchase service credits.

(b) Regarding an offender who is or was a member of the Ohio police and fire pension fund, "accumulated contributions" means the amount payable to a member under division (G) of section 742.37 of the Revised Code.

(c) Regarding an offender who is a member of the state teachers retirement system, except as otherwise provided in division (F)(3)(c) of this section, "accumulated contributions" has the same meaning as in section 3307.50 of the Revised Code. For a member participating in an STRS defined contribution plan, "accumulated contributions" means the contributions made under section 3307.26 of the Revised Code to participate in a plan established under section 3307.81 of the Revised Code and any earnings on those contributions. For a member participating in a STRS defined contribution plan that includes definitely determinable benefits, "accumulated contributions" means the contributions made under section 3307.26 of the Revised Code to participate in a plan established under section 3307.81 of the Revised Code, any

earnings on those contributions, and additionally any amounts paid by the member to purchase service credits.

(d) Regarding an offender who is or was a member of the school employees retirement system, "accumulated contributions" has the same meaning as in section 3309.01 of the Revised Code and also includes employee contributions made under section 3309.85 of the Revised Code and any earnings on those contributions.

(e) Regarding an offender who is or was a member of the state highway patrol retirement system, "accumulated contributions" has the same meaning as in section 5505.01 of the Revised Code.

(f) Regarding an offender who is or was participating in an alternative retirement plan, "accumulated contributions" means the amounts contributed to an alternative retirement plan participant's account by the plan participant pursuant to section 3305.06 of the Revised Code and any earnings on those contributions.

### **2929.153 Restitution for theft in office may be taken from retirement accounts**

(A) A person convicted of theft in office under RC 2921.41 shall be ordered to make restitution for all of the property or service that is the subject of the offense, in addition to restitution to the state, political subdivision, or political party for all of the actual loss experienced, in addition to the term of imprisonment and any fine imposed.

If the offender, at the time of the commission of the offense or at any other time, was a member of the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, or the state highway patrol retirement system; was an electing employee, as defined in section 3305.01 of the Revised Code, participating in an alternative retirement plan provided pursuant to Chapter 3305. of the Revised Code; was a participating employee or continuing member, as defined in section 148.01 of the Revised Code, in a deferred compensation program offered by the Ohio public employees deferred compensation board; was an officer or employee of a municipal corporation who was a participant in a deferred compensation program offered by that municipal corporation; was an officer or employee of a government unit, as defined in section 148.06 of the Revised Code, who was a participant in a deferred compensation program offered by that government unit, or was a participating employee, continuing member, or participant in any deferred compensation program described in this division and a member of a retirement system specified in this division or a retirement system of a municipal corporation, the court may issue an order requiring such retirement system, provider or program, or any combination of them, to withhold the amount required as restitution from any payment that is to be made under a pension, annuity, or allowance, under an option in the alternative retirement plan, under a participant account, as defined in section 148.01 of the Revised Code, or under any other type of benefit, other than a survivorship benefit, that has been or is in the future granted to the offender, from any payment of accumulated employee contributions standing to the offender's credit with that retirement system, provider, plan, or program, and from any payment of any other amounts to be paid to the

offender upon the offender's withdrawal of the offender's contributions pursuant to Chapter 145., 148., 742., 3307., 3309., or 5505. of the Revised Code.

(B) A motion for such an order may be filed at any time subsequent to the finding of guilt of the offender. Upon the filing of the motion, the clerk of the court in which the motion is filed shall notify the offender, the specified retirement system, provider, plan, or deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, in writing, of all of the following: that the motion was filed; that the offender will be granted a hearing on the issuance of the requested order if the offender files a written request for a hearing with the clerk prior to the expiration of thirty days after the offender receives the notice; that, if a hearing is requested, the court will schedule a hearing as soon as possible and notify the offender, any specified retirement system, any specified provider under an alternative retirement plan, and any specified deferred compensation program of the date, time, and place of the hearing; that, if a hearing is conducted, it will be limited only to a consideration of whether the offender can show good cause why the requested order should not be issued; that, if a hearing is conducted, the court will not issue the requested order if the court determines, based on evidence presented at the hearing by the offender, that there is good cause for the requested order not to be issued; that the court will issue the requested order if a hearing is not requested or if a hearing is conducted but the court does not determine, based on evidence presented at the hearing by the offender, that there is good cause for the requested order not to be issued; and that, if the requested order is issued, any retirement system, any provider under an alternative retirement plan, and any deferred compensation program specified in the motion will be required to withhold the amount required as restitution from payments to the offender.

The offender may receive a hearing on the motion by delivering a written request for a hearing to the court prior to the expiration of thirty days after the offender's receipt of the notice provided pursuant to division (B) of this section. If a request for a hearing is made by the offender within the prescribed time, the court shall schedule a hearing as soon as possible after the request is made and shall notify the offender, the applicable retirement system, provider, plan, and deferred compensation program of the date, time, and place of the hearing.

The hearing shall be limited to whether there is good cause, based on evidence presented by the offender, for the requested order not to be issued. If the court determines that there is good cause for the order not to be issued, the court shall deny the motion and shall not issue the requested order. If the offender does not request a hearing within the prescribed time or if the court conducts a hearing but does not determine, based on evidence presented by the offender, that there is good cause for the order not to be issued, the court shall order the specified retirement system, the specified provider under the alternative retirement plan, or the specified deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, to withhold the amount required as restitution under division (A) of this section from any payments to be made under a pension, annuity, or allowance, under a participant account, as defined in section 148.01 of the Revised Code, under an option in the alternative retirement plan, or under any other type of benefit, other than a survivorship benefit,

that has been or is in the future granted to the offender, from any payment of accumulated employee contributions standing to the offender's credit with that retirement system, that provider under the alternative retirement plan, or that deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, and from any payment of any other amounts to be paid to the offender upon the offender's withdrawal of the offender's contributions pursuant to Chapter 145., 148., 742., 3307., 3309., or 5505. of the Revised Code, and to continue the withholding for that purpose, in accordance with the order, out of each payment to be made on or after the date of issuance of the order, until further order of the court.

Upon receipt of an order issued under this division, the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, the state highway patrol retirement system, a municipal corporation retirement system, the provider under the alternative retirement plan, and the deferred compensation program offered by the Ohio public employees deferred compensation board, a municipal corporation, or a government unit, as defined in section 148.06 of the Revised Code, whichever are applicable, shall withhold the amount required as restitution, in accordance with the order, from any such payments and immediately shall forward the amount withheld to the clerk of the court in which the order was issued for payment to the entity to which restitution is to be made.

(iii) Service of a notice required by this section shall be effected in the same manner as provided in the Rules of Civil Procedure for the service of process.

(D) Upon the filing of charges against a person under this section, the prosecutor, as defined in section 2935.01 of the Revised Code, who is assigned the case shall send written notice that charges have been filed against that person to the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, the state highway patrol retirement system, the provider under an alternative retirement plan, any municipal corporation retirement system in this state, and the deferred compensation program offered by the Ohio public employees deferred compensation board, a municipal corporation, or a government unit, as defined in section 148.06 of the Revised Code. The written notice shall specifically identify the person charged.

**RC 2929.154 Prosecutor may obtain orders of attachment to retirement systems.**

(A) When it appears from the investigation or otherwise that a person under indictment for committing an offense while serving in a position of honor, trust or profit, at the time of commission of the offense owes restitution arising out of the offense the defendant is accused of committing, and is subject to forfeiture or execution upon the offender's accumulated funds from the offender's public retirement plan, alternative retirement plan, deferred compensation plan or alternative deferred compensation plan, the prosecuting attorney may move the common pleas court in the county where the offense is being prosecuted for an order of attachment of the defendant's interest in the offender's public retirement plan, alternative retirement plan, deferred

compensation plan and alternative deferred compensation plan, or any combination thereof. The motion shall be supported by an affidavit of an investigator or prosecuting attorney which shall set forth all of the following:

- (1) The nature and amount of restitution the prosecuting attorney claims is owed, and to which public entity;
- (2) That the defendant has fraudulently or criminally incurred the obligation upon which the criminal charge has been brought by indictment or complaint;
- (3) A description of the defendant with sufficient identifiers to allow the offender's public retirement plan, alternative retirement plan, deferred compensation plan or alternative deferred compensation plan to identify accurately and locate the offender's accounts;
- (4) The name(s) of the offender's public retirement plan, alternative retirement plan, deferred compensation plan or alternative deferred compensation plan, and the administrator(s) of the same.

