Supreme Court of Ohio Clerk of Court - Filed June 21, 2022 - Case No. 2021-0532

IN THE SUPREME COURT OF OHIO

SCT NO. 2021-0532

STATE OF OHIO	:	
Appellee	:	On Appeal From 8th Dist. Cuyahoga Case No. 109476
vs.	:	
DANAN L. SIMMONS, JR	:	
Appellant		

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INTRODUCTION

In March 2019, via the passage of S.B. 201 (aka Reagan Tokes Act), Ohio ushered in an entirely new sentencing system for all felonies of the first and second degree. S.B. 201 departs from both the pre-SB 2 indefinite sentencing system and post-S.B. 2 definite sentencing and creates a hybrid sentence whereby there is a definite presumptive minimum sentence accompanied by an indefinite tail which can be triggered upon certain post-imprisonment executive branch findings.

S.B. 201 sentences present several constitutional questions when the Department of Rehabilitation and Correction (DRC) seeks to extend the defendant's imprisonment:

- Will the State have to prove to a jury and beyond a reasonable doubt the basis for keeping the defendant in prison longer, i.e. the circumstance that has triggered the extension of the prison sentence?
- If a jury is not going to decide whether DRC has a valid basis, will the defendant at least have the benefit of a judge making the decision regarding a sentence increase, or is the extension of a sentence entirely an executive branch function?
- Does S.B. 201 provide adequate notice of what conduct or conditions could trigger the tail, and can a defendant ensure by their own good behavior that they will not be subject to those conditions?
- Will a defendant be presumed innocent, be present at the hearing, have an attorney, be able to confront witnesses, be able to subpoena witnesses on his behalf, and be able to testify on their own behalf?

S.B. 201 answers each of these questions with a "no." The correct answers under the United States and Ohio Constitutions are "yes."

STATEMENT OF THE CASE AND FACTS

On April 12, 2019, Danan Simmons was charged in a five-count indictment with F1 drug trafficking (cocaine), F1 drug possession (cocaine), F5 drug possession (heroin), having a weapon while under a disability, and possession of criminal tools. The weapon under disability and F1 drug trafficking charges also included firearm specifications. On December 17, 2019, Mr. Simmons and the State of Ohio entered into a plea agreement. Mr. Simmons agreed to plead guilty to having a weapon while under a disability (without any firearm specifications), to F2 drug trafficking (cocaine) with a oneyear firearm specification, and to F5 drug possession (heroin). The remaining two charges were to be dismissed.

The trial court held a sentencing hearing on January 30, 2020. The trial court sentenced Mr. Simmons to five years in prison, including a four-year prison sentence on the F2 drug conviction which was to be run consecutively with a one year firearm specification and concurrent sentences on the remaining counts. The trial court found "the indefinite sentencing [provisions in SB 201] to be unconstitutional." It therefore did not impose the S.B. 201 indefinite tail.

The State of Ohio appealed the trial court's ruling on the constitutionality of the Regan Tokes law to the Eighth District, and the Eighth District reversed, finding the sentencing law to be constitutional.

A timely appeal by Mr. Simmons to this Court was noted and Mr. Simmons was granted a stipulated extension to file this merit brief on or before June 21, 2022.

ARGUMENT

The S.B. 201 sentencing scheme

S.B. 201 codified hybrid prison terms for first- and second-degree felonies, which are referenced as "indefinite" terms under the statute. R.C. 2929.14(A) (eff. March 22, 2020). Under S.B. 201, it is presumed that the offender will be released at the expiration of the minimum term. However, DRC -- an executive branch agency -- may rebut the presumption and extend the sentence for the length of the tail. R.C. 2929.14(A), R.C. 2929.144, R.C. 2967.271. Essentially, DRC can impose additional prison time for a prisoner who DRC determines has not progressed satisfactorily while incarcerated.

To rebut the "presumptive earned early release date," DRC holds an administrative hearing and makes specific findings to justify keeping the offender beyond the presumptive release date. R.C. 2967.271 (C). One or more of the following three factual determinations (the first of which is bipartite) must be present:

> (1) Regardless of the security level in which the offender is classified at the time of the hearing, both of the following apply:
>
> > (a) During the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff of a state correctional institution or its inmates, or physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated.
> >
> > (b) The offender's behavior while incarcerated, including, but not limited to the infractions and violations specified in division (C)(1)(a) of this section, demonstrate that the offender continues to pose a threat to society.
>
> (2) Regardless of the security level in which the offender is classified at the time of the hearing, the offender has been placed by the department in extended restrictive housing at any time within the year preceding the date of the hearing.

> (3) At the time of the hearing, the offender is classified by the department as a security level three, four, or five, or at a higher security level.

R.C. 2967.271(C).

If DRC finds that at least one of the prerequisites outlined in subsection (C) applies, DRC may deny the offender's release and may extend the term of imprisonment for what DRC determines is a "reasonable period," up to the maximum term of imprisonment. R.C. 2967.271(D).

Proposition of Law I:The Reagan Tokes Act violates the Sixth Amendment as it permits the imposition of additional punishment for conduct not admitted by the defendant or found by a jury.

The right to trial by jury is protected by the Sixth Amendment and Article I, Section 5 of the Ohio Constitution. In *Apprendi v. New Jersey,* 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) and *Ring v. Arizona,* 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), the United States Supreme Court held that, in order to sentence a defendant to a term of imprisonment in excess of the statutory maximum, the Sixth Amendment demands that the factual circumstances justifying the enhanced sentence either be admitted via a guilty plea or found by the jury to exist beyond a reasonable doubt. *Ring* followed and held that "[i]f a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact – no matter how the State labels it – must be found by a jury beyond a reasonable doubt." *Ring,* 536 U.S. at 602, citing *Apprendi*, 530 U.S. at 482-83. In *Blakely v. Washington* 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), the Supreme Court clarified that, while *Apprendi* and *Ring* may have factually dealt with punishments that exceeded the *statutory* maximum, the Sixth Amendment's guarantee was actually much greater and prohibited

a judge from making any finding *necessary* for the imposition of a particular sentence, unless that finding was reflected in the jury's verdict. *Id.* at 304-05.

> In other words, the relevant "statutory maximum" is not the maximum sentence a judge may impose *304 after finding additional facts, but the maximum he may impose without any additional findings. When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts "which the law makes essential to the punishment," Bishop, *supra*, § 87, at 55, and the judge exceeds his proper authority.

Blakely at 303-04.

In 2006, this Court addressed *Apprendi-Blakely's* application to Revised Code Chapter 2929. *State v. Foster,* 109 Ohio St.3d 1, 845 N.E.2d 470, 2006-Ohio-856. At that time, Chapter 2929 contained provisions that required trial courts at sentencing to make certain findings in order to impose sentences of imprisonment for certain low-level felonies, beyond the minimum stated prison term for felonies for which a definite prison term was authorized, or to the maximum prison term for felonies for which a definite prison term was authorized. *Foster,* at ¶¶ 43-44. Of those various provisions, the one that most closely resembles S.B. 201 was then-R.C.2929.14(B)'s requirement that offenders sentenced to prison who had not previously been imprisoned would receive the minimum term of imprisonment in the absence of specific findings. *Foster* unanimously held that, because a finding to overcome the minimum sentence was being made by a judge, as opposed to being made by a jury, this provision was unconstitutional under *Blakely*. *Foster, at ¶* 61.

Applying this precedent to S.B. 201, the indeterminate sentences are similarly unconstitutional. Once again, the defendant's guilty plea or the jury's verdict, alone, are not enough to trigger a sentence beyond the presumptive sentence. Any increase in punishment beyond the presumptive sentence is dependent upon and triggered by one

or more findings that are being made by DRC as prescribed by R.C. 2967.271(D) – not by the jury as prescribed by the Sixth Amendment. The factual circumstance that triggers the tail is something that must occur *after* the finding of guilt, e.g., a rules infraction in prison. S.B. 201 leaves that determination to DRC. But the Sixth Amendment requires that the factfinder be the jury. In this regard, *Foster* is instructive. Even though the jury's verdict opened the door to a sentencing range, to receive more than the minimum sentence or consecutive sentences, findings apart from the jury's verdict used to be required under the Revised Code. Relying on *Blakely, Foster* unanimously concluded that this violated the right to trial by jury.

In the end, what *Blakely* said regarding the Washington sentencing guidelines is equally applicable here:

> The Framers would not have thought it too much to demand that, before depriving a man of three more years of his liberty, the State should suffer the modest inconvenience of submitting its accusation to "the unanimous suffrage of twelve of his equals and neighbours," *4 Blackstone [Commentaries of the Law of England], supra, at 343, rather than a lone employee of the State.

Blakely, 542 U.S. at 313-14.

For this reason alone, S.B. 201 is unconstitutional.

Proposition of Law II: The Reagan Tokes Act violates the doctrine of separation of powers because, as with bad time, it conferred judicial power to the executive branch.

S.B. 201 removes the sentencing enhancement from the prerogative of the judicial branch and transfers it to the executive branch – DRC decides if the sentence will be enhanced. DRC is presumptively required to turn the key and let the defendant out of prison when the minimum tem has expired -- unless DRC, in its sole discretion, decides it does not have to.

This Court's decision in *State ex rel. Bray v. Russell*, 89 Ohio St.3d 132, 729 N.E.2d 359, 2000-Ohio-116, dictates that S.B. 201 violates the separate of powers doctrine. In *Russell*, this Court addressed the "bad time" statute, R.C. 2967.11, under which an offender could be punished with additional prison time for any "violation," or crime, whether or not the offender was prosecuted for that violation. This Court held:

> In our constitutional scheme, the judicial power resides in the judicial branch. Section 1, Article IV of the Ohio Constitution. The determination of guilt in a criminal matter and the sentencing of a defendant convicted of a crime are solely the province of the judiciary.
>
> * * *
>
> Prison discipline is an exercise of executive power and nothing in this opinion should be interpreted to suggest otherwise. However, trying, convicting, and sentencing inmates for crimes committed while in prison is not an exercise of executive power. Accordingly, we hold that R.C. 2967.11 violates the doctrine of separation of powers and is therefore unconstitutional.

Russell, 89 Ohio St.3d at 136.

For purposes of *Russell,* the bad time provision in former R.C. 2967.11 is indistinguishable from S.B. 201. The following chart summarizes the two provisions.

	R.C. 2967.11 (B) - "Bad Time Statute"	**Reagan Tokes Act**
Sentence	Term of years plus possibility of bad time.	Term of years that includes possibility of extension beyond presumptive minimum.
Defendant's expectation at sentencing	Release upon serving stated prison term, i.e. without bad time.	Release at presumptive minimum term, i.e. without extension.
Discretion to Extend Prison Time	Executive via Parole Board	Executive via DRC
Basis for Extension	Conduct during incarceration	Conduct during incarceration

Procedural Protections	Parole Board rules	DRC administrative rules

Both provisions provide for the executive branch prison system to tell an inmate that the inmate will be serving a longer sentence as a result of an executive agency's determination. *Russell* recognized that, when this occurs, separation of powers is violated.

Moreover, under former R.C. 2967.11 and S.B. 201, the prerequisites for an extended sentence all relate to determinations previously made by DRC during the term of imprisonment. In the case of S.B. 201, an extended sentence can be triggered, for example, by an evaluation that the defendant is a threat to society, or the circumstance that the defendant is classified at higher than a security level 2. Thus, DRC, at the administrative hearing to determine whether to increase the sentence, is evaluating its own previous work and then using that evaluation as a basis for deciding whether to increase the sentence. What *Russell* said about then-R.C. 2967.11, which also provided for a bad time enhancement if DRC determined that the prisoner committed a new crime while in prison, is equally applicable here:

> This is no less than the executive branch's acting as judge, prosecutor, and jury. R.C. 2967.11 intrudes well beyond the defined role of the executive branch as set forth in our Constitution.

Russell, 89 Ohio St.3d at 135.

