

IN THE SUPREME COURT OF OHIO

State of Ohio,)	Supreme Court Case No. 2020-1392
)	
Appellant,)	
)	On Appeal from the Columbiana
)	County Court of Appeals, Seventh
v.)	Appellate District
)	
)	Court of Appeals Case No.
John D. Yerkey,)	19 CO 44
)	
Appellee.)	

**MERIT BRIEF OF
APPELLANT STATE OF OHIO**

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STATEMENT OF THE CASE AND FACTS

This matter arises from two criminal cases in which the offender pled guilty to two counts of Violation of a Protection Order in violation of Revised Code Section 2919.27(A)(1) and was subsequently ordered to pay the crime victim restitution in the amount of \$1,615.00 for lost wages suffered because of attending court proceedings.

A full restitution hearing was held by the trial court on September 27, 2019. At the restitution hearing, the State elicited witness testimony from the victim indicating she lost wages in the amount of \$1,615.00 while attending court for the prosecution of the criminal offenses. The trial court concluded that because Revised Code Section 2929.18(A)(1) directs trial courts to base restitution orders on the economic losses suffered by the victim as a direct and proximate result of the commission of the offense, it was appropriate for the trial court to order that Defendant pay the victim restitution in the amount of \$1,615.00 to compensate her for the lost wages she incurred while attending court for the case. *See* October 1, 2019, Judgment Entry of the Trial Court.

Defendant appealed the restitution order to the Seventh District Court of Appeals. The Seventh District reversed the trial court by striking the order of restitution from the trial court's sentencing order. In doing so, the Seventh District relied on the victim's lack of party status in the case to suggest that her participation in the prosecution was purely voluntary, and, therefore, an expense she alone caused. The Seventh District also improperly relied on an overly narrow and incorrect interpretation of Revised Code Section 2929.01(L) to limit the victim's right to "full and timely restitution" even though Marsy's Law supersedes the statute to the extent they conflict. Ohio Constitution, Article I, Section 10a(E). The Seventh District distinguished between the costs victims of criminal offenses incur during the commission of the criminal

offense, i.e. physical injuries from, for example, a criminal assault, and the costs victims of criminal offenses incur while the criminal conduct is being addressed by the criminal justice system through the prosecution of the criminal offense, i.e. lost wages incurred because the victim was attending court proceedings related to the prosecution of the criminal offense. The Seventh District concluded that while the first is directly and proximately caused by the commission of the criminal offense, the prosecution of the offense is somehow so far removed from the offense itself that it is no longer directly and proximately related to the defendant's commission of the criminal offense(s). Ultimately, the Seventh District held that the costs a victim incurs related to active participation in the court proceedings for the prosecution of the criminal offense committed against him/her are not compensable as restitution.

The State of Ohio timely filed a notice of appeal to this Honorable Court on November 12, 2020. The appeal was accepted by this Honorable Court on February 2, 2021.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Victims are constitutionally entitled to full and timely restitution, including restitution for losses incurred throughout the prosecution of the criminal offense.

R.C. 2929.18(A)(1) authorizes a trial court to impose restitution as part of a sentence in order to compensate the victim for economic loss. "A trial court has discretion to order restitution in an appropriate case and may base the amount it orders on a recommendation of the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, but the amount ordered cannot be greater than the amount of economic loss suffered as a direct and proximate result of the

commission of the offense.” *State v. Lelain*, 136 Ohio St.3d 248, 2013–Ohio–3093, paragraph one of the syllabus; R.C. 2929.18(A)(1).

In this case, the trial court’s restitution order was based on competent, credible evidence about the victim’s lost wages suffered as a direct and proximate result of the commission of the offense. The victim attended multiple court proceedings in order to protect her rights as a victim causing her to miss work and resulting in the loss of wages. At the hearing, the trial court opined that the lost wages were a direct and proximate result of the case. (9-27-19 Tr., p. 27). The trial court took the matter under advisement and issued its Judgment Entry on October 1, 2018 in which it properly allowed the lost wages as restitution. It is notable that the trial court did not allow other expenses sought by the victim such as medical and therapy bills and attorney fees supporting the conclusion that the trial court gave careful consideration to the evidence presented at the restitution hearing. The trial court’s decision that the victims’ lost wages were compensable as restitution cannot be said to be unreasonable, arbitrary, or unconscionable. However, the Seventh District Court of Appeals reversed.

The standard of review here was an abuse of discretion. “Under this standard of review, an appellate court may not simply substitute its judgment for that of the trial court.” *State v. Perkins*, 3d Dist. No. 9–13–52, 2014-Ohio-2242, ¶ 10, citing *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980) “A trial court abuses its discretion in ordering restitution in an amount that was not determined to bear a reasonable relationship to the actual loss suffered.” *State v. Portentoso*, 173 Ohio App.3d 297, 2007-Ohio-5490, 878 N.E.2d 76, ¶ 8 (3rd Dist.).

The issue of restitution is one left to the discretion of the trial court. In fact, a trial court is under no duty to itemize or otherwise explain how it arrived at the amount of restitution it

orders, so long as the trial court can discern the amount of restitution to a reasonable degree of certainty from competent credible evidence in the record. *Perkins*, supra, at ¶ 23; See also *State v. Shifflet*, 4th Dist. Athens, No. 13CA23, 2015-Ohio-4250, 44 N.E.3d 966.

Here, the Appellate Court's reversal cited an abuse of discretion but based its ruling on a narrow and erroneous application of the statutory framework for restitution. The Seventh District did not construe the victims' constitutional rights within the existing valid and unchanged statutory framework. Rather, the appellate court erroneously and narrowly interpreted the existing statutory framework thereby depriving the victim of her constitutional right to full and timely restitution and interfering with her constitutional right to be present at and participate in the criminal proceedings.

Following the rationale of the Sixth District Court of Appeals in *State v. Roach*, a case that pre-dated Marsy's Law, the Seventh District relied on the language of Revised Code Sections 2929.32 and 2929.01(L) to improperly limit the victim's constitutional right to full and timely restitution. *State v. Roach*, 6th Dist. Lucas No. L-16-1303, 2017-Ohio-8511.

The statutory provisions relative to restitution are found in ORC Section 2929.18(A)(1) which provides in part: "If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of * * * replacing property, and other information, *provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense*. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount." (emphasis added). ORC Section 2929.18(A)(1).

Economic loss is defined as any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury, any property loss, medical cost, or funeral expense. ORC Section 2929.01(L). ‘Economic loss’ does not include non-economic loss or any punitive or exemplary damages.” O.R.C. 2929.01(L)

The statute defining “economic loss” plainly permits restitution for any economic detriment suffered by a victim. ORC Section 2929.01(L). See *In Re Z.N.*, 11th Dist. No. 2014-L-030, 2015-Ohio-1213. The Court there held that “By having the list in question connected to the first clause through the use of a conjunction, the General Assembly has indicated that an economic loss is principally defined as “any economic detriment suffered by a victim * * * as a direct and proximate result of the delinquent act” and that the listed items that follow are examples of items that meet the criteria laid out in the first clause. As such, determining whether a financial expenditure is an economic loss does not depend upon whether the state can fit a purported loss into one of the categories after the conjunction; rather, the determination turns on whether the loss is economic detriment suffered by the victim that is the proximate result of the juvenile's conduct. Although *In Re Z.N.* deals with restitution provisions related to juveniles, those provisions mirror the provisions under Chapter 29.