(B) If a motion for attachment has been filed under division (A), the court may issue an ex parte order of attachment without conducting a hearing if it finds on the basis of the affidavit and any other relevant evidence that the court may wish to consider that there is probable cause to support the motion, and either: (1) there is present danger that the property will be immediately disposed of, concealed, or placed beyond the jurisdiction of the court; or (2) the value of the property will be impaired substantially if the issuance of an order of attachment is delayed. Such an Ex Parte Order of Attachment may order the offender's public retirement plan, alternative retirement plan, deferred compensation plan or alternative deferred compensation plan, and the administrator(s) of the same, to immediately STAY all distributions from said funds; provided, however, that if the offender is already receiving monthly benefits from said accounts, the court may within its discretion permit the offender to continue to receive such monthly benefits until further hearing.

(C) Upon motion for attachment being filed pursuant to division (B), the court will set a hearing upon the motion within 21 days of the filing of the motion, and the prosecuting attorney shall forthwith file with the clerk of the court a praecipe instructing the clerk to issue to the defendant and all affected public retirement plans, alternative retirement plans, deferred compensation plans or alternative deferred compensation plans or their administrators a notice of the proceeding, whereupon the clerk shall issue the notice which shall be in substantially the following form:

(Case Caption)

"You are hereby notified that the prosecuting attorney has applied to this court for the attachment of certain accounts in your public retirement plan, alternative retirement plan, deferred compensation plan or alternative deferred compensation plan. The basis for this application is indicated in the documents that are enclosed with this notice.

“The law of Ohio and the United States provides that certain benefit payments cannot be taken from you to pay a debt. Typical among the benefits that cannot be attached or executed on by a creditor are certain pensions.

“The law of Ohio does provide that your interest in certain public retirement plans, alternative retirement plans, deferred compensation plans and alternative deferred compensation plans may be subject to forfeiture, attachment and execution to repay the victim(s) of certain offenses under some circumstances.

The court will conduct a hearing upon the pending motion to attach those funds and may consider evidence at that time whether to attach your public retirement plan, alternative retirement plan, deferred compensation plan or alternative deferred compensation plan funds pending trial on the criminal charges filed against you. The court may also determine whether to order that all distributions you may be eligible for be allowed or disallowed.

That hearing will be held in the Common Pleas Court, Courtroom \_\_\_\_\_ (address of court), at \_\_\_\_\_ m. on \_\_\_\_\_, 20\_\_.

You may avoid having hearing but retain your right to possession of your funds at your public retirement plan, alternative retirement plan, deferred compensation plan or alternative deferred compensation plan, by filing with the court at the office of the clerk not later than the fifth business day after you receive this notice, cash in the amount set forth in the attached affidavit as the amount you owe, or a bond executed by a surety approved by the court in the amount of \$ \_\_\_\_\_.

As an accused offender, you have the right to counsel at that hearing. If you do not have counsel and need to have the court appoint you counsel, you must contact the court as soon as possible to request appointment of counsel in this matter.”

(D) The hearing under division (D) may be continued for good cause shown, and shall be continued to permit defendant to obtain counsel.

(E) At the hearing, the court may grant the motion for attachment, or may extend the previously issued ex parte order of attachment, only upon a showing of probable cause to support the motion. The order of attachment upon hearing, if issued, shall attach the accused’s interest in the public retirement plan, alternative retirement plan, deferred compensation plan or alternative deferred compensation plan, if any, and shall order the said plans and their administrators be enjoined from distributing, transferring, encumbering or otherwise allowing any change in and to said plan that would in any way diminish the value of the funds of said defendant until further order of court. Such funds shall not be subject to any intervening or subsequent attachment or

other legal action which would in any way diminish the value of said funds available to reimburse the victim(s) of the defendant.

(F) Within its discretion, the court may modify the order of attachment to allow the said plans and their administrators to pay during the pendency of the criminal prosecution payments on account of illness or disability to the extent reasonably necessary for the support of the defendant and the defendant's dependents taking into account all of the remaining assets and income of the defendant.

(G) Upon a finding of guilt, the sentencing court may order so much of the defendant's interest in the funds being held by those plans and their administrators as is needed to pay all restitution, fines and court costs, paid by those plans to the clerk of the court for distribution to the victims, and for the remaining payments. Upon acquittal, the court shall order that the attachment be vacated in its journal entry of acquittal, and the prosecuting attorney shall cause the clerk to serve a certified copy of the journal entry of acquittal upon the plans and plan administrators.

#### **2929.16 Fines and Costs.**

(A) In determining fines, the sentencing judge shall take into account the offender's current ability to pay based upon the offender's current assets, and ability to generate income at present and in the future. The court shall take into account the amount of restitution determined under RC 2929.15, which shall be paid and credited prior to payment of fines and court costs. The offender shall submit to the court all relevant information reflecting upon the offender's ability to pay. The Court may permit the offender to enter into a payment plan, and may suspend any or all of the fines based upon changes in the offender's ability to pay in accordance with that payment plan.

(B) Court costs shall be assessed against the offender as proscribed by law, and as these costs are not yet complete at sentencing hearing, need not be recited or referenced in court, but shall instead be assessed in the journal entry which shall be sufficient. The clerk shall compute the costs incurred through the date of the filing of the journal entry.

(C) The sentencing court may also order reimbursement by the offender the following costs of sentences incurred by the government:

(1) All or part of the costs of confinement authorized by law, provided that the amount of reimbursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay either as agreed to by the offender, or as determined at a hearing, and shall not exceed the actual cost of the confinement;

(2) All or part of the costs of implementing probation if ordered, including a supervision fee;

(3) All or part of the costs of confinement in a jail or alternative residential facility under a sentence imposed, provided that the amount of reimbursement ordered under this division shall

not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement ;

(4) All or part of the cost of obtaining and using an immobilizing or disabling device, or an electronic monitoring device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use provided the amount of reimbursement ordered does not exceed what the offender is able to pay, based on the ability to pay hearing;

(5) Reimbursement by the offender for costs pursuant to R.C. 2929.71 (newly renumbered 2909.25)

(6) An order under this section is a judgment in favor of the state or a political subdivision in which the court that imposed the restitution, fine and assessed the court costs is located, and the offender subject to the judgment is the judgment debtor.

**RC 2929.17 Organizational Penalties**

(A) Regardless of the penalties provided elsewhere in Title 29, an organization found guilty of an offense in Title 29 shall be fined as follows:

If the level of offense is:

The organizational fine is:

Aggravated Murder or Murder	Up to \$1,000,000 or the value of the organization, whichever is greater.
1 <sup>st</sup> Degree Felony	Up to \$500,000 or one-half the value of the organization, whichever is greater.
2 <sup>nd</sup> Degree Felony	Up to \$250,000 or one-tenth the value of the organization, whichever is greater.
3 <sup>rd</sup> Degree Felony	Up to \$50,000.
4 <sup>th</sup> Degree Felony	Up to \$35,000.
5 <sup>th</sup> Degree Felony	Up to \$25,000.
Unclassified Felony other than agg. murder/murder	As specified in the statute.
1 <sup>st</sup> Degree Misdemeanor	Up to \$10,000.
2 <sup>nd</sup> Degree Misdemeanor	Up to \$5,000.
3 <sup>rd</sup> Degree Misdemeanor	Up to \$2,500.
4 <sup>th</sup> Degree Misdemeanor	Up to \$1,500.
Minor Misdemeanor	Up to \$1,000.
Unclassified Misdemeanor	As specified in the statute.