On the other hand, comparisons of S.B. 201 to traditional indefinite sentencing with parole are inapt. Unlike conventional parole, where a defendant has no reason to believe that they will be released before their sentence is served in full, an S.B. 201 indeterminate sentence comes with a limited guarantee of release at the end of the minimum term -- a guarantee that can only be overcome by executive branch action in the form of keeping the defendant in prison. Traditional parole enables the executive

branch to shorten the maximum sentence, which is consistent with the traditional ability of the executive branch to commute sentences. But when the executive is able to act so as to extend the time that would otherwise be served, then the separation of powers is unconstitutionally traversed, as this Court recognized in *Russell*.

> **Proposition of Law III: The Reagan Tokes Act violates due process by failing to provide adequate notice, by inadequately confining executive branch discretion, by lacking adequate guarantees for a fair hearing.**

S.B. 201 violates due process under the Fourteenth Amendment and Article I, Section 16 of the Ohio Constitution. It does so in several ways.

a. Lack of Notice

First, defendants are not under adequate notice as to what conduct on their part will rebut the presumption and trigger an increase in his sentence under subsection (A)(1) of R.C. 2967.271:

> (a) During the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff of a state correctional institution or its inmates, or physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates, or committed a violation of law that was not prosecuted, **and the infractions or violations demonstrate that the offender has not been rehabilitated**.
>
> (b) The offender's behavior while incarcerated, including, but not limited to the infractions and violations specified in division (C)(1)(a) of this section, demonstrate that **the offender continues to pose a threat to society.**

Id., (emphasis added).

Simply put, on its face the statute fails to give adequate notice of what it takes to trigger the additional prison time. The standards of “not been rehabilitated” and “pose a threat to society” are amorphous at best. *City of Columbus v. Thompson*, 25 Ohio St.2d 26, 30-31, 266 N.E.2d 571 (1971) (“Basic to any penal enactment is the requirement that it be

sufficiently clear in defining the activity proscribed . . . The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions.”).

Here, a defendant can satisfy subsection (A) by committing a rule infraction which demonstrates a lack of rehabilitation. This is too vague. If, for example, a prisoner argues verbally with a guard (a rule infraction) and thus slows the guard’s progress in making a mid-day inmate count, has the prisoner compromised the safety of the institution? If the prisoner fails to clean up a spilled cup of coffee in the mess hall (another rule infraction), has the prisoner compromised the security of prison personnel and inmates? If, in response to a written questionnaire during a therapy session, the prisoner writes that the prisoner is innocent of the crime and disagrees with the jury’s verdict, has the prisoner falsified a government writing under R.C. 2913.42(A)(1), (B)(4)? And how does the prisoner know that what was done indicates a lack of rehabilitation, the second prong of subsection (A)(1), and a “threat to society,” as required by (A)(2)? The bottom line is that the prisoner is uncertain about what conduct could trigger the tail. This violates due process.

b. Inadequate Parameters on Executive Branch Discretion

Moreover, subsections (C)(2) and (C)(3) of R.C. 2967.271 (quoted at p. 3, supra) make it a triggering event that the offender was placed in restrictive housing or was designated at a security level higher than 2. These are decisions that may or may not be the product of an inmate’s wrongdoing. Moreover, these are decisions that, like prison rules infractions, are virtually unreviewable. *Williams v. Ohio Department of Rehabilitation and Corrections,* 67 Ohio Misc.2d 1, 3, 643 N.E.2d 1182 (Ct. Claims 1993) (“this court will not interfere with prison officials' decision on where an inmate is placed

within the institution.”).

While it may, as a matter of prison administration, be acceptable to give this type of unfettered discretion to the executive branch, it violates due process when the executive’s ability to make whatever judgment calls it deems appropriate results in a criminal penalty. *In re E.D.,* 194 Ohio App.3d 534, 957 N.E.2d 80, 2011-Ohio-4067, ¶ 21 (“This invites arbitrary and discriminatory enforcement and renders the ordinance unconstitutionally void for vagueness.”).

Attempts to avoid vagueness by arguing that discipline and housing decisions are part of ordinary prison life miss a critical distinction. When the prison rulemaking and enforcement controls the quality of an inmate's imprisonment, due process is indulgent of executive branch discretion. But when, as here, the prison rulemaking system causes a defendant to spend more time behind bars than they could otherwise serve, the due process considerations discussed above must be triggered.

c. Inadequate guarantees for a fair hearing

S.B. 201 fails to provide a defendant with anything close to the procedural protections required under due process by the Fourteenth Amendment and Article I, Section 16 of the Ohio Constitution. While R.C. 2967.271 provides for a hearing before the additional prison time is imposed, the statute provides no structure as to how the hearing will be conducted or what rights the defendant will have at a hearing. Fourteenth Amendment due process as well as the Sixth Amendment and Article I, Section 10 of the Ohio Constitution recognize certain core rights. In addition to the right to have a jury determine beyond a reasonable doubt if a triggering circumstance occurred, those right include:

- The right to be present for a hearing. *Snyder v. Massachusetts*, 291 U.S. 97, 54 S.Ct. 330, 78 L.Ed. 674 (1934).
- The right to counsel and to the appointment of counsel if indigent. *Gideon v. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).
- The right to confront witnesses. *Crawford v. Washington*, 541 U.S. 36, 52, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).
- The right to call witnesses and require their presence via subpoena. *Washington v. Texas,* 388 U.S.14, 87 S.Ct.1920, 18 L.Ed.2d 1019 (1967).
- The right to offer testimony. *In re Oliver,* 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948).

Nowhere in the statute are these rights enunciated.

Moreover, while DRC may well change its administrative policies, the current policy regarding the hearings to trigger the sentence tail are woefully inadequate. ODRC Policy 105-PBD-15 became effective on March 15, 2021 and sets forth the procedures for conducting a hearing to extend prision time under S.B. 201. The Policy is appended to this merit brief. Only two of the rights enumerated above are addressed in the Policy and they are both considerably diluted:

- The inmate has a limited opportunity to be present, which can be denied if the hearing officer believes that the inmate's presence is "inappropriate or unwarranted." Section VI-F-6.
- The inmate, while not having the opportunity to defend against the charges does have the right to "provide any mitigation information." Id at subsection 8.

Conspicuously absent from the Policy is any mention of the quantum of proof necessary to find that an extended-prison-prerequisite has been proven-- although the inclusion of a right to present information "in mitigation" without a corresponding right to present information for exculpation suggests that innocence is not the starting point.

Once again, and as discussed supra, the procedural vacuum memorialized in the current Policy may be acceptable when dealing with how an inmate is to be treated while serving a term of imprisonment that does not have a presumptive end date. But when extended prison time is at stake, due process requires more than the guarantee that, after it is determined that the inmate has qualified for the imposition of additional prison time, the defendant will have a chance to lessen the amount of time imposed.

Severance Is Not a Viable Option

Severance is not an appropriate remedy for S.B. 201's constitutional deficiencies. All of R.C. 2967.271 would have to be stricken, thus replacing definite sentences with the traditional indefinite sentences that S.B. 2 rejected in 1996. This is the only way to avoid DRC playing the role of jury, investigator, prosecutor, jury and sentencing judge that S.B. 201 currently envisions. The question before this Court is whether such a radical revision is consistent with legislative intent. It is not.

Severability is a limited remedy. It cannot be employed when "the unconstitutional part [is] so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out." *Foster,* at ¶ 99.

In *Foster,* this Court was confronted with the predicament of what to do with a set of statutory presumptions and preferences that required every definite felony sentence in Ohio to be the minimum and concurrent term of imprisonment unless a

judge made unconstitutional fact-finding in violation of *Blakely*. Having recognized that these presumptions/preferences could not be overcome constitutionally, this Court had two choices: Either get rid of the presumptions/preferences (i.e. severance) or mandate that all cases not carrying a life tail be sentenced to minimum and concurrent terms of imprisonment. Thus, for example, a bank robber with a long criminal history who robs ten banks would have to receive concurrent terms of three years each as a sentence. The *Foster* court recognized that requiring all prison sentences to be minimum and concurrent terms was not consistent with legislative intend and excised the required findings from the statutory scheme.

Severance was viable in *Foster*. After severance, judges still had the benefit of the General Assembly's guidance regarding sentencing, via R.C. 2929.11's goals of sentencing and R.C. 2929.12's extensive set of aggravating and mitigating factors that addressed offense conduct and offender history. *Foster's* severance still required trial courts to employ these sentencing statutes to arrive at a just sentence and *Foster* left judicial review of sentences intact. Severance in *Foster* still circumscribed the judge's discretion to impose sentence so that the General Assembly's guidance remained intact.

Severance does not work for S.B. 201. The presumption in S.B. 201 is that the minimum sentence imposed by the trial court will be the sentence actually served, subject to DRC modification predicated upon the existence of an R.C. 2967.271 prerequisite. Severance eliminates these statutory circumscriptions and returns all first- and second-degree felony prison sentences to indefinite sentences with traditional parole -- where DRC takes the place of a parole board and has broad discretion to keep defendants in prison. In drafting S.B. 201, the General Assembly prevented DRC from considering extensions of sentence unless the R.C. 2967.271(C) prerequisites are met.

But severance removes these statutory limitations and gives DRC free rein without any guidance from the General Assembly. And whereas severance in *Foster* was necessary to avoid the absurdity of everyone receiving minimum and concurrent terms of imprisonment, severance of S.B. 201 is not necessary to avoid an absurdity – the minimum sentence imposed by the judge reflects the actual amount of prison time the sentencing judge presumes is necessary after considering the goals of sentencing.

Put a different way, excising the statutory findings in in *Foster* did not eliminate the General Assembly's role in guiding judges as to when to go beyond the presumptive minimum (and concurrent) sentence – judges did not receive a blank check to impose any sentence up to the upper limit of the statutory sentencing range (i.e. maximum and consecutive). But excising the statutory findings in S.B. 201 does eliminate the General Assembly's role in guiding DRC as to when to go beyond the presumptive minimum sentence – DRC is receiving a blank check to extend the sentence to the upper limit of the judicially imposed sentencing range (i.e. the full amount of the tail).

CONCLUSION

For these reasons, this Court should hold that S.B. 201 is unconstitutional. The sentence as originally imposed should be affirmed.

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SERVICE

I hereby certify that one true copy of the foregoing was served via electronic mail to Assistant Prosecuting Attorney Daniel T. Van, dvan@prosecutor.cuyahogacounty.us, on this 21st day of June, 2022.

/s/ John T. Martin
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APPENDIX

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COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

MAR 25 2021

STATE OF OHIO,	:	
Plaintiff-Appellant,	:	
		No. 109476
v.	:	
DANAN SIMMONS, JR.,	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: March 25, 2021

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-638591-A

Appearances:

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Cullen Sweeney, Cuyahoga County Public Defender, *for appellee.*

MICHELLE J. SHEEHAN, J.:

{¶ 1} The trial court did not impose an indefinite sentence per Am.Sub.S.B. 201, the Reagan Tokes Law and the state of Ohio appeals. Because the provisions requiring a sentencing court to impose an indefinite sentence under the Reagan

Tokes Law are constitutional, we reverse the sentence imposed and remand this matter for resentencing.

I. PROCEDURAL HISTORY AND FACTS

{¶ 2} Danan Simmons, Jr., appellee, was indicted on March 27, 2019, for the offenses of having weapons while under disability, drug trafficking, two counts of drug possession, and possession of criminal tools. The charges included various firearm and forfeiture specifications. On December 17, 2019, Simmons entered guilty pleas to one count of having weapons while under disability in violation of R.C. 2923.13, a felony of the third degree; one count of drug trafficking in violation of R.C. 2925.03 with a one-year firearm specification pursuant to R.C. 2941.141, a felony of the second degree; and one count of drug possession in violation of R.C. 2925.11, a felony of the fifth degree.

{¶ 3} On January 30, 2020, at the sentencing hearing, the trial court found the Reagan Tokes Law, Am.Sub. S.B. 201, 2018 Ohio Laws 157, unconstitutional. Specifically, by adopting an opinion from the Hamilton County Court of Common Pleas, *State v. Oneal*, Hamilton C.P. No. B 1903562, 2019 WL 7670061 (Nov. 20, 2019), the trial court held that the indefinite sentencing scheme enacted under the Reagan Tokes Law violated the constitutional doctrine providing for the separation of powers. The opinion further holds that the administrative process that allows the Department of Rehabilitation and Correction ("DRC") to keep an offender incarcerated past the stated minimum sentence deprives the offender of procedural due process.