Pursuant to Marsy’s Law, victims are afforded the right “to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim.” Ohio Constitution, Article I, Section 10a(A)(7). To have meaning, full restitution must include losses suffered as a result of active participation in the prosecution of the criminal offense.

Under both the statutory definition and more expansive Marsy's law provisions, restitution is designed to compensate a crime victim for any economic detriment suffered as a direct and proximate result of the commission of a criminal offense. It is axiomatic that the losses resulting from the prosecution are a direct and proximate result of the criminal offense. Clearly, but for the criminal offense, there would be no prosecution. See *State v. McNear*, 1st Dist. No. C-190643, 2020-Ohio-4686. (court disallowed restitution for damage to vehicle when defendant convicted only of forgery using a but for analysis). *McNear* noted that

“Generally, for a criminal defendant's conduct to be the proximate cause of a certain result, it must first be determined that the conduct was the cause in fact of the result, meaning that the result would not have occurred ‘but for’ the conduct.” *Id.*, citing *State v. Lovelace*, 137 Ohio App.3d 206, 216, 738 N.E.2d 418 (1st Dist.1999).

Here, the result was the victim's loss of wages for attending court proceedings and it was the appellee's conduct that caused that result.

The Seventh District's holding erroneously limits restitution by narrowly interpreting ORC Section 2929.01(L). The Appellate Court points to the term “commission” as used in the statute and distinguishes same from “prosecution” when the focus should have been on the terms ‘direct and proximate result’. The State further asserts that although the statutory framework specifically references various types of economic loss, it is not an exhaustive list. This Honorable Court has previously held that the word “includes” indicates that the list was merely illustrative rather than exhaustive. *Trans Rail Am., Inc. v. Enyeart*, 123 Ohio St.3d 1, 2009-Ohio-3624, 913 N.E.2d 948, ¶ 28 [list of agency decisions that could be appealed]

To suggest that the General Assembly could and should have changed the statutory language if it intended for victims to be entitled to restitution for loss related to the prosecution of criminal offenses disregards the superseding constitutional amendments expanding victims' rights. A reviewing court is required to give reasonable construction to a subsequent

constitutional amendment and the statute so that both may stand. *State v. Burke*, 164 Ohio App.3d 740, 2005-Ohio-6727 (8th Dist.). [Issue 1 and Ohio’s domestic violence statute]. The Seventh District’s holding in this case fails to properly reconcile the statutory provisions and the subsequent constitutional amendment.

Similarly, this Court has held that the provisions of the constitutional amendment known as Marsy’s Law are self-executing and “supersede all conflicting state laws.” Article I, Section 10a(E); *City of Centerville v. Knab*, ---N.E. ---, 2020-Ohio-5219. *Knab* dealt with the definition of “victim”. Appellee erroneously cited this case in his Memorandum in Opposition to Jurisdiction as support for his argument that a restitution analysis must comply with ORC Section 2929.18. The analysis related to whether a municipality was a victim entitled to restitution.

The constitutional right to full and timely restitution extends to anyone who is deemed to be a victim as defined by the Ohio constitution to mean “a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act.” Ohio Constitution, Article I, Section 10a(D). In its analysis in *Knab*, this Court looked to the plain meaning of the language used in the Amendment as well as the intent of the voters. This Court noted that the express purpose of Marsy’s Law is to secure justice and due process for victims and provide rights to victims that must be protected with the same vigor as an accused’s rights. Article I, Section 10a(A), Ohio Constitution. *Knab*, supra.

This Court further stated that undefined words in the Constitution are given their common, everyday meaning, often relying on dictionary definitions to do so. *Id.* In addition to the statutory definition of economic loss, this Court also noted that “economic loss” is further

defined in as, “[a] monetary loss such as lost wages or lost profits * * *.” Black's Law Dictionary (11th Ed. 2019).

Based on this analysis of the statutory amendment, the definition of economic loss should not be narrowly limited or defined by the statutory framework. Instead, courts should be guided by the intent of the voters in enacting Marsy’s law as reflected in the purpose of same.

Victims are not merely voluntary participants in the criminal justice system. The status of victim is involuntarily conferred upon them by defendants when defendants commit criminal offenses against them or commit criminal offenses that directly and proximately harm them. Victims’ interaction with the criminal justice system results solely from the defendants’ criminal conduct.

Because crime victims are involuntarily forced into the criminal justice system by the criminal conduct of another, Ohio courts must vehemently protect these persons from additional victimization throughout the criminal justice system. Ohio’s voters and General Assembly have sought to ensure this protection by passing both Marsy’s Law and statutory protections that specifically protect victims’ rights, including the constitutional right to full and timely restitution. *See* Ohio Constitution, Article I, Section 10a; *see* generally R.C. 2930.

This Court should adopt the rationales of other courts throughout the country that hold that victims’ economic losses incurred while attending court are directly and proximately caused by the defendant’s criminal offense, and, therefore, eligible for restitution.

In Arizona, where full restitution for economic losses is also guaranteed to crime victims, courts have affirmed restitution orders for victim’s lost wages due to attending court during the prosecution of the case, finding that such attendance does flow directly from the defendant’s commission of the criminal offense against the victim and is not simply a matter of choice for the

victim who was forced into the criminal justice system by the defendant's criminal conduct. *See, e.g., State v. Madrid*, 207 Ariz. 296, 299-300 85 P.3d 1054 (App.2004) (relying on victims' constitutional right to attend court proceedings, observing that "[a] description of the [victims'] attendance at court hearings as simply a matter of 'choice' or 'desire' is outdated," and affirming a restitution order for costs associated with attendance at court proceedings); *State v. Lindsley*, 191 Ariz. 195, 198-199, 953 P.2d 1248 (App.1997) (concluding that wages lost as a result of trial appearances made mandatory by subpoena, as well as those lost because of the victim's voluntary attendance at proceedings, are the appropriate subject of a restitution order because such losses "flow directly from the crime" and observing that victims do not "'choose' to attend * * * hearings as disinterested bystander might, but because [victims are] the victim of defendant's actions and, thus, unavoidably entwined in the criminal proceedings * * *. We believe it makes no difference whether the victim attended pursuant to subpoena or not"); *State v. Guadagni*, 218 Ariz. 1, 15, 178 P.3d 473 (App.2008) (finding that lost wages and travel expenses associated with a victim's voluntary attendance at court proceedings are recoverable in restitution).

Similarly, in California, where victims of criminal offenses who "incur an economic loss as a result of the commission of a crime" are entitled to receive restitution directly from the defendant, courts have affirmed that economic losses resulting from the commission of the criminal offense, include economic losses victims incur during the prosecution of the criminal offense while attending court. Cal.Penal Code 1202.4; *See, e.g., People v. Moore*, 177 Cal.App.4th 1229, 1232-1233, 99 Cal.Rptr.3d 555 (2009) (finding that "[t]he victim's attendance at the pretrial and trial proceedings, and the costs associated with that attendance" are a direct result of defendant's criminal conduct and that the victim was not required by law to attend was

irrelevant when calculating restitution); *People v. Crisler*, 165 Cal.App.4th 1503, 1508, 81 Cal.Rptr.3d 887 (2008) (finding no bar to recovery in restitution expenses incurred by victims in connection with voluntarily attending criminal proceedings).