For any offense listed in the revised code as a classified misdemeanor or a classified felony, but specifying within the relevant statute as carrying a different penalty from that listed in this section, the specific language of the relevant statute shall control.

(B) In addition to the penalties above, the sentencing court may order restitution, forfeitures, expenses of investigation, costs of response, penalties and costs as otherwise specifically provided in the revised code.

### **R.C. 2929.18 Negotiated Pleas**

(A) If the prosecuting attorney and the defendant enter into a negotiated plea agreement wherein the parties agree that upon the defendant entering a plea of guilty to an offense, the parties will make a joint recommendation as to prison or jail sentence, or as to probation, and if the court follows that joint recommendation, the defendant thereby waives all right to appeal the conviction and sentence. No jointly recommended sentence shall be accepted unless it is reduced to writing, and clearly advises the defendant of his waiver of all rights to appeal his conviction and sentence by entering into that agreement.

(B) If the prosecuting attorney and the defendant enter into a negotiated plea agreement wherein the parties agree that upon the defendant entering a plea of guilty to an offense, the parties will make a joint recommendation as to prison or jail sentence, or as to probation, if the court thereafter does not follow that joint recommendation, the defendant has the right to withdraw his plea.

(C) If the defendant is sentenced in accordance with the joint recommendation, and if the defendant thereafter obtains any reversal or relief from that judgment of sentence, the state has the right to reinstate the original indictment and all prior negotiations shall be void so that the parties are returned to their original positions. Nothing in this paragraph shall be construed to allow or permit a defendant to appeal a conviction or sentence, or be entitled to withdraw his plea or obtain post-conviction relief after entering into an agreement containing such a joint recommendation.

### **2929.19 Modification of sentences; term and conditions of probation; split sentence.**

(A)(1) Subject to (A)(2), the sentencing court may suspend imposition of the prison or jail sentence imposed under section 2929.13 or 2929.14, and place the offender on probation. Conditions of the probation shall include that the offender not violate any law, not leave the state without written permission of the probation officer or the court, and pay all restitution, fines and court costs in the case within the offender's means to do so, and may include

additional terms of supervision specified by the court by rule of court, and additional terms ordered in the case.

- (2) Notwithstanding this section, offenders who are being sentenced or are serving a sentence for any of the following offenses are not eligible for probation:
  - a) Aggravated murder;
  - b) Murder;
  - c) Rape;
  - d) Conspiracy, complicity or attempt to commit aggravated murder, murder or rape;
  - e) Any mandatory portion of any offense that carries a mandatory sentence, but the non-mandatory portion of any sentence may be suspended;
  - f) Any specification that carries a mandatory sentence, but the non-mandatory portion of the underlying crime sentence may be suspended.

(3) In making such determination, the court shall consider all of the information and factors presented under RC 2929.12 at the sentencing, and balance justice and mercy with consideration of the resources required for each alternative available, to arrive at a fair, just and proportional sentence.

(B) If the sentencing court suspends a sentence and places the defendant on probation, the court shall specify the term of probation, which shall not exceed the following potential terms, determined by the most serious offense being sentenced in the case:

(1) F-1	10 years
(2) F-2 or F-3	5 years
(3) F-4	3 years
(4) F-5	2 years
(5) Misdemeanors	2 years

Upon recommendation of the offender's probation officer or the court's own motion, the sentencing court may release the offender from probation earlier than originally sentenced provided all financial obligations for restitution and costs are paid, and upon notice to the prosecutor and a reasonable opportunity for victims to be heard.

(C) The term of probation is automatically extended for any period that the offender is unavailable for supervision due to the offender being incarcerated for any reason, or due to the offender absconding supervision or otherwise making his whereabouts unknown to his probation officer. The term of probation may otherwise be administratively extended up to the full potential term of probation by notice to the probationer from the probation officer automatically and without hearing if the offender has failed to pay restitution, fines and court costs owed in the case in full, unless waived by the court.

(D) The period of supervision may otherwise be judicially extended up to the full potential period of supervision if after hearing, unless waived in writing, the court determines that the offender is in need of additional supervision in order to be adequately rehabilitated. Such extension shall be within the sole discretion of the sentencing court.

(E)(1) The sentencing court may, as a condition of probation, require the defendant to serve a term in a county jail for up to 120 days; and with the approval of the administrator of a community

based correctional facility, halfway house or other non-prison residential treatment facility, for an indefinite period until the administrator of such facility determines that the offender has successfully completed the program of treatment offered at that facility but not longer than 180 days; and in any event, not longer than the jail or prison sentence. Time served in local jail or in a CBCF or other residential treatment facility shall be credited against the original sentence, whether in work release or not. Time residing in a halfway house or other non-prison residential treatment facility shall not be credited against the original sentence.

- (2) The 120 day limit for a split sentence in a county jail does not preclude additional sentences for violation of probation conditions under RC 2929.191, in increments not to exceed 120 days each, but in any event, not to exceed the jail or prison sentence imposed at time of sentencing.
- (3) If a person is sentenced to a jail, CBCF, or other residential treatment facility, at the time of reception and at other times the person in charge of the operation of such facility determines to be appropriate, the offender may be examined and tested for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, and other contagious diseases. If the offender refuses to be tested or treated for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, or another contagious disease, the offender may be tested and treated involuntarily.
- (F) The sentencing court may require the defendant to comply with standard conditions of probation, adopted by local rule, by rules adopted by the probation department or Ohio Adult Parole Authority, and any special conditions by order of the court pronounced at sentencing and included in the sentencing order. Such local rules and special conditions may include the following requirements:
  - (1) Obtaining and maintaining employment;
  - (2) Education and training, including financial management;
  - (3) Mental health evaluation and treatment, including counseling addressing anger management, domestic violence, parenting, or other psychiatric or psychological treatment;
  - (4) Day reporting;
  - (5) Electronic monitoring;
  - (6) Continuous alcohol monitoring and testing;
  - (7) Drug monitoring and testing;
  - (8) Drug and alcohol treatment program participation, including medically-assisted treatment if determined appropriate by a program approved by the ODRC or OMHAS;
  - (9) Intensive probation supervision;
  - (10) Specified levels of supervision less than intensive supervision ranging from high level of supervision to only monitored time;
  - (11) Limitations on travel, including a curfew;
  - (12) Limitations on associations, including prohibitions as to individuals or groups;
  - (13) Requirement to pay restitution, fines and costs owed to victims or the court, including a quarterly review of payment of obligations for restitution, fines and court costs;
  - (14) Requirement to enter into a payment plan with the Clerk to pay court financial obligations.
  - (15) Provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation;
  - (16) Participation in a drug court program approved by the sentencing court;

(17) Any other condition reasonably calculated to protect the public and rehabilitate the offender.

Such conditions shall not give to the offender any credit against his prison or jail sentence and shall not be construed as incarceration.

(G) If the offender is serving a term of probation and is being supervised at the time of sentencing on an additional charge, and if the sentencing court on the instant charge suspends imposition of the new sentence, then supervision on all charges shall be under one probation officer, as follows:

(1) By the probation department supervising the offender on the most serious offense being served;

(2) If the charges are for the same level of offense, by the probation department that has the last date of termination of supervision among the sentences being served;

(3) By agreement of the sentencing courts on all offenses being supervised, by the probation department as agreed to by those sentencing courts, which agreement shall be recited in the sentencing entries and shall supersede paragraphs (1) and (2).

#### **2929.191 Person on probation violating probation conditions.**

(A) The probation officer or the prosecuting attorney on the case may file allegations in the offender's original case that the offender has violated his conditions of probation, supported by affidavit, at any time during the offender's period of supervision, or during any stay due to the incarceration or other unavailability of the offender. This section applies to offenders placed on probation at time of sentencing, and to those released upon judicial release and placed on probation at that time.

(B) Upon hearing, the prosecuting attorney has the burden of proof by clear and substantial evidence. If the court finds by clear and substantial evidence that a probationer has violated the conditions of probation, the sentencing court on the original charge for which the offender is being supervised may do any of the following:

(1) Order probation terminated and the offender to serve the remaining balance of his sentence.