{¶ 4} After determining that the Reagan Tokes Law was unconstitutional, the trial court sentenced appellee to an aggregate sentence of five years in prison: one year on the firearm specification to be served consecutively to a prison sentence of four years on the count of drug trafficking, a concurrent prison sentence of 18 months in prison for having a weapon while under disability, and a concurrent prison sentence of nine months for drug possession.

{¶ 5} In this appeal, the state raises one assignment of error:

> The trial court erred in finding the indefinite sentence required under S.B. 201 to be unconstitutional.

II. LAW AND ARGUMENT

A. THE APPEAL IS RIPE FOR REVIEW

{¶ 6} The Ohio Revised Code provides the state the right to appeal a sentence if it is contrary to law. R.C. 2953.08(B)(2). A sentence that fails to impose a mandatory provision is contrary to law. *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 21, *State v. Bass*, 10th Dist. Franklin Nos. 14AP-992 and 14AP-993, 2015-Ohio-3979, ¶ 21, *State v. Robinson,* 8th Dist. Cuyahoga No. 85207, 2005-Ohio-5132, ¶ 27.

B. STANDARD OF REVIEW FOR CONSTITUTIONALITY OF A STATUTE

{¶ 7} In this case, by adopting the *Oneal* opinion, the trial court found the Reagan Tokes Law unconstitutional because it violates the doctrine of separation of powers and the constitutional requirements of due process. In reviewing a claim of unconstitutionality, this court is to give a presumption of constitutionality to the

statute enacted by the legislature. *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 25. To find that a statute is unconstitutional, courts must determine "'beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible.'" *State v. Noling*, 149 Ohio St.3d 327, 2016-Ohio-8252, 75 N.E.3d 141, ¶ 10, quoting, *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59 (1955), paragraph one of the syllabus. Further, we are to resolve doubts regarding the constitutionality in favor of the statute. *State v. Mason*, 153 Ohio St.3d 476, 2018-Ohio-1462, 108 N.E.3d 56, ¶ 5, quoting *State v. Gill*, 63 Ohio St.3d 53, 55, 548 N.E.2d 1200 (1992).

C. THE REAGAN TOKES LAW IS CONSTITUTIONAL BASED ON ARGUMENTS RAISED ON APPEAL

1. RELEVANT PROVISIONS OF REAGAN TOKES LAW

{¶ 8} The Reagan Tokes Law, effective March 22, 2019, amended 50 sections of the revised code and adopted four new sections. R.C. 2901.011. In general, the law provides that first-degree and second-degree felonies not already carrying a life sentence are subject to an indefinite sentencing scheme. Specifically, when imposing prison terms for offenders with first- or second-degree felony offenses, sentencing courts are to impose an indefinite sentence, imposing a stated minimum sentence as provided in R.C. 2929.14(A)(2)(a) and an accompanying maximum term as provided in R.C. 2929.144.

{¶ 9} Once an offender serves the required minimum term of incarceration, the law provides that the offender is presumed to be released. R.C. 2967.271(B).

However, the presumption of release may be rebutted by the DRC and the DRC may maintain the offender in custody for a reasonable period of time, not to exceed the maximum term of incarceration imposed by the sentencing court. R.C. 2967.271(D). The statute provides that the presumption of release may be overcome only if the DRC holds a hearing and finds that one or more of the following apply:

> (1) (a) During the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff of a state correctional institution or its inmates, or physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated, [and]
>
> (b) The offender's behavior while incarcerated, including, but not limited to the infractions and violations specified in division (C)(1)(a) of this section demonstrate that the offender continues to pose a threat to society.
>
> (2) Regardless of the security level in which the offender is classified at the time of the hearing, the offender has been placed by the department in extended restrictive housing at any time within the year preceding the date of the hearing.
>
> (3) At the time of the hearing, the offender is classified by the department as a security level three, four, or five, or at a higher security level.

R.C. 2967.271(C)(1), (2), and (3).

2. REAGAN TOKES LAW DOES NOT VIOLATE THE DOCTRINE OF SEPARATION OF POWERS

{¶ 10} In adopting the *Oneal* opinion, the trial court implicitly determined that the Reagan Tokes Law violates the separation of powers. Simmons argues that a separation of powers violation occurs because the Reagan Tokes Law creates a

sentencing system in which the DRC imposes additional time to be served by the offender.[1] However, under the Reagan Tokes Law, the sentencing court imposes both a minimum and maximum term of incarceration and prohibits the DRC from maintaining custody of the offender past the maximum sentence imposed. This system does not violate the doctrine of separation of powers nor does it allow for the DRC to impose greater sanctions than those imposed by the sentencing court. *State v. Wilburn*, 8th Dist. Cuyahoga No. 109507, 2021-Ohio-578, ¶ 27

{¶ 11} Under our form of government, the separation-of-powers doctrine "recognizes that the executive, legislative, and judicial branches of our government have their own unique powers and duties that are separate and apart from the others." *State v. Thompson*, 92 Ohio St.3d 584, 586, 752 N.E.2d 276 (2001). As to the separation-of-powers doctrine, the legislature has the preeminent role in determining sentencing schemes. "[I]t is among the admitted legislative powers to define crimes; to prescribe the mode of procedure for their punishment; to fix by law the kind and manner of punishment, and to provide such disciplinary regulations for prisoners, not in conflict with the fundamental law, as the legislature deems best." *State ex rel. Atty. Gen. v. Peters*, 43 Ohio St. 629, 647, 4 N.E. 81 (1885).

{¶ 12} The Reagan Tokes Law prescribes that a sentencing court decides a minimum and maximum term of incarceration for offenders committing qualifying

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[1] In addition to his arguments that the Reagan Tokes Law is unconstitutional, Simmons asks that this court to vacate the plea if it sustains the state's assignment of error. However, Simmons did not appeal his conviction or timely file a cross-appeal. As such, we do not consider this argument. App.R. 4, *see State v. Jenkins*, 2018-Ohio-483, 106 N.E.3d 216 (8th Dist.) (Gallagher, J., concurring).

offenses. This sentencing scheme is not functionally different than a sentencing court imposing an indefinite sentence in which parole is a possibility. *See State v. Cochran*, 5th Dist. Licking No. 2019 CA 00122, 2020-Ohio-5329, ¶ 38 (Gwinn, J., dissenting) (explaining indefinite sentencing schemes in Ohio). Once the sentence is imposed, the judicial function of sentencing is complete. The DRC, as part of the executive branch of government, is vested with "absolute" discretion over parole matters. *Woods v. Telb*, 89 Ohio St.3d 504, 512, 2000-Ohio-171, 733, 733 N.E.2d 1103, citing *Peters*.

{¶ 13} The *Oneal* decision adopted by the trial court relied heavily on *State ex rel. Bray v. Russell*, 89 Ohio St.3d 132, 729 N.E.2d 359 (2000), to find the Reagan Tokes Law unconstitutional. In *Bray*, the Ohio Supreme Court found that former R.C. 2967.11, which allowed the DRC to extend the time served by an offender past the maximum term imposed by the court to be unconstitutional. The court stated that "[i]n our constitutional scheme, the judicial power resides in the judicial branch. * * * The determination of guilt in a criminal matter and the sentencing of a defendant convicted of a crime are solely the province of the judiciary." *Id.* at 136. However, the Reagan Tokes Law does not provide the DRC with the ability to increase the term of imprisonment for an offender and may not maintain an offender in prison longer than the maximum time imposed by the sentencing court. R.C. 2967.271(D). The holding in *Bray* is not applicable to the Reagan Tokes Law because it does not provide for the DRC to increase any judicially imposed sentence. *Wilburn*, 8th Dist. Cuyahoga No. 109507, 2021-Ohio-578, at ¶ 24 – 27.

{¶ 14} Further Ohio Supreme Court case law supports this conclusion. In *Woods*, the Ohio Supreme Court considered the constitutionality of R.C. 2967.28, Ohio's postrelease control statute. This section of the Revised Code allows the DRC, through the Adult Parole Authority ("APA"), to maintain a system of postrelease control after an offender is released from prison. It allows the APA to set rules for a released offender and impose sanctions on the offender for violations. This system passed constitutional review because the terms of the postrelease control statute were imposed by the sentencing court. *Woods* at 512.

{¶ 15} Because the Reagan Tokes Law provides that a court impose an indefinite sentence and does not allow the DRC to increase that sentence past the maximum imposed sentence, the trial court erred by finding that it violates the separation of powers, thus unconstitutional.

3. THE REAGAN TOKES LAW DOES NOT VIOLATE AN OFFENDER'S RIGHT TO DUE PROCESS

{¶ 16} The trial court, by adopting the *Oneal* opinion, found that the Reagan Tokes Law violates an offender's right to due process. Simmons argues that the trial court is correct because the Reagan Tokes Law does not provide adequate notice to him as to conduct that will trigger his incarceration past the presumptive release date, that DRC has unfettered discretion to continue and maintain custody of an offender after the presumed release date, and that the law as written does not guarantee a fair hearing.

{¶ 17} The Reagan Tokes Law creates a minimum term of incarceration as part of the indefinite sentence to be imposed, with a presumption of release of the offender after the minimum term is served. The *Oneal* opinion took exception with this provision, finding that the presumed release date created a liberty interest in the sentence and that the procedures in place for the DRC to hold a hearing to maintain custody of the offender violated the due process requirement of the Fourteenth Amendment.

{¶ 18} "When a state creates a liberty interest, the Due Process Clause requires fair procedures for its vindication — and courts will review the application of those constitutionally required procedures." *Swarthout v. Cooke*, 562 U.S. 216, 220, 131 S.Ct. 859, 178 L.Ed.2d 732 (2011). Assuming, without deciding, that Simmons has a cognizable liberty interest in a presumptive minimum term release date, the issue to be determined then is whether or not the Reagan Tokes Law impermissibly infringes on that interest.

{¶ 19} The Reagan Tokes Law provides for sentencing courts to impose an indefinite sentence on offenders committing qualifying offenses. There is no functional difference between these indefinite sentences and those indefinite sentences currently in place and that were common prior to the adoption of sentencing reforms pursuant to S.B. 2. "'Requiring a defendant to remain in prison beyond the presumptive minimum term is akin to the decision to grant or deny parole[,]'" which in Ohio is an executive function that does not involve the judiciary.

Wilburn, 8th Dist. Cuyahoga No. 109507, 2021-Ohio-578, at ¶ 30, quoting *State v. Leet*, 2d Dist. Montgomery No. 28670, 2020-Ohio-4592, ¶ 17.

{¶ 20} In the context of parole proceedings, the United States Supreme Court has found that adequate due process is met for parole determinations when there is an opportunity to be heard and where an offender is provided a statement of the reasons why parole was denied. *Swarthout*, citing *Greenholtz v. Inmates of Neb. Penal & Corr. Complex,* 442 U.S. 1, 16, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979). "The Constitution," the court held, "does not require more." *Id.* The Ohio Supreme Court has held that "the fundamental requisite of due process of law is the opportunity to be heard in a meaningful time and in a meaningful manner." *Woods*, 89 Ohio St.3d at 513, 2000-Ohio-171, 733 N.E.2d 1103, citing *Goldberg v. Kelly*, 397 U.S. 254, 267, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970).

{¶ 21} The Reagan Tokes Law provides due process that comports with constitutional requirements. *Wilburn* at ¶ 36 – 37. Pursuant to R.C. 2967.271(E):

> The [DRC] shall provide notices of hearings to be conducted under division (C) or (D) of this section in the same manner, and to the same persons, as specified in section 2967.12 and Chapter 2930 of the Revised Code with respect to hearings to be conducted regarding the possible release on parole of an inmate.