In Minnesota, where crime victims also have the right to receive restitution, the Supreme Court of Minnesota affirmed a trial court's restitution award to the children of a murder victim that covered the costs the victim's children incurred while voluntarily attending the murder trial. *See State v. Palubicki*, 727 N.W.2d 662, 667 (Minn. S.Ct. 2007). The Minnesota Supreme Court concluded that the murder victim's children attended court and incurred lost wages to attend as "a direct result of [the defendant's] crime." *Id.* The Court explained, victims do "not choose to attend the court proceedings as disinterested bystanders" or as "interested member[s] of the public," but "because they [are] unavoidably entwined in the criminal proceedings." *Id.*

Notably at least one Ohio Court interpreted Ohio's restitution statutes to include lost wages for attending court even before the passage of Marsy's law. *See State v. Shifflet*, 4th Dist. Athens, No. 13CA23, 2015-Ohio-4250, 44 N.E.3d 966, ¶ 50-59 (holding it was appropriate for the trial court to award restitution to cover lost wages incurred by the parents of child victims for work missed to attend the trial because the court found "none of the expenses of the victim representatives were voluntarily incurred or would have been incurred regardless of the commission of Appellant's offenses"). The inclusion of victims' economic losses incurred during the prosecution of a criminal offense were affirmed as appropriate restitution pursuant to the same statutes that the Seventh District used to limit a victim's right to restitution post Marsy's law.

Despite the constitutional amendment expanding victims' right to restitution, the Seventh District still chose to limit restitution to crime victims with a narrow interpretation of Ohio's

restitution statutes. The Seventh District relied on the language of Revised Code Section 2929.32 which states “the amount the court orders as restitution shall not exceed the amount of the economic losses suffered by the victim as a direct and proximate result of the commission of the offense” to conclude that the General Assembly anticipated restitution would include only losses incurred from the “commission,” not the “prosecution,” of the criminal offense. However, this interpretation is not supported by the language of Revised Code Section 2929.01(L) itself. The Seventh District erroneously concluded that the commission of the criminal offense does not directly and proximately cause the prosecution of the criminal offense and the costs incurred by the victim during the prosecution.

Marsy’s Law constitutionally mandates full and timely recovery. Ohio courts should interpret the existing statutes broadly to ensure that restitution is full, as is constitutionally required.

Proposition of Law No. II: Victims must be entitled to restitution for losses incurred throughout the prosecution of the criminal offense in order to protect victims’ constitutional rights to be present throughout the criminal justice process and heard when their rights are implicated.

Ohio law affords crime victims the constitutional rights to be present at all public proceedings involving the criminal offense and to be heard at any of these proceedings in which the victim’s rights are implicated. *See* Ohio Constitution Article I, Section 10(a)(A)(2), (3). In order to make these rights meaningful, trial courts must grant crime victims full and timely restitution for economic losses they incur while exercising the rights to be present and heard throughout the prosecution of the case. If crime victims are financially burdened when exercising their rights to be present and heard, they will be discouraged from exercising these rights at all. For some victims, incurring such economic losses without any chance of receiving restitution

may make participating in the prosecution of the case cost prohibitive. As a result, many victims will inevitably be left voiceless throughout the criminal justice process. Such a result would contravene the purpose of Marsy's Law, which is "to secure for victims justice and due process throughout the criminal and juvenile justice systems."

In Arizona, where victims also have the constitutional right to also be present at all court proceedings, one court observed, while upholding an award of a per diem fee to the victims for attending the murder trial of their murdered parent, that

[t]he characterization of a victim's attendance at court proceedings as either a direct or indirect result of the defendant's crime does not depend on whether the victim is seeking recovery for travel expenses in contrast to lost wages. Rather, the determinative question is whether a victim's exercise of the constitutionally guaranteed right to attend criminal proceedings is an 'additional causative factor' rendering travel expenses consequential losses.

State v. Madrid, 207 Ariz. 296, 299-300, 85 P.3d 1054 (App.2004) (internal citation omitted).

The Arizona court correctly concluded that "[c]learly, the necessity for [the defendant's] trial was entirely a direct consequence of his act of murder. At that point in time, the die was cast, and the children were irrevocably 'entwined in the criminal proceedings,' including the trial, without the occurrence of any additional causative event." *See Id.* at 300 (internal citation omitted). The court ultimately upheld the restitution award for the murder victim's children's "voluntary" attendance at the trial because the prosecution, including the trial, directly resulted from the commission of the criminal offense. *Id.* "But for defendant's criminal actions, the victim certainly would not have been present at the proceedings." *Id.* at 299.

Even in Ohio and prior to the enactment of the expanded victims' rights provisions known as Marsy's Law, the right of the victims to receive compensation for attending court proceedings was upheld. *Shiflett*, *supra*. The *Shiflett* court found that the expenses incurred by the victims in actively participating in the prosecution of a criminal offense were not expenses

voluntarily incurred and, further, were not expenses that would have been incurred but for the commission of the crime.

It is for this reason that restitution becomes intertwined with, and supports, the rights to be present and heard.

Here, the necessity for the prosecution of the criminal offenses of violating a protection order was entirely a direct consequence of Defendant's act of violating the protection order on numerous occasions. Once the Defendant committed the criminal offenses, he entwined both himself and the victim in the criminal proceedings related to the prosecution of the cases. The victim had the constitutional right to be present and the costs she incurred while being present were the direct and proximate result of the Defendant's criminal conduct and should be awarded as part of restitution.

Significantly, Ohio's constitution also guarantees "every person" the same "due course of law" and administration of justice. Ohio Constitution Article I, Section 16. Every person, including crime victims, should have equal access to Ohio's courts and to justice. If restitution is limited to exclude costs victims incur throughout the prosecution of a case, it will prevent victims who cannot financially bear such costs from participating in the prosecution to the same extent victims that are financially able to do so can. This creates an unjustifiable disparity between victims and produces economic injustice throughout the criminal justice system. Such a ruling cannot stand.

CONCLUSION


Crime victims are guaranteed concrete and enforceable constitutional rights under Marsy's law. Among those rights are the right to full and timely restitution and the right to be present at and participate in the criminal proceedings. In order to give effect to Marsy's law and afford all crime victims the opportunity to exercise the right to be present at and participate in the criminal proceedings and thereby permit equal access to justice regardless of economic status, full and timely restitution must include wages lost while actively participating in the prosecution of the criminal offense. To hold otherwise would effectively deprive crime victims of lesser financial means of their constitutional rights guaranteed by Marsy's law.

The holding by the Seventh District Court of Appeals improperly limits restitution to crime victims and as a result interferes with a crime victim's constitutional right to be present at all proceedings. The Appellate decision erroneously disregards that prosecution is directly and proximately caused by the defendant's commission of the criminal offense. Absent the criminal conduct, there would be no prosecution and the victim would not be entwined with the criminal justice system. By limiting a victim's constitutional right to full and timely restitution, the Seventh District also impermissibly created a financial barrier for victims that interferes with victims' constitutional rights to be present and heard throughout the criminal justice process. This Court should reject the Seventh District's reasoning because it interprets Ohio's restitution statutes unnecessarily narrowly, which causes them to contradict the Ohio Constitution's guarantee that victims receive full restitution.

The narrow and limiting decision of the Seventh District Appellate Court must be reversed. A reversal recognizes and protects the constitutional rights of all victims to full and timely restitution and to be present at and participate in the criminal proceedings.