(2) Order the term of probation stayed on the original prison term pending the offender's release from any other sentence of incarceration in prison or in jail on any unrelated case, with probation supervision to resume upon release from prison or jail without credit for the period the offender is incarcerated on the unrelated case.

(3) Continue the offender on probation up to the full potential period of supervision, with conditions of supervision as determined appropriate at the time of such violation hearing, including a new local jail sentence up to 120 days or, in the case of a felony, further CBCF treatment for each violation, provided the total sentence does not exceed the original sentence suspended. Multiple service of such split sentences are within the discretion of the court. Such time served in jail or in a CBCF shall be credited against the original sentence and shall not exceed the original sentence. The court may extend the term of probation for an additional

period of one year from the date of the willful violation of probation, even if such extension is beyond the original full potential period of supervision.

**2929.20 Judicial release sentence reduction of felony offenses.**

(A) On the motion of an eligible offender or upon its own motion, the sentencing court may suspend the remaining balance of the prison sentence, release the offender and place the offender on probation on such terms as it deems appropriate, to be supervised for up the period allowed under RC 2929.19(B), and shall reserve the right to reimpose the balance of the sentence that it suspended if the offender violates the conditions imposed. In considering such a motion, the court shall consider all relevant facts and circumstances at the time of the motion, including the nature and circumstances of the offense and the offender's conduct, the impact upon the victim, the age and institutional record of the offender, whether the punishment and treatment already received by the offender is sufficient to adequately punish the offender, the risk the offender poses, whether supervision upon release would adequately protect the public from future criminal violations and rehabilitate the offender, and whether release upon supervision would not demean the seriousness of the offense.

(B) As used in this section, "eligible offender" means any felon who has served all spec time imposed by all courts, the mandatory portion of the stated minimum prison terms imposed by all courts, and is serving the non-mandatory portion of the stated minimum prison term imposed by the court considering the motion, except the following:

(1) An offender who has been previously convicted of, or is now serving a prison term for, aggravated murder, murder or rape, or complicity in committing, or an attempt to commit, or conspiracy to commit any of those offenses;

(2) An offender who, while serving any prison term, has been convicted of committing, complicity in committing, or attempting to commit, or conspiracy to commit, any felony committed while in prison or any correctional facility;

(C) A motion for judicial release under this section may be filed and considered only as follows:

(1) If the aggregated minimum stated prison term imposed by the court considering release is not more than three years (thirty-six months), not earlier than thirty days after the most recent date the offender was delivered to a state correctional institution; provided that if such aggregated minimum stated prison terms include a mandatory portion, not earlier than thirty days after the expiration of all mandatory portions of the minimum stated prison terms.

(2) If the aggregated minimum stated prison terms are at least three years (thirty-six months), not earlier than the date on which the offender has served at least one-half of the offender's non-

mandatory minimum stated prison terms after the expiration of all spec time and all mandatory minimum stated prison terms.

(D) The court shall not grant the motion without a hearing. The court may deny the motion with or without a hearing. If the sentencing court fails to either deny the motion or issue a scheduling order or notice of hearing within sixty days after the motion is filed, the motion is deemed denied without a hearing. If a motion is denied, the court later may consider judicial release for that eligible offender unless the court denies the motion with prejudice. If a court denies a motion with prejudice, the court may later consider judicial release only on its own motion or upon recommendation of the director of the department of rehabilitation and corrections.

A hearing under this section shall be conducted in open court as scheduled by the sentencing court. If the court holds a hearing, the court shall consider all relevant information, including any statement of a victim and any victim impact statement and shall enter a ruling on the motion within thirty days after the hearing. A presentence investigation report is not required for judicial release.

(E) If a court schedules a hearing under division (D), the court shall notify the eligible offender and the warden of the prison in which the offender is confined prior to the hearing. The warden shall cause within twenty-four hours after receipt of the notice by the department to post on the database it maintains under RC 5120.66 the offender's name and all of the information specified in that section, and shall send to the court an institutional summary report on the offender's conduct in any institution where the offender has served which shall cover the offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the eligible offender or crimes committed. The court shall allow the prosecuting attorney and any law enforcement agency to review and make a copy of that report prior to the hearing. The report shall be made part of the record of the hearing.

The court promptly shall give notice of any hearing to the prosecuting attorney. The prosecuting attorney shall notify the victim or the victim's representative of the hearing by any reasonable means unless the victim or victim's representative has requested that they not be provided the notice. The prosecuting attorney shall keep a record of all attempts to provide the notice and of all notices provided under this division.

(F) If ordered to do so by the court, the head of the state correctional institution in which the eligible offender is incarcerated shall deliver the eligible offender to the sheriff of the county in which the hearing is to be held. The sheriff shall convey the eligible offender to and from the hearing.

(G) If the court grants judicial release, the court shall notify the offender's warden, and the department shall post notice of the release on the database it maintains pursuant to section 5120.66 of the Revised Code. The court also shall cause a copy of the journal entry to be provided to the prosecuting attorney. Unless the victim or the victim's representative has

requested not to be provided the notice, the prosecuting attorney shall notify the victim or the victim's representative of the judicial release in any reasonable manner.

(H) Persons granted judicial release shall be considered probationers for the term specified by the court up to the maximum allowed under RC 2929.19(B).

(I) Prior release upon judicial release shall not be a bar to granting judicial release in the same or any other felony.

### **§2929.201 Parole Review of Sentences and Release**

The General Assembly declares that the public policy of this state is to protect the public from future crime by the offender and others and to punish the offender. In fulfilling its responsibilities to balance justice and mercy, using the minimum sanctions that accomplish those purposes without imposing an unnecessary burden on state or local government resources, and in an effort to avoid mass incarceration while maintaining safer neighborhoods that work together for the betterment of the community:

(A) Except as provided in paragraph (B), an offender serving an extended prison sentence for multiple counts or offenses who is not otherwise eligible for parole review, after completing any mandatory period of incarceration and spec time, may be reviewed for release by the parole board as follows:

(1) If the offender's most serious offense of commitment is a felony of the fifth degree and the prisoner was sentenced to more than five years' incarceration, the prisoner may petition the parole board for review after serving five years.

(2) If the offender's most serious offense of commitment is a felony of the fourth degree and the prisoner was sentenced to more than eight years' incarceration, the prisoner may petition the parole board for review after serving eight years.

(3) If the offender's most serious offense of commitment is a felony of the third degree and the prisoner was sentenced to more than twelve years' incarceration, the prisoner may petition the parole board for review after serving twelve years.

(B) No offender shall be eligible for review or release under this section if currently serving sentences or has a prior criminal history that includes any first-degree felony, any felony offense of violence, or any felony sex offense.

(C) An offender eligible for a parole board review under his section shall receive a meaningful review by the parole board which shall consider the factors set forth in the OAC, and whether continued confinement is consistent with fairness and proportionality in light of all information about the offenses, the victims and the offender as demonstrated at the time of the review, including the offender's conduct in the institution.

(D) If the parole board recommends release, the parole board shall impose standard conditions for supervision or monitoring the releasee and may apply discretionary terms and conditions for supervision or monitoring the releasee under chapter 2967, for a period which shall be for the following terms, determined by the most serious offense being served by the offender:

- |     |   |         |
|-----|---|---------|
| (1) | F-3   | 3 years |
| (2) | F-4, F-5 or an unclassified felony other than aggravated murder or murder | 2 years |

(E) If the offender requests a parole board review under this section, the parole board may deny the request without a hearing. If the parole board grants a hearing and denies release under this section, the offender may not receive another hearing under this section.

(F) This section shall not be construed to give to any offender the right to be released from prison prior to the expiration of the offender's entire prison term. The decision of the parole board shall be final and not subject to appeal or judicial review.