Further, DRC is constrained in its ability to hold an offender past the minimum term. R.C. 2967.271(C)(1), (2) and (3) set forth very specific factors for the DRC to consider in determining whether an inmate may be imprisoned beyond his minimum release date, thereby limiting its discretion. Inmates are given adequate notice of the conduct that will lead to rule infractions or restrictive housing

assignments, factors that trigger the DRC to extend an inmate's minimum term of incarceration. Ohio Adm. Code 5120-9-06 sets forth inmate rules of conduct. Ohio Adm. Code 5120-9-08 provides detailed disciplinary procedures for inmate rule violations, with a hearing before the Rules Infraction Board and notice to the inmate of the hearing and an opportunity to appeal the decision of the board. Ohio Adm. Code 5120-9-10 sets forth the procedures for when and under what circumstances an inmate may be placed in and/or transferred to a restrictive housing assignment. These provisions of the Reagan Tokes Law provide adequate notice and an opportunity to be heard. *Wilburn* at ¶ 36.

{¶ 22} Contrary to *Oneal,* Hamilton C.P. No. B 1903562, 2019 WL 7670061, and to Simmons's arguments as to the discretion given to the DRC in determining whether an offender has met the criteria listed for continued custody, there is no due process requirement that the statutory scheme must give the decisionmaker a "hierarchy of misconduct" or a "guideline" as to "how each consideration shall be weighed" in determining whether an inmate's term can be continued beyond the minimum term of incarceration. The Ohio Supreme Court has observed that "for as long as parole has existed in Ohio, the executive branch (the APA and its predecessors) has had absolute discretion over that portion of an offender's sentence." *Woods* at 512. We find no reason to distinguish between the exercise of its discretion in determining parole matters and the DRC's discretion in determining whether an offender's minimum term of incarceration should be extended.

III. CONCLUSION

{¶ 23} The Reagan Tokes Law creates an indefinite sentencing system for offenders who commit first-degree and second-degree felony offenses on or after March 22, 2019. The indefinite sentences imposed resemble the system of indefinite sentencing and parole that existed for most felonies prior to the adoption of S.B. 2 in 1996, and that, in fact, still exists for certain felonies. The Reagan Tokes Law does not violate the separation-of-powers doctrine nor does it violate an offender's right to due process. Because the trial court did not impose the sentence in accord with the provisions of the Reagan Tokes Law, we sustain the state's assignment of error, vacate the sentence imposed, and remand this matter to the trial court for resentencing.

{¶ 24} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHELLE J. SHEEHAN, JUDGE

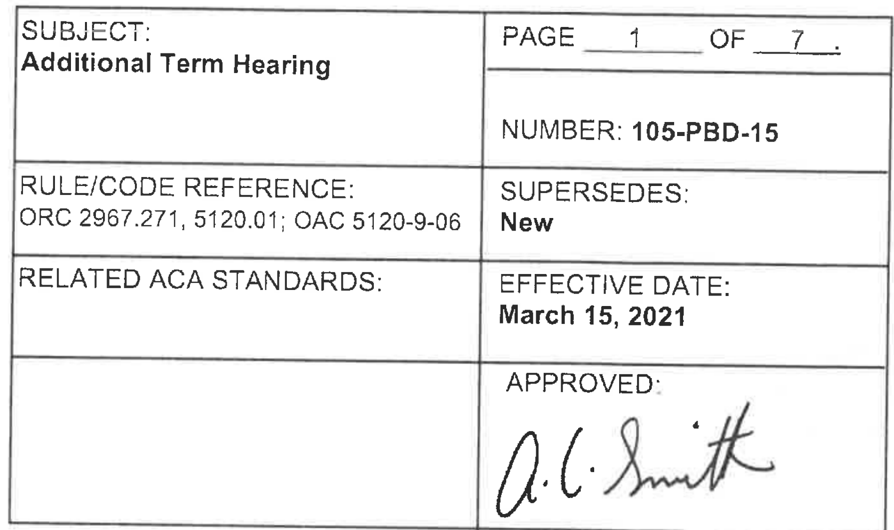
SEAN C. GALLAGHER, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)

MAR 25 2021

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Greg Kercik Deputy

Department of
Rehabilitation & Correction



SUBJECT: **Additional Term Hearing**	PAGE 1 OF 7.
	NUMBER: **105-PBD-15**
RULE/CODE REFERENCE: ORC 2967.271, 5120.01; OAC 5120-9-06	SUPERSEDES: **New**
RELATED ACA STANDARDS:	EFFECTIVE DATE: **March 15, 2021**
	APPROVED: A. C. Smith

I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

II. PURPOSE

The purpose of this policy is to establish a standard procedure for the Ohio Department of Rehabilitation and Correction (ODRC) to carry out its statutory duties efficiently and consistently concerning the Additional Term Hearing Process for persons sentenced under Senate Bill 201 (132nd Ohio General Assembly).

III. APPLICABILITY

This policy applies to all employees of the ODRC. This policy also applies to incarcerated adults sentenced pursuant to the provisions of SB201.

IV. DEFINITIONS

The definitions for the below listed terms can be found at the top of the ODRC policies page on the ODRC Intranet at the following:

Definitions Link

- **Additional Term Hearing**
- **Auto Referral Offenses**
- **Senate Bill 201 (SB201)**
- **Tier 1 Rule Violations**
- **Tier 2 Rule Violations**
- **Tier 3 Rule Violations**

V. POLICY

Pursuant to the authority granted to ODRC under ORC 2967.271, it is the policy of ODRC to establish an Additional Term Hearing process for conducting hearings to determine whether the presumption of release at the expiration of an incarcerated adult's minimum term is rebutted, and if so, to maintain incarceration of an incarcerated adult for an additional period of time, up to the maximum term. Incarcerated adults sentenced under ORC 2967.271 may be subject to an Additional Term Hearing following a finding of guilt of certain Inmate Rules of Conduct by the Rules Infraction Board (RIB) and affirmance of that finding after completion of any RIB appeals or following a recommendation from the Annual Security Review Team.

VI. PROCEDURES

The following procedures may be used more than once during an incarcerated adult's incarceration until the expiration of the maximum term.

A. Notification to Non-Life Felony Indefinite Prison Term Incarcerated Adults

During the reception process, the institution will make available a copy of the Non-Life Felony Indefinite Prison Term Notification (DRC3088) which shall include information regarding the possibility of reduction of the minimum term of incarceration for exceptional conduct or adjustment to incarceration, and information concerning the possibility of Additional Term Hearings to determine rebuttal of presumptive release at the minimum term.

B. Identification and Verification of SB201 Incarcerated Adults and Reporting Conduct

1. Upon a finding of guilt for violations of the Inmate Rules of Conduct by the RIB, the RIB chair will verify that the individual is serving a non-life felony indefinite sentence.

2. If the offense of which the individual is found guilty is a Tier 1 or Tier 2 Rule Violation, the RIB chair shall make an electronic referral of the disposition to the Parole Board on the SB201 Referral for Additional Term Hearing Review (DRC3196).

3. If an incarcerated adult serving a non-life felony indefinite sentence violates any of the Inmate Rules of Conduct less than sixty (60) days prior to the expiration of the individual's current sentence, then the referral of the disposition to the Parole Board will be expedited by the managing officer's administrative assistance (correction warden assistant 2). Referrals shall be made by routing the SB201 Referral for Additional Term Hearing Review (DRC3196) to the ODRC SB201 Additional Term Hearing (DRC.SB201AdditionalTermHearing@odrc.state.oh.us).

C. Annual Security Review Team

1. The Annual Security Review Team may use discretion to refer a case to the Parole Board for a possible Additional Term Hearing based upon concerns regarding any of the following:

   a. The individual's overall behavior demonstrates a poor adjustment to incarceration,

b. The individual has been involved in the conveyance of contraband and was not prosecuted,
c. The individual is an active or disruptive member of a security threat group (STG),
d. The individual has been found guilty of any STG-related offense,
e. The individual is currently classified at Security Level 3 or higher,
f. The individual has more than one (1) conduct report for refusal to attend mandatory programming (i.e., mandatory education or mandatory sex offender programming),
g. The individual's assessment from the Ohio Risk Assessment System (ORAS), if available, indicates they are moderate or high risk, or
h. The individual has been found guilty of a Tier 3 Rule Violation.

2. If the Annual Security Review Team refers an individual to the Parole Board, the Parole Board chair/designee shall review the request and determine if a hearing is warranted. If the Parole Board chair/designee determines that a hearing is warranted, then an Additional Term hearing shall be scheduled by the Parole Board chair/designee. The Parole Board chair's/designee's decision shall be documented on the SB201 Referral for Additional Term Hearing Review (DRC3196). Referrals shall be made by routing the SB201 Referral for Additional Term Hearing Review (DRC3196) to the ODRC SB201 Additional Term Hearing (DRC.SB201AdditionalTermHearing@odrc.state.oh.us).

D. Determination of Available Additional Time

For each non-life felony indefinite sentence that the individual is serving, the Bureau of Sentence Computation (BOSC) shall determine whether the maximum term has been exhausted, and if not, the additional time available for each case. Additional time shall be determined pursuant to ORC 2967.271, Presumptions related to sentence to non-life felony indefinite prison term.

E. Parole Board

1. The Parole Board chair/designee shall review all referrals, confirm that the individual is serving a non-life felony indefinite sentence, and determine whether an Additional Term Hearing is warranted based upon the information presented in the SB201 Referral for Additional Term Hearing Review (DRC3196). The review decision shall be documented, and if warranted, a hearing will be scheduled. The Parole Board chair/designee shall determine the amount of available additional time that may potentially be imposed. If there is no available additional time, then no further action is required.

2. After verifying that additional time is available to be imposed, a hearing shall be scheduled as follows:

   a. Tier 1 Rule Violation Referral – If the individual has been found guilty of a Tier 1 Rule Violation, then a hearing will be scheduled approximately ninety (90) calendar days after the determination that a hearing is warranted.

   b. Other Referrals – If the individual has been referred for an Additional Term Hearing for any reason other than a Tier 1 Rule Violation, the hearing schedule will depend on the time remaining to be served on the current sentence.

i. If more than 270 calendar days remain on the current sentence, the hearing will be scheduled no earlier than the mid-point of the current sentence and no later than 270 calendar days prior to the expiration of the current sentence.

ii. If less than 270 calendar days remain on the current sentence, the hearing will be scheduled within approximately ninety (90) calendar days if sufficient time remains.

c. Before any hearing, notices must be provided as mandated by Ohio law and outlined in ODRC Policy 105-PBD-13, Statutory Notice.

d. Designated Parole Board staff shall provide written notice to the individual of the scheduled hearing (DRC3210) at least thirty (30) calendar days prior to the month in which the hearing is scheduled unless the Parole Board chair/designee gives prior approval for notice to be provided less than thirty (30) calendar days prior to that month.

e. A hearing may be delayed for good cause, including without limitation a determination that the conduct forming the basis of the rule violation has been referred to law enforcement for prosecution as a criminal offense or is the basis for pending criminal charges.

3. Written input received from victims shall be uploaded to OnBase by designated Office of Victim Services staff and/or Parole Board staff.

4. Written input received from any other stakeholders (e.g., from a judge or prosecutor) shall be uploaded to OnBase by designated Parole Board staff.

F. Conducting an Additional Term Hearing

1. Parole Board staff shall not participate in any stage of the hearing process for a particular case when a conflict of interest exists. When there is a potential conflict of interest, the Parole Board chair/designee shall be informed, and the Parole Board chair/designee will decide as to the validity of the conflict of interest and how to proceed.

2. All Additional Term Hearings shall be conducted at the individual's institution in a setting which shall be private, secure, comfortable, and dignified.

3. Before the individual is brought into the hearing room, or prior to the initiation of the video conference hearing, the Parole Board hearing officer/designee conducting the Additional Term Hearing shall review all relevant RIB documents to which they have access and any other information including but not limited to the Annual Security Review Team referral, written input received pursuant to statutory notification, and the result of any specified risk instrument when available, along with the result of any supplemental risk tool specific to the particular type of offense or incarcerated adult. The Parole Board hearing officer cannot consider any conduct that was a violation of law that was prosecuted.