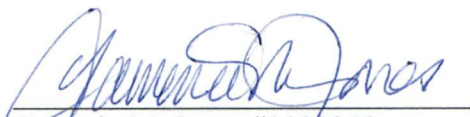
Respectfully submitted,

Vito J. Abruzzino #0082584

By: 
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STATE OF OHIO

PROOF OF SERVICE

I certify that a true copy of the foregoing was sent by certified mail to counsel for appellee, Attorneys Gregg A. Rossi and James N. Melfi, Rossi & Rossi, 26 Market St., 8th Floor, P.O. Box 6045, Youngstown, Ohio 44501, this 7th day of April 2021.


Tammie M. Jones #0030350
Assistant Prosecuting Attorney
Attorney for Appellant, State of Ohio

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO
CASE NO. 2018 CR 263
2018 CR 307

FILED
COLUMBIANA COUNTY
COURT OF COMMON PLEAS

OCT 01 2019
ANTHONY J. DATTILIO
CLERK (SCB)


STATE OF OHIO,)
)
Plaintiff,)
)
Vs.)
)
JOHN D. YERKEY,)
)
Defendant.)

JUDGMENT ENTRY

This matter came on for a restitution hearing on Friday, September 27, 2019. Tammie Riley Jones, Assistant Prosecuting Attorney, appeared on behalf of the State. The Defendant appeared with his counsel Attorney Gregg A. Rossi. The victim, Jamie Dattilio was present.

The Court had previously received documentation from Attorney David Engler, on behalf of the victim as to restitution being requested. The Court heard testimony of the victim. The charges in which the restitution claim stem from are Violating a Protection Order, a violation of ORC 2919.27(A)(1), being a felony of the fifth degree in Case No. 2018 CR 263 and Violating a Protection Order, a violation of ORC 2919.27(A)(1), being a felony of the fifth degree. The Court relied on the dates of the offenses in which were before it for the purposes of restitution. Restitution by the offender to the victim is an amount based on the victim's economic loss. ORC 2929.18(A)(1). The Court may order restitution that shall not exceed the amount of economic loss suffered by the victim as a direct and proximate result of the commission of the offense.

After the testimony of the victim and review of the documentation provided to the Court, the Defendant is order to pay the victim restitution in the amount of \$1,615.00, the amount of lost wages of the victim. The Defendant shall make payments through Adult Probation. The restitution shall be paid in full in one hundred and twenty (120) days from the date of this entry.



JUDGE MEGAN L. BICKERTON

Date: October 1, 2019

cc: File
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IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JOHN D. YERKEY,

Defendant-Appellant.



OPINION AND JUDGMENT ENTRY
Case No. 19 CO 0044

Criminal Appeal from the
Court of Common Pleas of Columbiana County, Ohio
Case Nos. 2018 CR 263; 2018 CR 307

BEFORE:

Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Reversed.
Order Modified.

Atty. Robert Herron, Columbiana County Prosecutor and *Atty. Tammie M. Jones*, Assistant Prosecuting Attorney, 105 South Market Street, Lisbon, Ohio 44432, for Plaintiff-Appellee

Atty. Gregg A. Rossi and Atty. James N. Melfi, Rossi & Rossi Co., 26 Market Street, 8th Floor, Huntington Bank Building, P.O. Box 6045, Youngstown, Ohio 44501, for Defendant-Appellant.

Dated: September 28, 2020

WAITE, P.J.

{¶1} Appellant John D. Yerkey appeals the judgment of the Columbiana County Common Pleas Court ordering him to pay restitution to his victim, J.D., after Yerkey was convicted of two counts of violating a protective order. Based on the following, the judgment of the trial court is reversed and the sentencing order of the trial court is modified to strike the order of restitution.

Factual and Procedural History

{¶2} Appellant and J.D. had been in a tumultuous, short-term marriage. There were no children born of the marriage. J.D. filed a divorce action in October of 2017 in Mahoning County where both parties resided. While that matter was pending, J.D. obtained a civil protection order ("CPO") against Appellant sometime in early 2018. The CPO prohibited Appellant from contacting J.D. in any manner including in person, by telephone, or by means of any electronic communication either directly or through another person. After the CPO went into effect, J.D. subsequently relocated to Columbiana County. The parties' divorce was finalized on December 6, 2018.

{¶3} The underlying offenses in this matter are based on Appellant's violation of this CPO on three occasions within a five-week period from June 30, 2018 to August 7, 2018 while their contested divorce was pending in Mahoning County. It should be noted

that although Appellant discusses only two CPO violations in his brief in this matter, the record reflects there are actually three instances of violation of the order.

{¶4} Appellant's first violation occurred on June 30, 2018, when he arrived at J.D.'s home while she was outside mowing her lawn. J.D. reminded Appellant of the CPO and asked Appellant to leave several times. Appellant ultimately fled when J.D. called 911. A complaint was filed in Columbiana County Municipal Court. In case number 18 CRA 876, Appellant was charged with one count of violation of a protection order. Appellant was released on \$25,000 bond with standard bond conditions again specifically prohibiting contact with the victim. After waiver of preliminary hearing on July 12, 2018, the bond was decreased to \$15,000 and additional conditions were applied, including: an order prohibiting contact with J.D. through social media; prohibition against entering the township in Columbiana County where J.D. resided; and a prohibition on the possession and use of alcohol by Appellant.

{¶5} On July 31, 2018, while the first matter was pending, Appellant violated the CPO a second time when he was spotted by J.D. driving past her home. J.D. filed a report with the Columbiana Police Department. Appellant was again charged in Columbiana County Municipal Court in case number 18 CR 1018 with one count of violation of a protection order.

{¶6} Finally, one week later, on August 7, 2018, Appellant violated the CPO a third time when he sent J.D. a friend request through social media and indicated he was sharing his location with her through the social media application, Pinterest. J.D. once again filed a police report with the Columbiana Police Department, and again Appellant

was charged in Columbiana County Municipal Court in case number 18 CRA 1060 with one count of violation of a protection order.

{¶7} While all three matters were pending, it was discovered that Appellant had been convicted twice previously of violating a protection order issued pursuant to R.C. 3113.31 for domestic violence. These convictions occurred on July 29, 2016 and on January 27, 2017, both in Mahoning County Court No. 5. Therefore, the pending matters were subject to an enhancement and all three misdemeanor cases were transferred from the municipal court to the Columbiana County Common Pleas Court.

{¶8} Appellant was charged with one count of violation of a protection order pursuant to R.C. 2919.27(A)(1), a felony of the fifth degree, in Columbiana County Common Pleas Court case number 18 CR 263 for the first incident. Appellant was also charged with two counts of violation of a protection order pursuant to R.C. 2919.27(A)(1), felonies of the fifth degree, in common pleas court case number 18 CR 307, for the second and third incidents.

{¶9} On March 25, 2019, Appellant pleaded guilty to one count of violation of a protection order in case number 18 CR 263, relative to the June 30, 2018 incident. Also on that date, Appellant pleaded guilty, in the form of an *Alford* plea, to one count of violation of a protection order in case number 18 CR 307.

{¶10} Appellant was sentenced in both cases on May 20, 2019. In case number 18 CR 263, Appellant was sentenced to "a Community Control Sanction of probation for a term of **four (4)** years. That probation shall be under **INTENSIVE** supervision[.]" (5/21/19 J.E.) In case number 18 CR 307, Appellant received the identical sentence of four years of probation, to be served concurrently with his sentence in 18 CR 263.