**§2929.202 Parole Release of Certain Non-violent, Non-sex offender offenders.**

The General Assembly declares that the public policy of this state is to protect the public from future crime by the offender and others and to punish the offender. In order to balance justice and mercy, using the minimum sanctions that accomplish those purposes without imposing an unnecessary burden on state or local government resources, and in an effort to avoid mass incarceration while maintaining safer neighborhoods that work together for the betterment of the community, the parole board shall:

(A) Evaluate fourth-degree and fifth-degree felony prisoners who have served at least seventy percent (70%) of their minimum stated prison terms as to their risk to commit future crimes for parole consideration.

(1) Exclude persons serving sentences, or with a prior criminal history, that includes any first-degree felony, any felony offense of violence, any felony sex offense, any offense that included a specification listed in RC 2941., and mandatory felony sentence, or two or more first degree misdemeanor offenses of violence.

(2) Exclude persons with prior violations of prison rules that posed a risk of harm to other inmates, visitors or any prison or parole staff, resulting in discipline within the rules of the institution.

(3) The parole board may rely upon a valid and reliable risk assessment tool and current information in making its determination. (B) In considering a potential release, the parole board shall consider all relevant facts and circumstances at the time of the release, including the nature and circumstances of the offense and the offender's conduct, the impact upon the victim, the age and institutional record of the offender, whether the punishment and treatment already received by the offender is sufficient to adequately punish the offender, the risk the offender poses, whether supervision upon release would adequately protect the public from future criminal violations and rehabilitate the offender, and whether release upon supervision would not demean the seriousness of the offense, and consider the appropriate conditions and levels of supervision for such prisoners.

(C) Release upon parole and impose standard conditions for supervision and appropriate discretionary terms and conditions for supervision consistent with those imposed for prisoners granted release under chapter 2967, for a term of two years; the last year of supervision for each

such prisoner released hereunder may be lowered to monitored time upon the recommendation of the supervising parole officer.

### **2929.203 Person on parole committing a felony**

(A) Upon the finding of guilt to a felony by a person on parole at the time of the commission of the felony, the sentencing court on the new felony may court may do either of the following regardless of whether the sentencing court or another court of this state imposed the original prison term for which the person is on parole:

(1) In addition to any sentence for the new felony, order parole release terminated and order the offender to serve the remaining balance of the sentence remaining under the terms of the prior sentence, to be served concurrently or consecutively to the new felony as specified by the court.

(2) Order the term of parole stayed on the original prison term pending the offender's release from any sentence of incarceration in prison or in jail, with the period of parole on the original charge stayed and to resume parole supervision upon such release.

(3) If the sentencing court on the new felony suspends imposition of the new sentence and places the defendant on probation, the court may order the offender to serve the remaining balance of the sentence remaining under the terms of the prior sentence, and stay the period of probation on the new charge pending release from prison on the old charge.

(4) If the sentencing court on the new felony suspends imposition of the new sentence and places the defendant on probation, and if the sentencing court is silent as to the original charge, the parole supervision will be automatically continued without the necessity of any order of the sentencing court, unless the Ohio Parole Board within its discretion violates the offender and returns the offender to prison pursuant to its authority, which it may do.

(B) If the sentencing court on the new felony orders the offender to serve the balance of the sentence remaining under the terms of the prior sentence consecutively to a prison term on the new felony, the offender shall serve the balance of the remaining sentence prior to beginning to serve the stated minimum prison term of the new felony sentence.

### **§2929.29 Sentencing Hearing and Sentencing Entry**

#### Hearing

(A) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was found guilty and before resentencing an offender whose case was remanded by an appellate court. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative and, with the approval of the court, any other person may present

information relevant to the imposition of sentence in the case. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender.

(B) Before imposing sentence, shall consider the record, any information presented at the hearing by any person, the presentence investigation report, if any, and any victim impact statement made, and determine if any of the counts in the indictment or complaint merge for purposes of sentencing. If merger is applicable, the court shall require the prosecutor to elect the charges to proceed on and shall impose sentence on those charges.

(C)(1) Before imposing sentence, the court shall either accept the stipulation proffered by the parties concerning restitution, if any, or conduct a hearing under 2929.15 and determine the amount of restitution for the benefit of each victim, and to whom the restitution shall be paid together with any applicable surcharge.

(2) Before imposing sentence, the court shall either accept the stipulation proffered by the parties, if any, or conduct a hearing and determine the amount of additional financial sanctions, including without limitation, any costs of investigation under RC 2929.71, forfeitures under 2929.151 through 2929.154, or as otherwise provided for under law.

(3) Before imposing any fines, the court shall either accept the stipulation proffered by the parties, if any, or conduct a hearing and determine the amount of fines the defendant can afford to pay under R.C. 2929.16.

(D) Before imposing sentence, the court shall determine whether the offender is subject to requirements to register in any registry required by statute, and shall comply with such requirements as are set forth in statutes concerning such registration requirements.

(E) For felonies cases not involving a potential death sentence, the court in accordance with RC 2929.13 shall:

(1) impose a prison term applicable to any specification the defendant was found guilty of, in accordance with such specification. If there are multiple specifications applicable, determine whether the specifications run concurrently or consecutively according to the applicable law concerning those specifications, and impose sentencing accordingly;

(2) if applicable, impose a life sentence with or without eligibility for parole as set forth in the applicable statute;

(3) impose a sentence within the terms set forth in any unclassified felony;

(4) impose a stated minimum prison term for each count and, if the court imposes a mandatory prison term, notify the offender of that portion of the stated minimum prison term is a mandatory prison term;

(5) after imposition of the stated minimum prison terms, pronounce the aggregate stated minimum prison term from all charges, and impose the maximum prison term;

(6) impose judgment for restitution, fines and court costs as determined by the court;

(7) impose judgment for forfeitures provided by law, if applicable;

(8) order the defendant to comply with any registration requirements as determined by the court.

(9) Determine the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and give local jail time credit for all such time against the sentence imposed. The court's calculation shall not include the number of days, if any, that the offender previously served in the custody of the department of rehabilitation and correction arising out of the offense for which the prisoner was convicted and sentenced.

(F) For misdemeanors, the court in accordance with RC 2929.14 shall:

(1) impose a jail term applicable to any specification the defendant was found guilty of, in accordance with such specification. If there are multiple specifications applicable, determine whether the specifications run concurrently or consecutively according to the applicable law concerning those specifications, and impose sentencing accordingly.

(2) impose a jail term for each count and, if the court imposes a mandatory jail term, notify the offender of that portion of the jail term that is a mandatory term;

(3) impose a sentence within the terms set forth in any unclassified misdemeanor;

(4) impose judgment for restitution, fines and court costs as determined by the court;

(5) impose judgment for forfeitures provided by law, if applicable;

(6) order the defendant to comply with any registration requirements as determined by the court.

(7) order the defendant to comply with any registration requirements as determined by the court;

(8) determine the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and give local jail time credit for all such time against the sentence imposed.

The court shall not impose a sentence that imposes an unnecessary burden on local government resources.

### **SENTENCING ENTRY**

(G) The court shall prepare a sentencing entry, and shall include in the sentencing entry:

(1) the name and section reference to the offense or offenses;

(2) the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications;

(3) the sentence or sentences imposed and whether the sentence or sentences contain mandatory terms of incarceration;

(4) whether the sentences are to be served concurrently or consecutively, to other counts sentenced in the case, or to other cases in any court; if any count is to be served consecutively to the sentence in any other case or any other court, the case number and title of the court of the other case shall be included;

(5) the amount of restitution, if any, as to each count being sentenced; provided, however, that if multiple counts result in the same loss caused or benefit derived, the restitution can be ordered applicable to each such count, provided further that there is no double or overlapping recovery by the victim;

(6) the amount of fines, if any, as to each count being sentenced;

(7) the amount of judgments for costs of investigation, forfeitures, or other financial sanctions as determined by the court, if any, and for whose benefit, and to whom payable;

- (8) that the offender is subject to registration, if applicable, the type of registry or registration, and the period of time the offender is subject to such registration requirements, if applicable;
- (9) the number of days of jail time credit as determined at sentencing hearing.