4. The hearing shall be conducted in person or via video conference on the scheduled hearing date. If the hearing cannot be held on the scheduled hearing date, then after the decision to reschedule has been finalized and processed to the Parole Board minutes, the individual will be notified in writing of the new scheduled hearing date using the Additional Term Hearing and Minutes (DRC3272)

5. Attendance at the Additional Term Hearing is limited to Parole Board staff, the incarcerated adult, and if required, special needs facilitators (i.e., an interpreter, translator, or other persons authorized by the Parole Board chair/designee to observe the hearing process). When deemed appropriate or necessary by the Parole Board staff, mental health staff or security personnel may also be present in the hearing room. The sole purpose of the presence of mental health staff shall be to assist an incarcerated adult with understanding the hearing process when the incarcerated adult has such diminished capacity that it renders the individual incapable or substantially unable to understand the process without assistance.

6. Each institutional hearing or interview shall be conducted with the incarcerated adult present in person or via video conference unless the Parole Board chair/designee determines, for good cause shown, that attendance by the incarcerated adult is inappropriate or unwarranted. The reasons for conducting a hearing without the incarcerated adult's attendance shall be documented in the Additional Term Hearing Decision and Minutes (DRC3272). The first instance of an incarcerated adult's refusal to appear does not by itself constitute good cause to conduct a hearing without the incarcerated adult's attendance. Incarcerated adults refusing to appear at an institutional hearing cannot receive an additional term based solely on that refusal. For the first such refusal to appear, the hearing shall be rescheduled to approximately ninety (90) calendar days later. Unit staff shall interview the individual to determine the reasons for the refusal and attempt to resolve the problem. A subsequent refusal to appear may be considered good cause to hold the re-scheduled hearing without the individual present.

   a. If there is not enough time remaining prior to the incarcerated adult's scheduled release date to allow for a ninety (90) day continuance, the hearing will be set for an appropriate date to allow a decision to be made prior to the existing scheduled release date.

7. The Parole Board hearing officer/designee is responsible for completing all required paper or electronic forms. The Parole Board hearing officer should use the Additional Term Hearing Decision and Minutes (DRC3272) as a guide to conducting the hearing and ensuring that all relevant information is reviewed during the Additional Term Hearing. The Parole Board hearing officer should inform the incarcerated adult of the reason(s) for holding the Additional Term Hearing and the potential consequence of a finding that the presumption of release has been rebutted.

8. During the hearing, using the Additional Term Hearing Decision and Minutes (DRC3272), the Parole Board hearing officer should inform the incarcerated adult that they may provide mitigating information, and should briefly explain what information may be mitigating. The individual shall be given an opportunity to provide any mitigating information.

9. After the hearing has concluded, the Parole Board hearing officer shall determine whether the presumption of release has been rebutted, and whether to maintain incarceration for an additional period of time.

10. The Parole Board hearing officer may determine that the presumption has been rebutted only if the Parole Board hearing officer determines that one or more of the following applies:

    a. Regardless of the security level in which the incarcerated adult is classified at the time of the hearing, both of the following apply:

        i. During the individual's incarceration, the individual committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff or member of the incarcerated population of a state correctional institution, or physical harm or the threat of physical harm to the staff or member of the incarcerated population of a state correctional institution, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the individual has not been rehabilitated; and

        ii. The individual's behavior while incarcerated, including but not limited to the infractions and violations described in the paragraph above, demonstrate that the individual continues to pose a threat to society.

    b. Regardless of the security level in which the incarcerated adult is classified at the time of the hearing, the individual has been placed in extended restrictive housing at any time within the year preceding the date of the hearing.

    c. At the time of the hearing, the individual is classified by the department at security level 3 or higher.

11. If the Parole Board hearing officer determines that an additional term is warranted, they will verify the amount of remaining time available as identified in the SENTN screen of DOTS Portal and issue a reasonable additional term of specific days, in day-long increments, of up to 365 days. If the Parole Board hearing officer determines that a term of more than 365 additional days is warranted, the Parole Board hearing officer shall staff the matter with a Chief Hearing Officer for review and approval. The Parole Board hearing officer shall utilize the Additional Term Hearing Grid (DRC3106) when determining the amount of additional time to impose.

12. The Parole Board hearing officer will review the Additional Term Hearing Decision and Minutes (DRC3272) with the incarcerated adult and inform the individual whether the presumption of release at the minimum has been rebutted, and if so, the additional period of incarceration that will be imposed.

13. The decision to impose an additional period of incarceration shall be noted on the Additional Term Hearing Decision and Minutes (DRC3272). Decisions rendered by the Parole Board hearing officer/designee shall be processed and noted in the Parole Board

Minutes within five (5) business days. Parole Board Minutes are considered public record after they are certified by the Parole Board chair.

14. A completed copy of the Additional Term Hearing Decision and Minutes (DRC3272) shall be provided to the incarcerated adult after the decision has been finalized and processed to the Parole Board Minutes.

15. The decision is final and non-appealable. The incarcerated adult shall be notified that the decision is final and non-appealable and shall be notified that future Additional Term Hearings may be held as long as they remain incarcerated and until the expiration of their maximum term.

G. Application of Additional Time by the Bureau of Sentence Computation

1. Once a decision is rendered, the hearing officer shall provide a copy of the Additional Term Hearing Decision and Minutes (DRC3272) to the BOSC Parole Board Section.

2. BOSC shall verify that the individual's non-life felony indefinite maximum prison term allows for application of an additional period of incarceration. If there is sufficient time remaining, BOSC shall apply the additional period noted on the Additional Term Hearing Decision and Minutes (DRC3272) and determine the new expiration date of the incarcerated adult's minimum term. If there is not sufficient time remaining to be served, BOSC shall immediately notify the Parole Board hearing officer/designee.

3. BOSC shall notify the unit management chief at the incarcerated adult's institution, the ODRC Notifications (drc.notifications@odrc.state.oh.us), and the Office of Victim Services of the additional period imposed and the new expected release date.

4. BOSC shall notify the incarcerated adult of the new expected release date.

Referenced ODRC Policies

105-PBD-13 Statutory Notice

Referenced Forms:

Non-Life Felony Indefinite Prison Term Notification Form	DRC3088
Additional Term Hearing Grid	DRC3106
SB201 Referral for Additional Term Hearing Review	DRC3196
Notice to Incarcerated Adult of Additional Term Hearing	DRC3210
Additional Term Hearing Decision and Minutes	DRC3272

The Ohio Constitution (amended 1912)

Article I, Section 5: Trial by jury

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

Article I, Section 10: Trial for crimes; witnesses

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

Article I, Section 16: Redress in courts

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

The United States Constitution

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Fourteenth Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2913.42 | Tampering with records.

Ohio Revised Code / Title 29 Crimes-Procedure / Chapter 2913 Theft and Fraud

Effective: *September 30, 2011* ***Latest Legislation:*** *House Bill 86 - 129th General Assembly*

(A) No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record;

(2) Utter any writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section.

(B)(1) Whoever violates this section is guilty of tampering with records.

(2) Except as provided in division (B)(4) of this section, if the offense does not involve data or computer software, tampering with records is whichever of the following is applicable:

(a) If division (B)(2)(b) of this section does not apply, a misdemeanor of the first degree;

(b) If the writing or record is a will unrevoked at the time of the offense, a felony of the fifth degree.

(3) Except as provided in division (B)(4) of this section, if the offense involves a violation of division (A) of this section involving data or computer software, tampering with records is whichever of the following is applicable:

(a) Except as otherwise provided in division (B)(3)(b), (c), or (d) of this section, a misdemeanor of the first degree;

(b) If the value of the data or computer software involved in the offense or the loss to the victim is one thousand dollars or more and is less than seven thousand five hundred dollars, a felony of the fifth degree;

(c) If the value of the data or computer software involved in the offense or the loss to the victim is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, a felony of the fourth degree;

(d) If the value of the data or computer software involved in the offense or the loss to the victim is one hundred fifty thousand dollars or more or if the offense is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services and the value of the property or services or the loss to the victim is seven thousand five hundred dollars or more, a felony of the third degree.

(4) If the writing, data, computer software, or record is kept by or belongs to a local, state, or federal governmental entity, a felony of the third degree.

Available Versions of this Section

September 30, 2011 – House Bill 86 - 129th General Assembly

Section 2929.11 | Purposes of felony sentencing.

Ohio Revised Code / Title 29 Crimes-Procedure / Chapter 2929 Penalties and Sentencing

Effective: *October 29, 2018* ***Latest Legislation:*** *Senate Bill 66 - 132nd General Assembly*

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

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

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

Available Versions of this Section

September 30, 2011 – House Bill 86 - 129th General Assembly

October 29, 2018 – Amended by Senate Bill 66 - 132nd General Assembly

Section 2929.12 | Seriousness of crime and recidivism factors.

Ohio Revised Code / Title 29 Crimes-Procedure / Chapter 2929 Penalties and Sentencing

Effective: *September 19, 2014* ***Latest Legislation:*** *Senate Bill 143 - 130th General Assembly*

(A) Unless otherwise required by section 2929.13 or 2929.14 of the Revised Code, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct, the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism, and the factors set forth in division (F) of this section pertaining to the offender's service in the armed forces of the United States and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

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

(1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.

(2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.

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

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

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

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

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

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

(9) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

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

(1) The victim induced or facilitated the offense.

(2) In committing the offense, the offender acted under strong provocation.

(3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.

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

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

(1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing; was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code; was under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-release control for a prior offense pursuant to division (B) of section 2967.16 or section 2929.141 of the Revised Code; was under transitional control in connection with a prior offense; or had absconded from the offender's approved community placement resulting in the offender's removal from the transitional control program under section 2967.26 of the Revised Code.

(2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has a history of criminal convictions.

(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

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

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

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

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

(2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.

(3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.

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

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

(F) The sentencing court shall consider the offender's military service record and whether the offender has an emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses.

Available Versions of this Section

September 19, 2014 – Senate Bill 143 - 130th General Assembly

Section 2929.14 | Definite prison terms.

Ohio Revised Code / Title 29 Crimes-Procedure / Chapter 2929 Penalties and Sentencing

Effective: *April 12, 2021* ***Latest Legislation:*** *Senate Bill 256, House Bill 136 - 133rd General Assembly*

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(9), (B)(10), (B)(11), (E), (G), (H), (J), or (K) of this section or in division (D)(6) of section 2919.25 of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a prison term that shall be one of the following:

(1)(a) For a felony of the first degree committed on or after the effective date of this amendment, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of three, four, five, six, seven, eight, nine, ten, or eleven years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.

(b) For a felony of the first degree committed prior to the effective date of this amendment, the prison term shall be a definite prison term of three, four, five, six, seven, eight, nine, ten, or eleven years.

(2)(a) For a felony of the second degree committed on or after the effective date of this amendment, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code, except that if the

section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.

(b) For a felony of the second degree committed prior to the effective date of this amendment, the prison term shall be a definite term of two, three, four, five, six, seven, or eight years.

(3)(a) For a felony of the third degree that is a violation of section 2903.06, 2903.08, 2907.03, 2907.04, 2907.05, 2907.321, 2907.322, 2907.323, or 3795.04 of the Revised Code or that is a violation of section 2911.02 or 2911.12 of the Revised Code if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of section 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code, the prison term shall be a definite term of twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.

(b) For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be a definite term of nine, twelve, eighteen, twenty-four, thirty, or thirty-six months.

(4) For a felony of the fourth degree, the prison term shall be a definite term of six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be a definite term of six, seven, eight, nine, ten, eleven, or twelve months.

(B)(1)(a) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a

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96); 146 v S 269 (Eff 7-1-96); S 166 (Eff 10-17-96); 146 v H ℇff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 122 (Eff -3-2000); 148 v S 107 (Eff ·17-2000); 148 v H 528 (Eff -22-2001); 149 v H 485 (Eff 8-2002; 149 v S 123, § 1, eff. 03; 150 v S 5, § 3, eff. 1-1-04; ;0 v H 163, § 1, eff. 9-23-04; 151 v H 95, § 1, eff. 8-3-06.