{¶11} A restitution hearing in both cases was held on September 27, 2019. Present were Appellant and his counsel, the assistant prosecutor on behalf of the state, and the victim, J.D., who appeared without counsel. Although not present at the hearing, counsel for J.D. had submitted documentation to the state on J.D.'s behalf as to the restitution being sought.

{¶12} At the outset of the hearing, the state presented to the court copies of the documents submitted by J.D.'s counsel outlining the restitution J.D. was seeking. The state informed the court that J.D.'s counsel was attending another hearing and had not requested a continuance in the matter to allow him to be present, although he continued to represent J.D. The state proceeded to elicit testimony from J.D. regarding restitution. J.D.'s request for compensation included attorney's fees for court appearances related to both cases, counseling bills for her therapy, and other medical bills J.D. contended were related to the incidents. The state also noted that it had met with J.D. previously, where she indicated she had lost wages as a result of court appearances relating to both matters. The state asked to approach J.D. and the following exchange occurred:

[PROSECUTOR:] [J.D.], I'm going to hand you a notebook -- a notebook paper. I have marked it for purposes of the record here today as Exhibit 1.

Do you recognize that piece of paper, that document?

[J.D.:] Yes.

[PROSECUTOR:] Do you recall that being the document that you presented to the State with regard to times that you had appeared in court and perhaps had missed work?

[J.D.:] Yes.

[PROSECUTOR:] Okay. Does it accurately reflect what you believe to have been your losses relative to missed wages in conjunction with these proceedings?

[J.D.:] Yes.

[PROSECUTOR:] Can you tell us, [J.D.], where you are employed and what your hourly rate is?

[J.D.:] Big Lots in Calcutta, and it's 29 dollars and, like, 14 cents, I believe.

[PROSECUTOR:] Your hourly rate is \$29.14?

J.D. Yes. I'm salary --

[PROSECUTOR:] Oh.

[J.D.:] -- so -- but broken down that is what it --

[PROSECUTOR:] Okay. And the dates that you have indicated that you have missed on that document there, were those full dates of work?

[J.D.:] No. I do not believe so. I think a couple of them were like half-days.

[PROSECUTOR:] Have you in any way on that document you presented totaled the total amount of loss of wages?

[J.D.:] Yes.

[PROSECUTOR:] And what was the total that you had calculated?

[J.D.:] \$1,615.

(9/27/19 Tr., pp.6-7.)

{¶13} J.D. also testified about the other restitution sought, including a discussion of the medical and counseling bills submitted to the state by her counsel. Although the record reveals the documents were marked for identification as exhibits 1 and 2, the state never submitted these documents from J.D. and her counsel to be admitted into evidence. Counsel for Appellant also questioned J.D. extensively regarding her medical bills, therapy bills, and attorney fees. Counsel for Appellant did not question J.D. about her claim for lost wages during cross-examination. The court allowed closing argument, at which time the prosecutor stated, "Your Honor, I have no follow-up comments, short of allowing and affording the victim an opportunity to make her request to the Court, which, I guess, in some fashion has been done through her counsel in written format." (9/27/19 Tr., p. 22.) In his closing, counsel for Appellant argued that no restitution should be granted, because the medical bills, therapy bills, and attorney fees were not directly and proximately related to Appellant's conduct. Certain of the medical and therapy bills predated the incidents in question, and counsel urged that an attorney fee award would be improper, because J.D. had elected to hire her own counsel in the matter voluntarily. Regarding J.D.'s lost wages, the following exchange occurred:

[DEFENSE COUNSEL]: With respect to her lost-wage claim. She is the complaining witness. She did appear, but it's because – that is with respect

to the prosecution of the matter, not because of the facts serving the basis for the actual offense.

THE COURT: Well, [Defense Counsel], I believe Marcy's [sic] Law permits her to be present at every hearing --

[DEFENSE COUNSEL]: Sure. Sure.

THE COURT: --relating to these. I don't think whether she chooses to come or not is a decision that can be -- if she is present, she's present.

[DEFENSE COUNSEL]: No, I didn't mean that.

THE COURT: Okay.

[DEFENSE COUNSEL]: I just meant her claiming lost wages for being present doesn't flow from the --

THE COURT: Well, she was at a hearing on this exact case and lost wages as a result of that. I think there is an argument to be made that that can be a direct and proximate result of the case.

(9/27/19 Tr., p. 27.)

{¶14} On October 1, 2018, the trial court issued a judgment entry stating:

The Court had previously received documentation from Attorney David Engler, on behalf of the victim as to restitution being requested. The Court heard testimony of the victim.

After the testimony of the victim and review of the documentation provided to the Court, the Defendant is order [sic] to pay the victim restitution in the amount of \$1,615.00, the amount of lost wages of the victim.

(10/1/18 J.E.)

{¶15} It is from that restitution order that Appellant filed this timely appeal.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IMPOSED RESTITUTION UPON APPELLANT IN THE AMOUNT OF ONE THOUSAND SIX HUNDRED FIFTEEN DOLLARS (\$1,615.00) FOR CLAIMED LOST WAGES OF THE COMPLAINANT FOR VOLUNTARY COURT APPEARANCES NOT DIRECTLY AND PROXIMATELY CAUSED BY THE CRIMINAL CONDUCT.

{¶16} In his first assignment of error Appellant contends the trial court abused its discretion in awarding the victim \$1,615 in lost wages because the victim's court appearances were not directly or proximately caused by Appellant's criminal conduct.

{¶17} We review the trial court's order of restitution for abuse of discretion. *State v. Downie*, 7th Dist. Mahoning No. 07 MA 214, 2009-Ohio-4643, ¶ 30. An abuse of discretion implies more than an error of judgment; it connotes that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶18} R.C. 2929.18(A)(1) authorizes the trial court to order restitution for felonies:

(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in section 2929.32 of the Revised Code, may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the

offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

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

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

{¶19} "To establish the amount of restitution within a reasonable certainty, there must be some competent, credible evidence." *State v Carrino*, 8th Dist. Cuyahoga No. 67696, 1995 WL 277103, *1 citing *State v. Warner*, 55 Ohio St.3d 31, 52, 564 N.E.2d 18 (1990). R.C. 2929.01(L).

{¶20} The amount of restitution ordered by the trial court must be reasonably related to the loss suffered and can take the form of testimony or documentary evidence. *State v. Holt*, 8th Dist. Cuyahoga No. 95520, 2011-Ohio-1582.

[A] [t]rial court has discretion to order restitution in an appropriate case and may base the amount it orders on a recommendation of the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information,

but the amount ordered cannot be greater than the amount of economic loss suffered as a direct and proximate result of the commission of the offense.

State v. Lalain, 136 Ohio St.3d 248, 2013-Ohio-3093, paragraph one of the syllabus. The amount of restitution ordered must be supported by competent, credible evidence from which the trial court can calculate restitution to a reasonable degree of certainty. *State v. Johnson*, 8th Dist. Cuyahoga No. 106450, 2018-Ohio-3670, 119 N.E.3d 914, ¶ 55.

{¶21} In the context of restitution, however, “economic loss” is defined as: any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. “Economic loss” does not include non-economic loss or any punitive or exemplary damages.

R.C. 2929.01(L).