The sentencing court retains continuing jurisdiction to correct any error not previously raised at sentencing determining jail time credit. The offender may at any time after sentencing file a motion to correct any error made in calculating jail time credit, and the court may in its discretion grant or deny that motion. If the court changes the number of days in its redetermination, the court shall cause the entry granting that change to be delivered to the offender's custodian without delay. Sections 2931.15 and 2953.21 of the Revised Code do not apply to a motion made under this section. An inaccurate determination under this section is not grounds for setting aside the offender's finding of guilt or sentence and does not otherwise render the sentence void or voidable.

(10) If the sentencing court sentences the offender to jail, and if the local jail is covered by a policy under section 2929.37 of the Revised Code, the court shall determine whether the offender has the ability to pay or reimburse said amounts. If the court finds the defendant does have the ability to pay, then the court shall specify the following as part of the sentence:

- (a) the offender shall pay an itemized bill for payment of the costs of confinement when presented the bill in accordance RC 2929.37, or must dispute the bill in writing to the court;
- (b) if the offender does not dispute the bill for payment of costs of confinement and does not pay the bill by the times specified in RC 2929.37, the clerk of the court may issue a certificate of judgment against the offender and the sentence automatically includes any certificate of judgment so issued.

(11) The failure of the court to notify the offender that a term of incarceration is a mandatory term or to include such in the sentencing entry does not affect the validity of the imposed sentence or sentences. If the sentencing court notifies the offender at the sentencing hearing that a prison term is mandatory but the sentencing entry does not specify that the prison term is mandatory, the court may complete a corrected journal entry and send copies of the corrected entry to the offender and the offender's custodian (warden, department or jailer).

(H) The sentencing court may use its discretion in preparation of its journal entry on sentencing, but if the court elects to use the form set forth in RC 2929.XX as applicable, the sentencing entry shall be presumed to be valid and complete, and shall not be deemed void.

#### **2929.291 Journal Entry on Felony Sentencing Presumed Valid**

#### **2929.292 Journal Entry on Misdemeanor Sentencing Presumed Valid**

#### **2929.34 Where imprisonment to be served.**

(A) A person who is convicted of or pleads guilty to aggravated murder, murder, or an offense punishable by life imprisonment and who is sentenced to a term of life imprisonment or a prison

term pursuant to that conviction shall serve that term in an institution under the control of the department of rehabilitation and correction.

(B)

(1) A person who is convicted of or pleads guilty to a felony other than aggravated murder, murder, or an offense punishable by life imprisonment and who is sentenced to a term of imprisonment or a prison term pursuant to that conviction shall serve that term as follows:

(a) Subject to divisions (B)(1)(b) and (B)(2) of this section, in an institution under the control of the department of rehabilitation and correction if the term is a prison term or as otherwise determined by the sentencing court pursuant to section 2929.16 of the Revised Code if the term is not a prison term;

(b) In a facility of a type described in division (G)(1) of section 2929.13 of the Revised Code, if the offender is sentenced pursuant to that division.

(2) If the term is a prison term, the person may be imprisoned in a jail that is not a minimum security jail pursuant to agreement under section 5120.161 of the Revised Code between the department of rehabilitation and correction and the local authority that operates the jail.

(C) A person who is convicted of or pleads guilty to one or more misdemeanors and who is sentenced to a jail term or term of imprisonment pursuant to the conviction or convictions shall serve that term in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse; in a community alternative sentencing center or district community alternative sentencing center when authorized by section 307.932 of the Revised Code; or, if the misdemeanor or misdemeanors are not offenses of violence, in a minimum security jail.

(D) Nothing in this section prohibits the commitment, referral, or sentencing of a person who is convicted of or pleads guilty to a felony to a community-based correctional facility.

### **2929.37 Confinement cost policy.**

(A) A board of county commissioners, in an agreement with the sheriff, a legislative authority of a municipal corporation, a corrections commission, a facility governing board, or any other public or private entity that operates a local detention facility at which a prisoner who is convicted of an offense and who is confined in the facility under a sanction or term of imprisonment imposed under any provision of the Revised Code may adopt a policy that requires the prisoner to pay all or part of the costs of confinement in that facility. If a board of county commissioners, legislative authority, corrections commission, facility governing board, or other entity adopts such a policy, the person in charge of that facility shall appoint a reimbursement coordinator to administer the facility's policy.

The costs of confinement may include, but are not limited to, the costs of repairing property damaged by the prisoner while confined, a per diem fee for room and board, medical and dental treatment costs, the fee for a random drug test performed on the prisoner, and a one-time reception fee for the costs of processing the prisoner into the facility at the time of the prisoner's initial entry into the facility under the confinement in question. Any policy adopted under this

section shall be used only when the court orders reimbursement of confinement costs under RC 2929.16, which amount assessed shall not exceed the total amount that the prisoner is able to pay as agreed to by the defendant or as determined by the court.

(B)

(1) Each prisoner covered by a repayment policy adopted as described in division (A) of this section shall at the end of the prisoner's confinement an itemized bill of the expenses to be reimbursed. The policy shall allow periodic payments on a schedule to be implemented upon a prisoner's release. The bill also shall state that payment shall be made to the person identified in the bill as the reimbursement coordinator and include a notice that specifies that the prisoner has thirty days in which to dispute the bill by filing a written objection with the reimbursement coordinator and that if the prisoner does not dispute the bill in that manner within that period, the prisoner is required to pay the bill and a certificate of judgment may be obtained against the prisoner for the amount of the unpaid expenses. The prisoner shall sign a copy of the bill, and the reimbursement coordinator shall retain that copy. If the prisoner disputes an item on the bill within thirty days after receiving the bill, the reimbursement coordinator may either concede the disputed item or proceed to a hearing under division (B)(2) of this section.

(2) If the prisoner disputes an item on an itemized bill presented to the prisoner under division (B)(1) of this section and the reimbursement coordinator does not concede the item, the reimbursement coordinator shall submit the bill to the court, and the court shall hold a hearing on the disputed items in the bill. At the end of the hearing, the court shall determine how much of the disputed expenses the prisoner shall reimburse the legislative authority or managing authority and shall issue a judgment in favor of the legislative authority or managing authority for any undisputed expenses and the amount of the disputed expenses for which the prisoner must reimburse the legislative authority or managing authority.

(C) If a prisoner does not dispute the itemized bill presented to the prisoner under division (B) of this section and does not pay the bill within ninety days, the reimbursement coordinator shall notify the clerk of the appropriate court of those facts, and the clerk may issue a certificate of judgment against the prisoner for the balance of the expenses remaining unpaid.

(D) The reimbursement coordinator shall cause the clerk of the court to send a copy of the judgment to the judgment debtor, who shall comply with Civil Rule 58(B). The reimbursement coordinator shall not seek to enforce the judgment until at least ninety days after the court issues the judgment.

(E) The prisoner, before or after judgment, may enter into a payment plan with the reimbursement coordinator to pay the amount owed in monthly installments, as amortized over no longer than five years.

(F) The reimbursement coordinator may collect any amounts remaining unpaid on an itemized bill and any costs associated with the enforcement of the judgment and may enter into a contract with one or more public agencies to collect any amounts remaining unpaid. For enforcing a judgment issued under this section, the reimbursement coordinator or public agency may assess

an additional poundage fee of two per cent of the amount remaining unpaid and may collect costs associated with the enforcement of the judgment.

(G) Neither the reimbursement coordinator nor the legislative authority or the managing authority shall enforce any judgment obtained under this section by means of execution against the prisoner's homestead. Any reimbursement received under this section shall be credited to the general fund of the treasury of the political subdivision that incurred the expense, to be used for general fund purposes.

#### **2929.42 Notice of conviction sent to licensing board.**

(A) The prosecutor in any case against any person licensed, certified, registered, or otherwise authorized to practice under RC 3719., 4715., 4723., 4729., 4730., 4731., 4734., or 4741. shall notify the appropriate licensing board, on forms provided by the board, of any of the following regarding the person:

(1) A finding of guilt on a felony, or a court order dismissing a felony charge on technical or procedural grounds;

(2) A finding of guilt of a misdemeanor committed in the course of practice or in the course of business, or a court order dismissing such a misdemeanor charge on technical or procedural grounds;

(3) A finding of guilt of a misdemeanor involving moral turpitude, or a court order dismissing such a charge on technical or procedural grounds.