·73 (150 v —) read as follows:
'29.01, 2929.13, and 2929.14 of
n this act as composites of the
H.B. 52 and Am. Sub. H.B. 163
° ° ° The General Assembly,
ˊision (B) of section 1.52 of the
: to be harmonized if reasonably
, finds that the composites are
ıs in effect prior to the effective
n this act.
ion 4 of S.B. 123.
123 (149 v —) following RC

:: § 2929.13 (139 v S 199), -96.
(150 v —) read as follows:
2929.13 of the Revised Code is
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327 and Sub. H.B. 485 of the
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of this act.
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; (149 v —) read as follows:
the Revised Code is presented
:tion as amended by Am. H.B.
B. 107, Am. S.B. 142, and Am.
ıl Assembly. Sections 2950.01,
l Code are presented in this act
ıended by both Sub. H.B. 393
24th General Assembly. The
nciple stated in division (B) of
that amendments are to be

harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the section as presented in this act.

The provisions of § 3 of SB 222 (148 v —) read, in part, as follows:

SECTION 3. ° ° ° Section 2929.13 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. S.B. 22, Am. Sub. S.B. 107 and Am. S.B. 142 of the 123rd General Assembly, with the new language of none of the acts shown in capital letters. ° ° ° This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

CASE NOTES AND OAG

Constitutionality

Trial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences. State v. Foster, 2006 Ohio LEXIS 516, 2006 Ohio 856 (2006).

§ 2929.14 Basic prison terms.

See syllabus paragraphs from State v. Foster (2006 Ohio 856) set forth in the "Case Notes and OAG" section below.

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

(1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, or ten years.

(2) For a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years.

(3) For a felony of the third degree, the prison term shall be one, two, three, four, or five years.

(4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

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

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

(2) The court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others.

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

(D)(1)(a) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.141 [2941.14.1], 2941.144 [2941.14.4], or 2941.145 [2941.14.5] of the Revised Code, the court shall impose on the offender one of the following prison terms:

(i) A prison term of six years if the specification is of the type described in section 2941.144 [2941.14.4] of the Revised Code that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony;

(ii) A prison term of three years if the specification is of the type described in section 2941.145 [2941.14.5] of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(iii) A prison term of one year if the specification is of the type described in section 2941.141 [2941.14.1] of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

(b) If a court imposes a prison term on an offender under division (D)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(1)(a) of this section for felonies committed as part of the same act or transaction.

(c) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of section 2923.161 [2923.16.1] of the Revised Code or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in section 2941.146 [2941.14.6] of the Revised Code that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of section 2923.161 [2923.16.1] of the Revised Code or for the other felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of five years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (D)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender

under division (D)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (D)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.1411 [2941.14.11] of the Revised Code that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a prison term of two years. The prison term so imposed shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(1)(d) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term under division (D)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (D)(1)(d) of this section.

(e) The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.12 or 2923.123 [2923.12.3] of the Revised Code. The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.13 of the Revised Code unless all of the following apply:

(i) The offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree.

(ii) Less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(f) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in section 2941.1412 [2941.14.12] of the Revised Code that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in section 2935.01 of the Revised Code or a corrections officer as defined in section 2941.1412 [2941.14.12] of the Revised Code, the court, after imposing a prison term on the offender for the felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (D)(1)(f) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (D)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (D)(1)(a) or (c) of this section relative to the same offense.

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

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 [2941.14.9] of the Revised Code that the offender is a repeat violent offender.

(ii) The offense of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(iii) The court imposes the longest prison term for the offense that is not life imprisonment without parole.

(iv) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are inadequate to punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism.

(v) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are demeaning to the seriousness of the offense, because one or more of the factors under section 2929.12 of the Revised Code indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that section indicating that the offender's conduct is less serious than conduct normally constituting the offense.

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

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 [2941.14.9] of the Revised Code that the offender is a repeat violent offender.

(ii) The offender within the preceding twenty years has been convicted of or pleaded guilty to three or more offenses described in division (DD)(1) of section 2929.01 of the Revised Code, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.

(iii) The offense or offenses of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the

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court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

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

(d) A sentence imposed under division (D)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20 or section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.

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

(3)(a) Except when an offender commits a violation of section 2903.01 or 2907.02 of the Revised Code and the penalty imposed for the violation is life imprisonment or commits a violation of section 2903.02 of the Revised Code, if the offender commits a violation of section 2925.03 or 2925.11 of the Revised Code and that section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, if the offender commits a felony violation of section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161 [3719.16.1], 4729.37, or 4729.61, division (C) or (D) of section 3719.172 [3719.17.2], division (C) of section 4729.51, or division (J) of section 4729.54 of the Revised Code that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in section 2941.1410 [2941.14.10] of the Revised Code charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of section 2907.02 of the Revised Code and, had the offender completed the violation of section 2907.02 of the Revised Code that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of section 2907.02 of the Revised Code, the court shall impose upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant to section 2929.20 or Chapter 2967. or 5120. of the Revised Code.

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

(4) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the sentencing court shall impose upon the offender a mandatory prison term in accordance with that division. In addition to the mandatory prison term, if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced for a third degree felony OVI offense, the sentencing court may sentence the offender to an additional prison term of any duration specified in division (A)(3) of this section. In either case, the additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the mandatory prison term. The total of the additional prison term imposed under division (D)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense. If the court imposes an additional prison term under division (D)(4) of this section, the offender shall serve the additional prison term after the offender has served the mandatory prison term required for the offense. In addition to the mandatory prison term or mandatory and additional prison term imposed as described in division (D)(4) of this section, the court also may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code and the court imposes a mandatory term of local incarceration, the court may impose a prison term as described in division (A)(1) of that section.

(5) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1413 [2941.14.13] of the Revised Code that charges that the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, the court shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (D)(5) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(5) of this section for felonies committed as part of the same act.

(6) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1414 [2941.14.14] of the Revised Code that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1414 [2941.14.14] of the Revised Code, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (D)(6) of this section, the prison term shall not be reduced

pursuant to section 2929.20, section 2967.193 [2967.19.3], or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(6) of this section for felonies committed as part of the same act.

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

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

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

(2) If an offender who is an inmate in a jail, prison, or other residential detention facility violates section 2917.02, 2917.03, 2921.34, or 2921.35 of the Revised Code, if an offender who is under detention at a detention facility commits a felony violation of section 2923.131 [2923.13.1] of the Revised Code, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of section 2921.34 of the Revised Code, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.

(3) If a prison term is imposed for a violation of division (B) of section 2911.01 of the Revised Code, a violation of division (A) of section 2913.02 of the Revised Code in which the stolen property is a firearm or dangerous ordnance, or a felony violation of division (B) of section 2921.331 [2921.33.1] of the Revised Code, the offender shall serve that prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

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

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

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

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

(6) When consecutive prison terms are imposed pursuant to division (E)(1), (2), (3), (4), or (5) of this section, the term to be served is the aggregate of all of the terms so imposed.

(F)(1) If a court imposes a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division. If a court imposes a sentence including a prison term of a type described in this division on or after the effective date of this amendment, the failure of a court to include a post-release control requirement in the sentence pursuant to this division does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 [2929.19.1] of the Revised Code applies

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if, prior to the effective date of this amendment, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(2) If a court imposes a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (F)(1) of this section, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division, if the parole board determines that a period of post-release control is necessary. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to the effective date of this amendment, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(G) If a person is convicted of or pleads guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense and, in relation to that offense, the offender is adjudicated a sexually violent predator, the court shall impose sentence upon the offender in accordance with section 2971.03 of the Revised Code, and Chapter 2971. of the Revised Code applies regarding the prison term or term of life imprisonment without parole imposed upon the offender and the service of that term of imprisonment.

(H) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a prison term or term of imprisonment under this section, sections 2929.02 to 2929.06 of the Revised Code, section 2971.03 of the Revised Code, or any other provision of law, section 5120.163 [5120.16.3] of the Revised Code applies regarding the person while the person is confined in a state correctional institution.

(I) If an offender who is convicted of or pleads guilty to a felony that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.142 [2941.14.2] of the Revised Code that charges the offender with having committed the felony while participating in a criminal gang, the court shall impose upon the offender an additional prison term of one, two, or three years.

(J) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.143 [2941.14.3] of the Revised Code that charges the offender with having committed the offense in a school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years consecutively to and prior to the prison term imposed for the underlying offense.

(K) At the time of sentencing, the court may recommend the offender for placement in a program of shock incarceration under section 5120.031 [5120.03.1] of the Revised Code or for placement in an intensive program prison under section 5120.032 [5120.03.2] of the Revised Code, disapprove placement of the offender in a program of shock incarceration or an intensive program prison of that nature, or make no recommendation on placement of the offender. In no case shall the department of rehabilitation and correction place the offender in a program or prison of that nature unless the department determines as specified in section 5120.031 [5120.03.1] or 5120.032 [5120.03.2] of the Revised Code, whichever is applicable, that the offender is eligible for the placement.

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

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison, and if the offender is subsequently placed in the recommended program or prison, the department shall notify the court of the placement and shall include with the notice a brief description of the placement.

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

If the court does not make a recommendation under this division with respect to an offender and if the department determines as specified in section 5120.031 [5120.03.1] or 5120.032 [5120.03.2] of the Revised Code, whichever is applicable, that the offender is eligible for placement in a program or prison of that nature, the department shall screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If there is an available program of shock incarceration or an intensive program prison for which the offender is suited, the department shall notify the court of the proposed placement of the offender as specified in section 5120.031 [5120.03.1] or 5120.032 [5120.03.2] of the Revised Code and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

HISTORY: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 88 (Eff 9-3-96); 146 v H 445 (Eff 9-3-96); 146 v H 154 (Eff 10-4-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 151 (Eff 9-16-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 2 (Eff 1-1-99); 148 v S 1 (Eff 8-6-99); 148 v H 29 (Eff 10-29-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 130. Eff 4-7-2003; 149 v S 123, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04†; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 137, § 1, eff. 7-11-06; 151 v H 137, § 3, eff. 8-3-06.

† Section 3, H.B. 12, Acts 2004, purported to amend the version of RC § 2929.14 as amended by S.B. 123 (149 v —), which took effect on January 1, 2004. However, H.B. 12, Acts 2004 was approved January 8, 2004, and became effective April 8, 2004.

See provisions of § 5 of 151 v H 137 following RC § 2929.191.

The effective date is set by § 7 of 151 v H 137.

The provisions of § 3 of H.B. 473 (150 v —) read as follows:

SECTION 3. * * * Sections 2929.01, 2929.13, and 2929.14 of the Revised Code are presented in this act as composites of the sections as amended by both Sub. H.B. 52 and Am. Sub. H.B. 163 of the 125th General Assembly. * * * The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.

The provisions of § 10, H.B. 12 (150 v —), read as follows:

SECTION 10. If any provision of sections 1547.69, 2911.21,

Section 2929.144 | Determination of maximum prison term for qualifying felonies of the first or second degree.

Ohio Revised Code / Title 29 Crimes-Procedure / Chapter 2929 Penalties and Sentencing

Effective: *March 22, 2019* ***Latest Legislation:*** *Senate Bill 201 - 132nd General Assembly*

(A) As used in this section, "qualifying felony of the first or second degree" means a felony of the first or second degree committed on or after the effective date of this section .

(B) The court imposing a prison term on an offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree shall determine the maximum prison term that is part of the sentence in accordance with the following:

(1) If the offender is being sentenced for one felony and the felony is a qualifying felony of the first or second degree, the maximum prison term shall be equal to the minimum term imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code plus fifty per cent of that term.

(2) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that some or all of the prison terms imposed are to be served consecutively, the court shall add all of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree that are to be served consecutively and all of the definite terms of the felonies that are not qualifying felonies of the first or second degree that are to be served consecutively, and the maximum term shall be equal to the total of those terms so added by the court plus fifty per cent of the longest minimum term or definite term for the most serious felony being sentenced.

(3) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that all of the prison terms imposed are to run concurrently, the maximum term shall be equal to the longest of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree for which the sentence is being imposed plus fifty per cent of the longest minimum term for the most serious qualifying felony being sentenced.