{¶22} Appellant’s primary argument is that under Ohio law, even after the expansion of victim’s rights following adoption of Marsy’s Law, the victim is not a party in a criminal case. Therefore, a victim is not required to be present at hearings in the matter. Appellant argues that as J.D.’s appearance at the court hearings for which she claims lost wages was completely voluntary, her lost wages were not suffered as a direct and proximate result of Appellant’s criminal conduct. Appellant relies on *State v. Roach*, 6th Dist. Lucas No. L-16-1303, 2017-Ohio-8511 in arguing that J.D. is not a party in

Appellant's criminal case, and so any restitution cannot include lost wages for time away from work to attend court hearings in the criminal matter by a nonparty. In *Roach*, the defendant pleaded guilty to two counts of telephone harassment. At the subsequent restitution hearing the victim sought lost wages for time taken from work while attending court hearings in the matter after being subpoenaed by the state as a witness. The trial court concluded that her lost wages represented economic loss and ordered the defendant to pay \$324 in restitution. On appeal, the Sixth District reversed, concluding that the statutes restricted restitution to loss of income due to an injury suffered by a victim that occurred as a direct and proximate result of the commission of the crime, and not for court appearances related to the criminal case. *Roach*, ¶ 12. The court further reasoned that because only the state and the offender are parties in the criminal case and not the victim, a victim could not unilaterally assert a claim for restitution. *Roach*, ¶ 13.

{¶23} In its response, the state concedes the medical and counseling bills predated Appellant's criminal offenses at issue. The state argues that the court properly limited restitution to J.D.'s lost wages. The state argues that the Sixth District's decision in *Roach* is not binding on this Court and that the holding in *Roach* predates Marsy's Law, which expanded the rights of crime victims and provides victims with the constitutional right to attend and be heard in the related criminal proceedings, and to restitution from offenders. Because J.D. was exercising her constitutional right to be present at hearings, she should be entitled to lost wages as restitution in the instant case.

{¶24} On February 5, 2018, the amendment to Article I. Section 10(a) of the Ohio Constitution, known as Marsy's Law, became effective. This amendment expands the rights afforded to crime victims:

(A) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused:

(1) to be treated with fairness and respect for the victim's safety, dignity and privacy;

(2) upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings;

(3) to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated;

(4) to reasonable protection from the accused or any person acting on behalf of the accused;

(5) upon request, to reasonable notice of any release or escape of the accused;

(6) except as authorized by section 10 of Article I of this constitution, to refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused;

(7) to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim;

(8) to proceedings free from unreasonable delay and a prompt conclusion of the case;

(9) upon request, to confer with the attorney for the government; and

(10) to be informed, in writing, of all rights enumerated in this section.

{¶25} In addressing this issue, we recognize it is long-settled that a crime victim is not a party in the offender's criminal proceedings. *State v. Williams*, 7th Dist. Mahoning No. 09 MA 11, 2010-Ohio-3279. It is also clear that one of the basic constitutional tenets under Marsy's Law is that a crime victim is entitled to be present and to be heard at court hearings, and is entitled to "full and timely restitution" from the offender for the criminal act. Appellant argues that the constitutional right to restitution for victims described in Marsy's Law is not implicated where the restitution is for lost wages for attending court hearings because, as a nonparty, court appearance is not mandatory. She has the right to be present for hearings but no duty to be present. The state argues that the constitutional right to be present and heard during all relevant portions of the criminal hearings provides the foundation for restitution for lost wages due to those court appearances by the victim.

{¶26} The state is correct that the holding by the Sixth District is not binding on this Court and that it predates the constitutional rights guaranteed in Marsy's Law. However, the rights provided under Marsy's Law do not exist in a vacuum and still must be construed within the valid and unchanged statutory framework for restitution set forth by the General Assembly. We look to the plain language of the statute and apply it as written if the meaning is unambiguous. *Beckett v. Warren*, 124 Ohio St.3d 526, 921

N.E.2d 624, 2010-Ohio-4, ¶ 15. R.C. 2929.32, governing restitution, and R.C. 2929.01(L), defining economic loss, both state that in order to qualify for restitution, any economic loss suffered must have occurred "as a direct and proximate result of the commission of an offense". The word "commission" is used in the definition, not the word "prosecution." Losses from the commission of a crime, such as property damage or even lost wages incurred because of physical injury suffered by the victim, clearly fit the definition of economic loss for purposes of restitution. However, where the losses incurred arise solely from the prosecution of the offense, and not from its commission, these losses do not meet the definition of economic loss pursuant to statute. Had the General Assembly intended for crime victims to be remunerated for economic loss suffered as a direct and proximate result of the prosecution of an offense, the statutory language could and should have been amended accordingly. It was not, and in reviewing the unambiguous statutory language, lost wages due to attendance at court proceedings furthering prosecution of the offense are not incurred as a direct and proximate result of the commission of the offense. Thus, the trial court abused its discretion in issuing a restitution order for losses sustained from the prosecution of this offense. The victim was not entitled to this restitution and the trial court erred in granting lost wages to the victim in the restitution order.

{¶27} Appellant's first assignment of error has merit and is sustained.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IMPOSED
RESTITUTION UPON APPELLANT IN THE AMOUNT OF ONE
THOUSAND SIX HUNDRED FIFTEEN DOLLARS (\$1,615.00) FOR

CLAIMED LOST WAGES OF COMPLAINANT BECAUSE OF
INADEQUATE AND INSUFFICIENT PROOF OF DAMAGES.

{¶28} In his second assignment of error Appellant argues the state failed to present sufficient proof of her damages. Appellant argues that the state failed to introduce a written calculation of J.D.'s lost wages into evidence and J.D.'s testimony was insufficient to establish her economic loss.

{¶29} Based on our decision in assignment number one that the trial court erred in awarding wages lost as a result of attendance at court proceedings in this matter, Appellant's second assignment is moot.

{¶30} Based on the foregoing, the trial court erred in ordering Appellant to pay restitution to the victim in this matter, as the award was sought for wages lost in prosecution of the crime, and not as a direct and proximate result of its commission. The judgment of the trial court is reversed and the order is modified to strike the order of restitution from the sentencing order.

Robb, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, Appellant's first assignment of error is sustained and his second assignment is moot. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is reversed and the sentencing order is modified to strike the restitution order. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.



JUDGE CHERYL L. WAITE



JUDGE CAROL ANN ROBB



JUDGE DAVID A. D'APOLITO

NOTICE TO COUNSEL

This document constitutes a final judgment entry.



Ohio Constitution

The 1851 Constitution with Amendments to 2017

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I.10a Rights of victims of crime

(A) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused:

- (1) to be treated with fairness and respect for the victim's safety, dignity and privacy;
- (2) upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings;
- (3) to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated;
- (4) to reasonable protection from the accused or any person acting on behalf of the accused;
- (5) upon request, to reasonable notice of any release or escape of the accused;
- (6) except as authorized by section 10 of Article I of this constitution, to refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused;
- (7) to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim;
- (8) to proceedings free from unreasonable delay and a prompt conclusion of the case;
- (9) upon request, to confer with the attorney for the government; and
- (10) to be informed, in writing, of all rights enumerated in this section.

(B) The victim, the attorney for the government upon request of the victim, or the victim's other lawful representative, in any proceeding involving the criminal offense or delinquent act against the victim or in which the victim's rights are implicated, may assert the rights enumerated in this section and any other right afforded to the victim by law. If the relief sought is denied, the victim or the victim's lawful



political subdivision of the state, any officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

(D) As used in this section, "victim" means a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

(E) All provisions of this section shall be self-executing and severable, and shall supersede all conflicting state laws.