(B) The report required by division (A) of this section shall include the name and address of the person, the nature of the offense, and certified copies of court entries in the action.

#### **2929.43 Procedure when defendant is a peace officer**

(A)

(1) Any indictment or information charging a peace officer with a felony shall include in the caption, after the name of the defendant, the phrase "a peace officer." Upon defendant's initial appearance in common pleas court, the court shall determine whether the defendant is a peace officer. If the court determines that the defendant is a peace officer, it shall address the defendant personally and provide the following advisement to the defendant that shall be entered in the record of the court.

"You are hereby advised that conviction of the felony offense to which you are charged will result in the termination of your employment as a peace officer and in your decertification as a peace officer pursuant to the laws of Ohio."

The court shall include in the caption of the case "a peace officer" after the name of the defendant in the initial journal entry, and all court entries thereafter.

(2) Prior to accepting a plea of guilty to an indictment or information charging a peace officer with a felony, the court shall address the defendant personally and provide the following advisement to the defendant that shall be entered in the record of the court.

"You are hereby advised that conviction of the felony offense to which you are pleading guilty will result in the termination of your employment as a peace officer and in your decertification as a peace officer pursuant to the laws of Ohio."

Upon the request of the defendant, the court shall allow the defendant additional time to consider the appropriateness of the plea of guilty in light of the advisement described in division (B)(1) of this section. The court shall not accept a plea of guilty of a defendant who is a peace officer unless, in addition to any other procedures required under the Rules of Criminal Procedure, the court determines that the defendant voluntarily and intelligently enters that plea after being given the advisement described in division (B)(1) of this section.

(3) Upon journalizing a finding of guilty of a peace officer to a felony indictment or information, the court shall include in its entry and all subsequent entries in the case the name and address of the peace officer, the law enforcement agency or other governmental entity that employs the peace officer and its address, the date of the plea, the nature of the felony offense, and the clerk shall transmit to the employer of the peace officer and to the Ohio peace officer training council certified copies of the court entries in the action.

(4) If at any time thereafter, the trial judge determines that the defendant was a peace officer at the time of his finding of guilt or at time of sentencing, the judge shall provide to the clerk of the court of common pleas a written notice of the conviction of the defendant peace officer, the name and address of the peace officer, the law enforcement agency or other governmental entity that employs the peace officer and its address, the date of the conviction, and the nature of the felony offense, and the clerk shall transmit to the employer of the peace officer and to the Ohio peace officer training council a report that includes the information contained in the written notice and certified copies of the court entries of guilt and sentencing in the action.

(B)

Upon the conclusion of the final appeal of a defendant who is a peace officer and who has been convicted of a felony, upon expiration of the time period within which that peace officer may appeal the conviction if no appeal is taken, or otherwise upon the final disposition of the criminal action against that peace officer, the clerk of the court of common pleas shall send, as applicable, certified copies of the opinion and journal entries from the appellate courts disposing of the appeal, a certified copy of the journal entry of the acquittal of the peace officer of the felony, the conviction of the peace officer of a misdemeanor, or the dismissal of the felony charge against the peace officer to the employer of the peace officer and to the Ohio peace officer training council the certified copies of the court entries in the action. If the case has been transferred to a municipal or other misdemeanor court, the clerk of that court shall send such certified copies to the employer of the peace officer and to the Ohio peace officer training council.

(C) If pursuant to a negotiated plea agreement between a prosecuting attorney and a defendant who is a peace officer and who is charged with a felony, in which the defendant agrees to enter a

plea of guilty to a misdemeanor and to surrender the certificate awarded to the defendant under RC 109.77, the trial judge issues an order to the defendant to surrender that certificate, the order shall include the name and address of the peace officer, the law enforcement agency or other governmental entity that employs the peace officer and its address, the date of the plea, the nature of the misdemeanor to which the peace officer pleaded guilty, and the clerk of the court shall send certified copies of the court entries in the action to the employer of the peace officer and to the executive director of the Ohio peace officer training council.

**2929.44 Mental health evaluations and treatment to be entered into NCIS supervised release file.**

(A) If a court orders a person found guilty of an offense of violence to receive a mental health evaluation or treatment for a mental illness, either prior to sentencing or as a condition of probation, the clerk send a copy of said journal entry to the police department of a municipal corporation in which an offense occurred or, if the offense did not occur in a municipal corporation, the sheriff of the county in which the offense occurred, which agency shall enter the finding of guilt and required evaluation or treatment into the national crime information center supervised release file through the law enforcement automated data system. The information reported and entered shall include all of the following:

- (1) The name of the court providing the information;
- (2) The offense(s) of violence the offender was found guilty of;
- (3) Any other information required for the entry of information into the national crime information center supervised release file.

(B) Information entered into the national crime information center supervised release file pursuant to this section shall remain in the file until further order of the court.

**2929.61 Sentencing under prior law.**

(A) Persons charged with a capital offense committed prior to January 1, 1974, shall be prosecuted under the law as it existed at the time the offense was committed, and, if convicted, shall be imprisoned for life, except that whenever the statute under which any such person is prosecuted provides for a lesser penalty under the circumstances of the particular case, such lesser penalty shall be imposed.

(B) Persons charged with an offense, other than a capital offense, committed prior to January 1, 1974, shall be prosecuted under the law as it existed at the time the offense was committed. Persons convicted or sentenced on or after January 1, 1974, for an offense committed prior to January 1, 1974, shall be sentenced according to the penalty for commission of the substantially equivalent offense under Amended Substitute House Bill 511 of the 109th General Assembly. If the offense for which sentence is being imposed does not have a substantial equivalent under that act, or if that act provides a more severe penalty than that originally prescribed for the offense of

which the person is convicted, then sentence shall be imposed under the law as it existed prior to January 1, 1974.

(C) Persons charged with an offense that is a felony of the third or fourth degree and that was committed on or after January 1, 1974, and before July 1, 1983, shall be prosecuted under the law as it existed at the time the offense was committed. Persons convicted or sentenced on or after July 1, 1983, for an offense that is a felony of the third or fourth degree and that was committed on or after January 1, 1974, and before July 1, 1983, shall be notified by the court sufficiently in advance of sentencing that they may choose to be sentenced pursuant to either the law in effect at the time of the commission of the offense or the law in effect at the time of sentencing. This notice shall be written and shall include the differences between and possible effects of the alternative sentence forms and the effect of the person's refusal to choose. The person to be sentenced shall then inform the court in writing of his choice, and shall be sentenced accordingly. Any person choosing to be sentenced pursuant to the law in effect at the time of the commission of an offense that is a felony of the third or fourth degree shall then be eligible for parole, and this person cannot at a later date have his sentence converted to a definite sentence. If the person refuses to choose between the two possible sentences, the person shall be sentenced pursuant to the law in effect at the time of the commission of the offense.

(D) Persons charged with an offense that was a felony of the first or second degree at the time it was committed, that was committed on or after January 1, 1974, and that was committed prior to July 1, 1983, shall be prosecuted for that offense and, if convicted, shall be sentenced under the law as it existed at the time the offense was committed.

#### **2929.71 Investigative Costs**

(A) In addition to any fines imposed, the court sentencing an offender who is found guilty of a violation of Chapter 2909R.C. 2909.02, 2909.03, 2909.06(A)(2), or any violation of R.C. 2909.22 through R.C. 2909.29 may order the offender to pay to the governmental agencies that handled the investigation and prosecution all of the costs that the governmental agencies reasonably incurred as response costs and costs related to the investigation and prosecution of the violation as a separate judgment against the offender. The court shall hold a hearing to determine the amount of costs to be imposed under this section. The court may hold the hearing prior to or concurrent with the sentencing hearing for the offender.