(4) Any mandatory prison term, or portion of a mandatory prison term, that is imposed or to be imposed on the offender under division (B), (G), or (H) of section 2929.14 of the Revised Code or under any other provision of the Revised Code, with respect to a conviction of or plea of guilty to a specification, and that is in addition to the sentence imposed for the underlying offense is separate from the sentence being imposed for the qualifying first or second degree felony committed on or after the effective date of this section and shall not be considered or included in determining a maximum prison term for the offender under divisions (B)(1) to (3) of this section.

(C) The court imposing a prison term on an offender pursuant to division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree shall sentence the offender, as part of the sentence, to the maximum prison term determined under division (B) of this section. The court shall impose this maximum term at sentencing as part of the sentence it imposes under section 2929.14 of the Revised Code, and shall state the minimum term it imposes under division (A)(1)(a) or (2)(a) of that section, and this maximum term, in the sentencing entry.

(D) If a court imposes a prison term on an offender pursuant to division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree, section 2967.271 of the Revised Code applies with respect to the offender's service of the prison term.

Available Versions of this Section

March 23, 2015 – House Bill 234 - 130th General Assembly

March 22, 2019 – Enacted by Senate Bill 201 - 132nd General Assembly

2967.05 Release of prisoner in imminent danger of death; return to institution from which released

Upon recommendation of the director of rehabilitation and correction, accompanied by a certificate of the attending physician that a prisoner or convict is in imminent danger of death, the governor may order his release as if on parole, reserving the right to return him to the institution pursuant to this section. If, subsequent to his release, his health improves so that he is no longer in imminent danger of death, he shall be returned, by order of the governor, to the institution from which he was released. If he violates any rules or conditions applicable to him, he may be returned to an institution under the control of the department of rehabilitation and correction.

HISTORY: 1994 H 571, eff. 10-6-94
1982 H 269, § 4, eff. 7-1-83; 1982 S 199; 132 v S 394

2967.06 Warrants of pardon and commutation

Warrants of pardon and commutation shall be issued in triplicate, one to be given to the convict, one to be filed with the clerk of the court of common pleas in whose office the sentence is recorded, and one to be filed with the head of the institution in which the convict was confined, in case he was confined.

All warrants of pardon, whether conditional or otherwise, shall be recorded by said clerk and the officer of the institution with whom such warrants and copies are filed, in a book provided for that purpose, which record shall include the indorsements on such warrants. A copy of such a warrant with all indorsements, certified by said clerk under seal, shall be received in evidence as proof of the facts set forth in such copy with indorsements.

HISTORY: 130 v Pt 2, H 28, eff. 3-18-65

2967.07 Application for executive pardon, commutation, or reprieve

All applications for pardon, commutation of sentence, or reprieve shall be made in writing to the adult parole authority. Upon the filing of such application, or when directed by the governor in any case, a thorough investigation into the propriety of granting a pardon, commutation, or reprieve shall be made by the authority, which shall report in writing to the governor a brief statement of the facts in the case, together with the recommendation of the authority for or against the granting of a pardon, commutation, or reprieve, the grounds therefor and the records or minutes relating to the case.

HISTORY: 130 v Pt 2, H 28, eff. 3-18-65

2967.08 Reprieve to a person under sentence of death

The governor may grant a reprieve for a definite time to a person under sentence of death, with or without notices or application.

HISTORY: 130 v Pt 2, H 28, eff. 3-18-65

2967.09 Warrant of reprieve

On receiving a warrant of reprieve, the head of the institution, sheriff, or other officer having custody of the person reprieved, shall file it forthwith with the clerk of the court of common pleas in which the sentence is recorded, who shall thereupon record the warrant in the journal of the court.

HISTORY: 130 v Pt 2, H 28, eff. 3-18-65

2967.10 Confinement of prisoner during reprieve

When the governor directs in a warrant of reprieve that the prisoner be confined in a state correctional institution for the time of the reprieve or any part thereof, the sheriff or other officer having the prisoner in custody shall convey him to the state correctional institution in the manner provided for the conveyance of convicts, and the warden shall receive the prisoner and warrant and proceed as the warrant directs. At the expiration of the time specified in the warrant for the confinement of the prisoner in the state correctional institution, the warden shall deal with him according to the sentence as originally imposed, or as modified by executive clemency as shown by a new warrant of pardon, commutation, or reprieve executed by the governor.

HISTORY: 1994 H 571, eff. 10-6-94
130 v Pt 2, H 28, eff. 3-18-65

2967.11 Administrative extension of prison term for offenses committed during term

(A) As used in this section, "violation" means an act that is a criminal offense under the law of this state or the United States, whether or not a person is prosecuted for the commission of the offense.

(B) As part of a prisoner's sentence, the parole board may punish a violation committed by the prisoner by extending the prisoner's stated prison term for a period of fifteen, thirty, sixty, or ninety days in accordance with this section. The parole board may not extend a prisoner's stated prison term for a period longer than one-half of the stated prison term's duration for all violations occurring during the course of the prisoner's stated prison term, including violations occurring while the offender is serving extended time under this section or serving a prison term imposed for a failure to meet the conditions of a post-release control sanction imposed under section 2967.28 of the Revised Code. If a prisoner's stated prison term is extended under this section, the time by which it is so extended shall be referred to as "bad time."

(C) The department of rehabilitation and correction shall establish a rules infraction board in each state correctional institution. When a prisoner in an institution is alleged by any person to have committed a violation, the institutional investigator or other appropriate official promptly shall investigate the alleged violation and promptly shall report the investigator's or other appropriate official's findings to the rules infraction board in that institution. The rules infraction board in that institution shall hold a hearing on the allegation to determine, for purposes of the parole board's possible extension of the prisoner's stated prison term under this section, whether there is evidence of a violation. At the hearing, the accused prisoner shall have the right to testify and be assisted by a member of the staff of the institution who is designated pursuant to rules adopted by the department to assist the prisoner in presenting a defense before the board in the hearing. The rules infraction board shall make an audio tape of the hearing. The board shall report its finding to the head of the institution within ten days after the date of the hearing. If the board finds any evidence of a violation, it also shall include with its finding a recommendation regarding a period of time, as specified in division (B) of this section, by which the prisoner's stated prison term should be extended as a result of the violation. If the board does not so find, the board shall terminate the matter.

(D) Within ten days after receiving from the rules infraction board a finding and a recommendation that the prisoner's stated prison term be extended, the head of the institution shall review the finding and determine whether the prisoner committed a violation. If the head of the institution determines by clear and convincing evidence that the prisoner committed a violation and concludes that the prisoner's stated prison term should be extended as a result of the violation, the head of the institution shall report the determination in a finding to the parole board within ten days after making the determination and shall include with the finding a

recommendation regarding the length of the extension of the stated prison term. If the head of the institution does not determine by clear and convincing evidence that the prisoner committed the violation or does not conclude that the prisoner's stated prison term should be extended, the head of the institution shall terminate the matter.

(E) Within thirty days after receiving a report from the head of an institution pursuant to division (D) of this section containing a finding and recommendation, the parole board shall review the findings of the rules infraction board and the head of the institution to determine whether there is clear and convincing evidence that the prisoner committed the violation and, if so, to determine whether the stated prison term should be extended and the length of time by which to extend it. If the parole board determines that there is clear and convincing evidence that the prisoner committed the violation and that the prisoner's stated prison term should be extended, the board shall consider the nature of the violation, other conduct of the prisoner while in prison, and any other evidence relevant to maintaining order in the institution. After considering these factors, the board shall extend the stated prison term by either fifteen, thirty, sixty, or ninety days for the violation, subject to the maximum extension authorized by division (B) of this section. The board shall act to extend a stated prison term no later than sixty days from the date of the finding by the rules infraction board pursuant to division (C) of this section.

(F) If an accusation of a violation is made within sixty days before the end of a prisoner's stated prison term, the rules infraction board, head of the institution, and parole board shall attempt to complete the procedures required by divisions (C) to (E) of this section before the prisoner's stated prison term ends. If necessary, the accused prisoner may be held in the institution for not more than ten days after the end of the prisoner's stated prison term pending review of the violation and a determination regarding an extension of the stated prison term.

(G) This section does not preclude the department of rehabilitation and correction from referring a criminal offense allegedly committed by a prisoner to the appropriate prosecuting authority or from disciplining a prisoner through the use of disciplinary processes other than the extension of the prisoner's stated prison term.

(H) Pursuant to section 111.15 of the Revised Code, the department of rehabilitation and correction shall adopt rules establishing standards and procedures for implementing the requirements of this section and for designating state correctional institution staff members to assist prisoners in hearings conducted under division (C) of this section.

HISTORY: 1996 S 269, eff. 7-1-96
1995 S 2, eff. 7-1-96

2967.12 Notice of pendency of pardon, commutation, parole, termination or transfer of control; rights of crime victim or representative

(A) Except as provided in division (G) of this section, at least three weeks before the adult parole authority recommends any pardon or commutation of sentence, or grants any parole, the authority shall send a notice of the pendency of the pardon, commutation, or parole, setting forth the name of the person on whose behalf it is made, the offense of which the person was convicted, the time of conviction, and the term of the person's sentence, to the prosecuting attorney and the judge of the court of common pleas of the county in which the indictment against the person was found. If there is more than one judge of that court of common pleas, the authority shall send the notice to the presiding judge.

(B) If a request for notification has been made pursuant to section 2930.16 of the Revised Code, the adult parole authority also shall give notice to the victim or the victim's representative prior to recommending any pardon or commutation of sentence for, or granting any parole to, the person. The authority shall provide the notice at the same time as the notice required by division (A) of this section and shall include in the notice the information required to be set forth in that notice. The notice also shall inform the victim or the victim's representative that the victim or representative may send a written statement relative to the victimization and the pending action to the adult parole authority and that, if the authority receives any written statement prior to recommending a pardon or commutation or granting a parole for a person, the authority will consider the statement before it recommends a pardon or commutation or grants a parole. If the person is being considered for parole, the notice shall inform the victim or the victim's representative that a full board hearing of the parole board may be held and that the victim or victim's representative may contact the office of victims' services for further information.

(C) When notice of the pendency of any pardon, commutation of sentence, or parole has been given as provided in division (A) of this section and a hearing on the pardon, commutation, or parole is continued to a date certain, the authority shall give notice by mail of the further consideration of the pardon, commutation, or parole to the proper judge and prosecuting attorney at least ten days before the further consideration. When notice of the pendency of any pardon, commutation, or parole has been given as provided in division (B) of this section and the hearing on it is continued to a date certain, the authority shall give notice of the further consideration to the victim or the victim's representative in accordance with section 2930.03 of the Revised Code.

(D) In case of an application for the pardon or commutation of sentence of a person sentenced to capital punishment, the governor may modify the requirements of notification and publication if there is not sufficient time for compliance with the requirements before the date fixed for the execution of sentence.

(E) If an offender is serving a prison term imposed under division (A)(3) of section 2971.03 of the Revised Code and if the parole board terminates its control over the offender's service of that term pursuant to section 2971.04 of the Revised Code, the parole board immediately shall provide written notice of its termination of control or the transfer of control to the entities and persons specified in section 2971.04 of the Revised Code.

(F) The failure of the adult parole authority to comply with the notice provisions of division (A), (B), or (C) of this section or the failure of the parole board to comply with the notice provisions of division (E) of this section do not give any rights or any grounds for appeal or post-conviction relief to the person serving the sentence.

(G) Divisions (A), (B), and (C) of this section do not apply to any release of a person that is of the type described in division (B)(2)(b) of section 5120.031 of the Revised Code.

HISTORY: 1996 H 180, eff. 1-1-97
1995 S 2, eff. 7-1-96; 1994 S 186, eff. 10-12-94; 1990 S 258, eff. 11-20-90; 1987 S 6, § 3; 1984 S 172, § 1, 3; 130 v Pt 2, H 28

2967.121 Notice to prosecuting attorney of pending release of certain prisoners

(A) Subject to division (C) of this section, at least two weeks before any convict who is serving a sentence for committing a felony of the first, second, or third degree is released from confinement in any state correctional institution pursuant to a pardon, commutation of sentence, parole, or completed prison term, the adult parole authority shall send notice of the release to the prosecuting attorney of the county in which the indictment of the convict was found.