(F) This section shall take effect ninety days after the election at which it was approved.

(Adopted, effective February 5, 2018; Proposed by Initiative Petition)

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SUPPORT

Section 2929.01 | Penalties and sentencing general definitions.

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

[Previous](#)[Next](#)

A new version of Section 2929.01 exists that will be effective as of April 12, 2021

[View New Version](#)

Effective: October 1, 2020

Latest Legislation: House Bill 66, House Bill 431 - 133rd General Assembly

PDF: [Download Authenticated PDF](#)

As used in this chapter:

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

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

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

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imposed by the court or imposed by the parole board pursuant to section [2967.28](#) of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

(C) "Cocaine," "fentanyl-related compound," "hashish," "L.S.D.," and "unit dose" have the same meanings as in section [2925.01](#) of the Revised Code.

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

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

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

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

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

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

(K) "Drug treatment program" means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

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

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

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

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

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

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

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

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to impose pursuant to section [2929.24](#) or [2929.25](#) of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

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

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

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

(W) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or

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fentanyl-related compound; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to section [2925.03](#), [2925.04](#), [2925.05](#), or [2925.11](#) of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

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

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (21) of section [2929.13](#) and division (B) of section [2929.14](#) of the Revised Code. Except as provided in sections [2925.02](#), [2925.03](#), [2925.04](#), [2925.05](#), and [2925.11](#) of the Revised Code, unless the maximum or another specific term is required under section [2929.14](#) or [2929.142](#) of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense except that if the offense is a felony of the first or second degree committed on or after March 22, 2019, a mandatory prison term described in this division may be one of the terms prescribed in division (A)(1)(a) or (2)(a) of section [2929.14](#) of the Revised Code, whichever is applicable, that is authorized as the minimum term for the offense.

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

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

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

(AA) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction and includes a violation sanction center operated under authority of section [2967.141](#) of the Revised Code.

(BB)(1) "Prison term" includes either of the following sanctions for an offender:

(a) A stated prison term;

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

(2) With respect to a non-life felony indefinite prison term, references in any provision of law to a reduction of, or deduction from, the prison term mean a reduction in, or deduction from, the minimum term imposed as part of the indefinite term.

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

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the first or second degree;

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

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

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

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

(FF)(1) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section [2929.14](#), [2929.142](#), or [2971.03](#) of the Revised Code or under section [2919.25](#) of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section [2967.193](#) of the Revised Code. If an offender is serving a prison term as a risk reduction sentence under sections [2929.143](#) and [5120.036](#) of the Revised Code, "stated prison term" includes any period of

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section, a prison term is a definite prison term imposed under section [2929.14](#) of the Revised Code or any other provision of law, is the minimum and maximum prison terms under a non-life felony indefinite prison term, or is a term of life imprisonment except to the extent that the use of that definition in a section of the Revised Code clearly is not intended to include a term of life imprisonment. With respect to an offender sentenced to a non-life felony indefinite prison term, references in section [2967.191](#) or [2967.193](#) of the Revised Code or any other provision of law to a reduction of, or deduction from, the offender's stated prison term or to release of the offender before the expiration of the offender's stated prison term mean a reduction in, or deduction from, the minimum term imposed as part of the indefinite term or a release of the offender before the expiration of that minimum term, references in section [2929.19](#) or [2967.28](#) of the Revised Code to a stated prison term with respect to a prison term imposed for a violation of a post-release control sanction mean the minimum term so imposed, and references in any provision of law to an offender's service of the offender's stated prison term or the expiration of the offender's stated prison term mean service or expiration of the minimum term so imposed plus any additional period of incarceration under the sentence that is required under section [2967.271](#) of the Revised Code.

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

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

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convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section [2929.13](#) of the Revised Code and division (G)(1)(d) or (e) of section [4511.19](#) of the Revised Code.

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

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

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

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

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

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third degree.
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(QQ) "Random drug testing" has the same meaning as in section [5120.63](#) of the Revised Code.

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

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

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

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

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

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

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

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

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

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

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner

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

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

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

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

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

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boundaries of any school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

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

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

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

(b) To facilitate, encourage, or recruit a victim who is a minor or is a person with a developmental disability, or victims who are minors or are persons with developmental disabilities, for any purpose listed in divisions (A)(2)(a) to (c) of section [2905.32](#) of the Revised Code.

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

(a) Each of the felony offenses is a violation of section [2905.01](#), [2905.02](#), [2905.32](#), [2907.21](#), [2907.22](#), or [2923.32](#), division (A)(1) or (2) of section [2907.323](#), or division (B)(1), (2), (3), (4), or (5) of section [2919.22](#) of the Revised Code or is a violation of a law of any

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

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

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

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

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

(FFF) "Permanent disabling harm" means serious physical harm that results in permanent injury to the intellectual, physical, or sensory functions and that permanently and substantially impairs a person's ability to meet one or more of the ordinary demands of life, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(GGG) "Non-life felony indefinite prison term" means a prison term imposed under division (A)(1)(a) or (2)(a) of section [2929.14](#) and section [2929.144](#) of the Revised Code for a felony of the first or second degree committed on or after March 22, 2019.

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September 14, 2016 – Amended by House Bill 171, House Bill 158, 131st General Assembly [View September 14, 2016 Version]

October 17, 2017 – Amended by House Bill 63, 132nd General Assembly [View October 17, 2017 Version]

October 31, 2018 – Amended by Senate Bill 1, House Bill 63, 132nd General Assembly [View October 31, 2018 Version]

March 22, 2019 – Amended by Senate Bill 1, Senate Bill 201, House Bill 63, Senate Bill 20, House Bill 411, 132nd General Assembly [View March 22, 2019 Version]

October 1, 2020 – Amended by House Bill 66, House Bill 431, 133rd General Assembly [View October 1, 2020 Version]

April 12, 2021 – Amended by House Bill 66, House Bill 431, 133rd General Assembly [View April 12, 2021 Version]

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Section 2929.18 | Financial sanctions - felony.

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

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Effective: October 1, 2020 **Latest Legislation:** House Bill 66 - 133rd General Assembly

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(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to section [2947.23](#) of the Revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in section [2929.32](#) of the Revised Code, may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts

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may order restitution for any amount of the victim's costs of accounting or auditing provided that the amount of restitution is reasonable and does not exceed the value of property or services stolen or damaged as a result of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

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

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

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

(3) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or

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- (c) For a felony of the third degree, not more than ten thousand dollars;
- (d) For a felony of the fourth degree, not more than five thousand dollars;
- (e) For a felony of the fifth degree, not more than two thousand five hundred dollars.
- (4) A state fine or costs as defined in section [2949.111](#) of the Revised Code.
- (5)(a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:
- (i) All or part of the costs of implementing any community control sanction, including a supervision fee under section [2951.021](#) of the Revised Code;
- (ii) All or part of the costs of confinement under a sanction imposed pursuant to section [2929.14](#), [2929.142](#), or [2929.16](#) of the Revised Code, provided that the amount of reimbursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement;
- (iii) All or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under section [4510.13](#) of the Revised Code.
- (b) If the offender is sentenced to a sanction of confinement pursuant to section [2929.14](#) or [2929.16](#) of the Revised Code that is to be served in a facility operated by

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corporation, or other entity for its expenses incurred by reason of the prisoner's confinement, and if the court does not impose a financial sanction under division (A)(5)(a)(ii) of this section, confinement costs may be assessed pursuant to section [2929.37](#) of the Revised Code. In addition, the offender may be required to pay the fees specified in section [2929.38](#) of the Revised Code in accordance with that section.