(B) No judgment shall be granted in favor of the governmental agency and against the offender unless it is based upon an agreement between the State and the defendant, or after a full hearing upon the evidence. If the Court finds, by the preponderance of the evidence, that a judgment should be issued against the defendant, the Court's findings for recovery shall state the Court's findings of facts and conclusions of law. Any judgment so issued shall not become dormant, as provided for under R.C. 2329.07, so long as either execution on the judgment is issued or a

certificate of judgment is issued and filed, as provided in R.C. 2329.02 and R.C. 2329.04, within ten years from the date of the judgment or within fifteen years from the date of the issuance of the last execution thereon or the issuance and filing of the last such certificate, whichever is later.

### **2953.08 Appeal of sentence.**

Appeal as of right.

(A) In addition to any other right to appeal and except as provided in division (F) of this section, a defendant may appeal as a matter of right the sentence imposed on the grounds of lack of proportionality under any of the following circumstances:

(1) The sentence was not for a felony offense of violence, a felony sex offense, an offense carrying with it a mandatory sentence, or an offense with a specification for which the offender was also sentenced; and the sentence consisted of or included the maximum stated minimum prison term allowed for the offense; and the offender has no prior felony finding of guilt.

(2) The sentence was not for a felony offense of violence, a felony sex offense, an offense carrying with it a mandatory sentence, or an offense with a specification for which the offender was also sentenced; and the defendant was sentenced for multiple offenses:

(a) when the most serious offense sentenced was a fifth degree felony, and the aggregated stated minimum prison term exceeded five years;

(b) when the most serious offense sentenced was a fourth degree felony, and the aggregated stated minimum prison term exceeded eight years;

(c) when the most serious offense sentenced was a third degree felony, and the aggregated stated minimum prison term exceeded twelve years;

(d) when the most serious offense sentenced was a second degree felony, and the aggregated stated minimum prison term exceeded sixteen years;

(e) when the most serious offense sentenced was a first degree felony, and the aggregated stated minimum prison term exceeded twenty-two years;

(3) regardless of the nature of the offense, the defendant was sentenced for multiple offenses:

(a) when the most serious offense sentenced was a fifth degree felony, and the aggregated stated minimum prison term exceeded eight years;

(b) when the most serious offense sentenced was a fourth degree felony, and the aggregated stated minimum prison term exceeded twelve years;

(c) when the most serious offense sentenced was a third degree felony, and the aggregated stated minimum prison term exceeded fifteen years;

(d) when the most serious offense sentenced was a second degree felony, and the aggregated stated minimum prison term exceeded twenty years;

(e) when the most serious offense sentenced was a first degree felony, and the aggregated stated minimum prison term exceeded twenty-five years;

(3) The prison sentence was not suspended under R.C. 2929.19, and under circumstances where the offender had no prior felony finding of guilt, and the most serious offense sentenced was a felony of the fourth or fifth degree, and there was no mandatory prison sentence applicable, and

the offense being sentenced is not an offense of violence or a sexually oriented offense, and the offender had no prior offense of violence or prior sex offense.

(4) The sentence is contrary to law.

(B) In addition to any other right to appeal and except as provided in division (F) of this section, a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant for a felony or, in the event of the modification of a sentence imposed upon such a defendant, on any of the following grounds:

(1) The prison sentence was suspended despite a specification or a mandatory sentence being required to be imposed, or is otherwise contrary to law.

(2) The sentence is a modification under RC 2929.19 or 2929.20 of a sentence that was imposed for a felony of the first or second degree and is not proportional to the conduct of the offender, the harm caused by the offense, the criminal history of the offender, all other relevant sentencing factors, and the sentences imposed for similar offenses committed by offenders similarly situated.

(3) The prosecutor and the defendant entered into a negotiated plea agreement with a jointly recommended sentence under 2929.18, and the sentencing court sentenced the offender to a lower sentence than was in the joint recommendation.

Appeal with leave of court.

(C) (1) Provided that the sentence did not include sentencing for a felony offense of violence, a felony sex offense, an offense carrying with it a mandatory sentence, or an offense with a specification for which the offender was also sentenced, in addition to the right to appeal a sentence granted under division (A), a defendant may seek leave to appeal a sentence imposed upon the defendant on the basis that the sentence is not proportional to the conduct of the offender, the harm caused by the offense, the criminal history of the offender, all other relevant sentencing factors, and the sentences imposed for similar offenses committed by offenders similarly situated, if the aggregated minimum stated prison term imposed equals or exceeds two years, or the maximum minimum stated prison term for the most serious offense sentenced, whichever is greater.

(2) A defendant may seek leave to appeal a sentence imposed upon the defendant that includes a sentence under the repeat violent offender specification under RC 2941.149 that is longer than five years on the basis that the sentence is not proportional to the conduct of the offender, the harm caused by the offense, the criminal history of the offender, all other relevant sentencing and the sentences imposed for similar offenses committed by offenders similarly situated.

(3) A defendant may seek leave to appeal a sentence imposed upon the defendant that includes a sentence under the sexually violent predator provisions of RC 2971.03 on the basis that the sentence is not proportional to the conduct of the offender, the harm caused by the offense, the criminal history of the offender, all other relevant sentencing and the sentences imposed for similar offenses committed by offenders similarly situated.

(D) A motion for leave to appeal a sentence or modification shall be filed with the court of appeals within thirty days from the entry of the judgment and order sought to be appealed and shall set forth the basis that the sentence is not proportional to the sentence. The motion for leave to appeal shall be accompanied by affidavits, and by the parts of the record upon which the movant relies, and must specifically include all exhibits admitted at the sentencing hearing and the hearing on judicial release, if applicable, the presentence investigation report and the victim impact statements, if any, to show the probability that the errors claimed did in fact occur, and by a brief or memorandum of law in support of the movant's claims. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the motion and a copy of the notice of appeal to the clerk of the court of appeals who shall serve the notice of appeal and a copy of the motion for leave to appeal upon the opposing attorney who, within thirty days from the filing of the motion, may file affidavits, parts of the record, and brief or memorandum of law to refute the claims of the movant. The court of appeals may grant an extension of the time to file the supporting materials to either party within its discretion.

When a criminal defendant has filed a notice of appeal pursuant to App.R. 4, the defendant may elect to incorporate in defendant's initial appellate brief an assignment of error under RC 2953.08(B), and this assignment of error shall be deemed to constitute a timely motion for leave to appeal hereunder.

Except when required by the court the motion shall be determined by the court of appeals on the documents filed without formal hearing or oral argument. Upon the filing of a motion under this division, the court of appeals may grant leave to appeal the sentence if the court determines that there is a substantial likelihood that the sentence lacks proportionality in its cursory review of the supporting and opposing documents.

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

(2) A sentence imposed for aggravated murder or murder under RC 2929.02 to 2929.06 is not subject to review under this section.

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

(1) Any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed. An appellate court that reviews a presentence investigation report upon appeal of a sentence shall comply with RC 2951.03(D)(3) when the appellate court is not using the presentence investigation report, and the appellate court's use of a presentence investigation report of that nature in connection with the appeal of a sentence under this section does not affect the otherwise confidential character of the contents of that report as

described in RC 2951.03 and does not cause that report to become a public record, as defined in RC 149.43, following the appellate court's use of the report.

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

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

#### Remedies

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

(1) That the sentence under RC 2929.13 or modification under RC 2929.19 or RC 2929.20, whichever is applicable, imposed by the trial court is not proportional to the conduct of the offender, the harm caused by the offense, the criminal history of the offender, all other relevant sentencing factors, and the sentences imposed for similar offenses committed by offenders similarly situated the sentence; or

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

If the court of appeals determines that such sentence or modification was not proportional, or is otherwise contrary to law, it shall enter its judgment increasing, decreasing or otherwise modifying the trial court's entry, which thereafter shall become the sentencing entry in the case, without remand for further consideration by the trial court. The case shall thereafter be remanded to the trial court for execution of the sentence so imposed by the court of appeals.

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