(B) The notice required by division (A) of this section may be contained in a weekly list of all felons of the first, second, or third degree who are scheduled for release. The notice shall contain all of the following:

(1) The name of the convict being released;

Section 2967.271 | Presumptions related to sentence to non-life felony indefinite prison term.

Ohio Revised Code / Title 29 Crimes-Procedure / Chapter 2967 Pardon; Parole; Probation

Effective: *March 22, 2019* ***Latest Legislation:*** *Senate Bill 201 - 132nd General Assembly*

(A) As used in this section:

(1) "Offender's minimum prison term" means the minimum prison term imposed on an offender under a non-life felony indefinite prison term, diminished as provided in section 2967.191 or 2967.193 of the Revised Code or in any other provision of the Revised Code, other than division (F) of this section, that provides for diminution or reduction of an offender's sentence.

(2) "Offender's presumptive earned early release date" means the date that is determined under the procedures described in division (F) of this section by the reduction, if any, of an offender's minimum prison term by the sentencing court and the crediting of that reduction toward the satisfaction of the minimum term.

(3) "Rehabilitative programs and activities" means education programs, vocational training, employment in prison industries, treatment for substance abuse, or other constructive programs developed by the department of rehabilitation and correction with specific standards for performance by prisoners.

(4) "Security level" means the security level in which an offender is classified under the inmate classification level system of the department of rehabilitation and correction that then is in effect.

(5) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(B) When an offender is sentenced to a non-life felony indefinite prison term, there shall be a presumption that the person shall be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier.

(C) The presumption established under division (B) of this section is a rebuttable presumption that the department of rehabilitation and correction may rebut as provided in this division. Unless the department rebuts the presumption, the offender shall be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier. The department may rebut the presumption only if the department determines, at a hearing, that one or more of the following applies:

(1) Regardless of the security level in which the offender is classified at the time of the hearing, both of the following apply:

(a) During the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff of a state correctional institution or its inmates, or physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated.

(b) The offender's behavior while incarcerated, including, but not limited to the infractions and violations specified in division (C)(1)(a) of this section, demonstrate that the offender continues to pose a threat to society.

(2) Regardless of the security level in which the offender is classified at the time of the hearing, the offender has been placed by the department in extended restrictive housing at any time within the year preceding the date of the hearing.

(3) At the time of the hearing, the offender is classified by the department as a security level three, four, or five, or at a higher security level.

(D)(1) If the department of rehabilitation and correction, pursuant to division (C) of this section, rebuts the presumption established under division (B) of this section, the department may maintain the offender's incarceration in a state correctional institution under the sentence after the expiration of the offender's minimum prison term or, for offenders who have a presumptive earned early release date, after the offender's presumptive earned early release date. The department may maintain the offender's incarceration under this division for an additional period of incarceration determined by the department. The additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender's maximum prison term.

(2) If the department maintains an offender's incarceration for an additional period under division (D)(1) of this section, there shall be a presumption that the offender shall be released on the expiration of the offender's minimum prison term plus the additional period of incarceration specified by the department as provided under that division or, for offenders who have a presumptive earned early release date, on the expiration of the additional period of incarceration to be served after the offender's presumptive earned early release date that is specified by the department as provided under that division. The presumption is a rebuttable presumption that the department may rebut, but only if it conducts a hearing and makes the determinations specified in division (C) of this section, and if the department rebuts the presumption, it may maintain the offender's incarceration in a state correctional institution for an additional period determined as specified in division (D)(1) of this section. Unless the department rebuts the presumption at the hearing, the offender shall be released from service of the sentence on the expiration of the offender's minimum prison term plus the additional period of incarceration specified by the department or, for offenders who have a presumptive earned early release date, on the

expiration of the additional period of incarceration to be served after the offender's presumptive earned early release date as specified by the department.

The provisions of this division regarding the establishment of a rebuttable presumption, the department's rebuttal of the presumption, and the department's maintenance of an offender's incarceration for an additional period of incarceration apply, and may be utilized more than one time, during the remainder of the offender's incarceration. If the offender has not been released under division (C) of this section or this division prior to the expiration of the offender's maximum prison term imposed as part of the offender's non-life felony indefinite prison term, the offender shall be released upon the expiration of that maximum term.

(E) The department shall provide notices of hearings to be conducted under division (C) or (D) of this section in the same manner, and to the same persons, as specified in section 2967.12 and Chapter 2930. of the Revised Code with respect to hearings to be conducted regarding the possible release on parole of an inmate.

(F)(1) The director of the department of rehabilitation and correction may notify the sentencing court in writing that the director is recommending that the court grant a reduction in the minimum prison term imposed on a specified offender who is serving a non-life felony indefinite prison term and who is eligible under division (F)(8) of this section for such a reduction, due to the offender's exceptional conduct while incarcerated or the offender's adjustment to incarceration. If the director wishes to recommend such a reduction for an offender, the director shall send the notice to the court not earlier than ninety days prior to the date on which the director wishes to credit the reduction toward the satisfaction of the offender's minimum prison term. If the director recommends such a reduction for an offender, there shall be a presumption that the court shall grant the recommended reduction to the offender. The presumption established under this division is a rebuttable presumption that may be rebutted as provided in division (F)(4) of this section.

The director shall include with the notice sent to a court under this division an institutional summary report that covers the offender's participation while confined in a state correctional institution in rehabilitative programs and activities and any disciplinary action taken against the offender while so confined, and any other documentation requested by the court, if available.

The notice the director sends to a court under this division shall do all of the following:

(a) Identify the offender;

(b) Specify the length of the recommended reduction, which shall be for five to fifteen per cent of the offender's minimum term determined in accordance with rules adopted by the department under division (F)(7) of this section;

(c) Specify the reason or reasons that qualify the offender for the recommended reduction;

(d) Inform the court of the rebuttable presumption and that the court must either approve or, if the court finds that the presumption has been rebutted, disapprove of the recommended reduction, and that if it approves of the recommended reduction, it must grant the reduction;

(e) Inform the court that it must notify the department of its decision as to approval or disapproval not later than sixty days after receipt of the notice from the director.

(2) When the director, under division (F)(1) of this section, submits a notice to a sentencing court that the director is recommending that the court grant a reduction in the minimum prison term imposed on an offender serving a non-life felony indefinite prison term, the department promptly shall provide to the prosecuting attorney of the county in which the offender was indicted a copy of the written notice, a copy of the institutional summary report described in that division, and any other information provided to the court.

(3) Upon receipt of a notice submitted by the director under division (F)(1) of this section, the court shall schedule a hearing to consider whether to grant the reduction in the minimum prison term imposed on the specified offender that was recommended by the director or to find that the presumption has been rebutted and disapprove the recommended reduction. Upon scheduling the hearing, the court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the offender was indicted and to the department. The notice shall inform the prosecuting attorney that the prosecuting attorney may submit to the court, prior to the date of the hearing, written information relevant to the recommendation and may present at the hearing written information and oral information relevant to the recommendation.

Upon receipt of the notice from the court, the prosecuting attorney shall notify the victim of the offender or the victim's representative of the recommendation by the director, the date, time, and place of the hearing, the fact that the victim may submit to the court, prior to the date of the hearing, written information relevant to the recommendation, and the address and procedure for submitting the information.

(4) At the hearing scheduled under division (F)(3) of this section, the court shall afford the prosecuting attorney an opportunity to present written information and oral information relevant to the director's recommendation. In making its determination as to whether to grant or disapprove the reduction in the minimum prison term imposed on the specified offender that was recommended by the director, the court shall consider any report and other documentation submitted by the director, any information submitted by a victim, any information submitted or presented at the hearing by the prosecuting attorney, and all of the factors set forth in divisions (B) to (D) of section 2929.12 of the Revised Code that are relevant to the offender's offense and to the offender.

Unless the court, after considering at the hearing the specified reports, documentation, information, and relevant factors, finds that the presumption that the recommended reduction shall be granted has been rebutted and disapproves the recommended reduction,

the court shall grant the recommended reduction. The court may disapprove the recommended reduction only if, after considering at the hearing the specified reports, documentation, information, and relevant factors, it finds that the presumption that the reduction shall be granted has been rebutted. The court may find that the presumption has been rebutted and disapprove the recommended reduction only if it determines at the hearing that one or more of the following applies:

(a) Regardless of the security level in which the offender is classified at the time of the hearing, during the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff of a state correctional institution or its inmates, or physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated.

(b) The offender's behavior while incarcerated, including, but not limited to, the infractions and violations specified in division (F)(4)(a) of this section, demonstrates that the offender continues to pose a threat to society.

(c) At the time of the hearing, the offender is classified by the department as a security level three, four, or five, or at a higher security level.

(d) During the offender's incarceration, the offender did not productively participate in a majority of the rehabilitative programs and activities recommended by the department for the offender, or the offender participated in a majority of such recommended programs or activities but did not successfully complete a reasonable number of the programs or activities in which the offender participated.

(e) After release, the offender will not be residing in a halfway house, reentry center, or community residential center licensed under division (C) of section 2967.14 of the Revised

Code and, after release, does not have any other place to reside at a fixed residence address.

(5) If the court pursuant to division (F)(4) of this section finds that the presumption that the recommended reduction in the offender's minimum prison term has been rebutted and disapproves the recommended reduction, the court shall notify the department of the disapproval not later than sixty days after receipt of the notice from the director. The court shall specify in the notification the reason or reasons for which it found that the presumption was rebutted and disapproved the recommended reduction. The court shall not reduce the offender's minimum prison term, and the department shall not credit the amount of the disapproved reduction toward satisfaction of the offender's minimum prison term.

If the court pursuant to division (F)(4) of this section grants the recommended reduction of the offender's minimum prison term, the court shall notify the department of the grant of the reduction not later than sixty days after receipt of the notice from the director, the court shall reduce the offender's minimum prison term in accordance with the recommendation submitted by the director, and the department shall credit the amount of the reduction toward satisfaction of the offender's minimum prison term.

Upon deciding whether to disapprove or grant the recommended reduction of the offender's minimum prison term, the court shall notify the prosecuting attorney of the decision and the prosecuting attorney shall notify the victim or victim's representative of the court's decision.

(6) If the court under division (F)(5) of this section grants the reduction in the minimum prison term imposed on an offender that was recommended by the director and reduces the offender's minimum prison term, the date determined by the department's crediting of the reduction toward satisfaction of the offender's minimum prison term is the offender's presumptive earned early release date.

(7) The department of rehabilitation and correction by rule shall specify both of the following for offenders serving a non-life felony indefinite prison term:

(a) The type of exceptional conduct while incarcerated and the type of adjustment to incarceration that will qualify an offender serving such a prison term for a reduction under divisions (F)(1) to (6) of this section of the minimum prison term imposed on the offender under the non-life felony indefinite prison term.

(b) The per cent of reduction that it may recommend for, and that may be granted to, an offender serving such a prison term under divisions (F)(1) to (6) of this section, based on the offense level of the offense for which the prison term was imposed, with the department specifying the offense levels used for purposes of this division and assigning a specific percentage reduction within the range of five to fifteen per cent for each such offense level.

(8) Divisions (F)(1) to (6) of this section do not apply with respect to an offender serving a non-life felony indefinite prison term for a sexually oriented offense, and no offender serving such a prison term for a sexually oriented offense is eligible to be recommended for or granted, or may be recommended for or granted, a reduction under those divisions in the offender's minimum prison term imposed under that non-life felony indefinite prison term.

(G) If an offender is sentenced to a non-life felony indefinite prison term, any reference in a section of the Revised Code to a definite prison term shall be construed as referring to the offender's minimum term under that sentence plus any additional period of time of incarceration specified by the department under division (D)(1) or (2) of this section, except to the extent otherwise specified in the section or to the extent that that construction clearly would be inappropriate.

Available Versions of this Section

March 22, 2019 – Enacted by Senate Bill 201 - 132nd General Assembly