(c) Reimbursement by the offender for costs pursuant to section [2929.71](#) of the Revised Code.

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

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

(3) For a fourth degree felony OVI offense and for a third degree felony OVI offense, the sentencing court shall impose upon the offender a mandatory fine in the

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DIVISION (A)(2) OR (3) OR (B)(1) OF THIS SECTION OR SECTION 2925.03 OF THE REVISED CODE
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for a violation of section 2925.03 of the Revised Code, in addition to any penalty or sanction imposed for that offense under section 2925.03 or sections 2929.11 to 2929.18 of the Revised Code and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender for a violation of section 2925.03 of the Revised Code may impose upon the offender a fine in addition to any fine imposed under division (A)(2) or (3) of this section and in addition to any mandatory fine imposed under division (B)(1) of this section. The fine imposed under division (B)(4) of this section shall be used as provided in division (H) of section 2925.03 of the Revised Code. A fine imposed under division (B)(4) of this section shall not exceed whichever of the following is applicable:

- (a) The total value of any personal or real property in which the offender has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 2925.03 of the Revised Code, including any property that constitutes proceeds derived from that offense;
- (b) If the offender has no interest in any property of the type described in division (B)(4)(a) of this section or if it is not possible to ascertain whether the offender has an interest in any property of that type in which the offender may have an interest, the amount of the mandatory fine for the offense imposed under division (B)(1) of this section or, if no mandatory fine is imposed under division (B)(1) of this section, the amount of the fine authorized for the level of the offense imposed under division (A)(3) of this section.

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SUPPORT for a violation of section [2925.03](#) of the Revised Code prescribed under those sections or sections [2929.11](#) to [2929.18](#) of the Revised Code and does not limit or affect a forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code.

(6) If the sum total of a mandatory fine amount imposed for a first, second, or third degree felony violation of section [2925.03](#) of the Revised Code under division (B)(1) of this section plus the amount of any fine imposed under division (B)(4) of this section does not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section [2929.31](#) of the Revised Code, the court may impose a fine for the offense in addition to the mandatory fine and the fine imposed under division (B)(4) of this section. The sum total of the amounts of the mandatory fine, the fine imposed under division (B)(4) of this section, and the additional fine imposed under division (B)(6) of this section shall not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section [2929.31](#) of the Revised Code. The clerk of the court shall pay any fine that is imposed under division (B)(6) of this section to the county, township, municipal corporation, park district as created pursuant to section [511.18](#) or [1545.04](#) of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender pursuant to division (F) of section [2925.03](#) of the Revised Code.

(7) If the sum total of the amount of a mandatory fine imposed for a first, second, or third degree felony violation of section [2925.03](#) of the Revised Code plus the amount of any fine imposed under division (B)(4) of this section exceeds the maximum statutory fine amount authorized for the level of the offense under

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~~2901.323~~ INVOLVING A MINOR, OR DIVISION (D)(1), (2), (3), (4), OR (5) OF SECTION ~~2911.22~~
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of the Revised Code also is convicted of or pleads guilty to a specification of the type described in section [2941.1422](#) of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking, the sentencing court shall sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and the greater of the following:

- (i) The gross income or value to the offender of the victim's labor or services;
 - (ii) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the "Federal Fair Labor Standards Act of 1938," 52 Stat. 1060, 20 U.S.C. 207, and state labor laws.
- (b) If a court imposing sentence upon an offender for a felony is required to impose upon the offender a financial sanction of restitution under division (B)(8)(a) of this section, in addition to that financial sanction of restitution, the court may sentence the offender to any other financial sanction or combination of financial sanctions authorized under this section, including a restitution sanction under division (A)(1) of this section.
- (9) In addition to any other fine that is or may be imposed under this section, the court imposing sentence upon an offender for a felony that is a sexually oriented offense or a child-victim oriented offense, as those terms are defined in section [2950.01](#) of the Revised Code, may impose a fine of not less than fifty nor more than five hundred dollars.

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of this section shall be paid to the law enforcement agency that was served by the SUPPORT police dog or horse that was killed in the felony violation of division (A) of section 2921.321 of the Revised Code to be used as provided in division (E)(1)(b) of that section.

(11) In addition to any other fine that is or may be imposed under this section, the court imposing sentence upon an offender for any of the following offenses that is a felony may impose a fine of not less than seventy nor more than five hundred dollars, which shall be transmitted to the treasurer of state to be credited to the address confidentiality program fund created by section 111.48 of the Revised Code:

(a) Domestic violence;

(b) Menacing by stalking;

(c) Rape;

(d) Sexual battery;

(e) Trafficking in persons;

(f) A violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323 involving a minor, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code, if the offender also is convicted of a specification of the type described in section 2941.1422 of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking.

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

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

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

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SUPPORT this section upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed upon an offender pursuant to this section for costs incurred by a private provider of sanctions is a judgment in favor of the private provider, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of a mandatory fine imposed under division (B)(10) of this section that is required under that division to be paid to a law enforcement agency is a judgment in favor of the specified law enforcement agency, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to division (A)(1) or (B)(8) of this section is an order in favor of the victim of the offender's criminal act that can be collected through a certificate of judgment as described in division (D)(1) of this section, through execution as described in division (D)(2) of this section, or through an order as described in division (D)(3) of this section, and the offender shall be considered for purposes of the collection as the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may do any of the following:

- (1) Obtain from the clerk of the court in which the judgment was entered a certificate of judgment that shall be in the same manner and form as a certificate of judgment issued in a civil action;
- (2) Obtain execution of the judgment or order through any available procedure, including:

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~~(C) Proceeding~~ proceeding in aid of execution under Chapter 2333. of the Revised Code, including:

(i) A proceeding for the examination of the judgment debtor under sections [2333.09](#) to [2333.12](#) and sections [2333.15](#) to [2333.27](#) of the Revised Code;

(ii) A proceeding for attachment of the person of the judgment debtor under section [2333.28](#) of the Revised Code;

(iii) A creditor's suit under section [2333.01](#) of the Revised Code.

(d) The attachment of the property of the judgment debtor under Chapter 2715. of the Revised Code;

(e) The garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code.

(3) Obtain an order for the assignment of wages of the judgment debtor under section [1321.33](#) of the Revised Code.

(E) A court that imposes a financial sanction upon an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it.

(F) Each court imposing a financial sanction upon an offender under this section or under section [2929.32](#) of the Revised Code may designate the clerk of the court or another person to collect the financial sanction. The clerk or other person authorized by law or the court to collect the financial sanction may enter into contracts with one or more public agencies or private vendors for the collection of,

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

(H) No financial sanction imposed under this section or section [2929.32](#) of the Revised Code shall preclude a victim from bringing a civil action against the offender.

Available Versions of this Section

September 29, 2013 – House Bill 59, 130th General Assembly [[View September 29, 2013 Version](#)]

September 29, 2015 – House Bill 64, 131st General Assembly [[View September 29, 2015 Version](#)]

September 13, 2016 – Amended by House Bill 60, House Bill 359, 131st General Assembly [[View September 13, 2016 Version](#)]

March 22, 2019 – Amended by Senate Bill 201, 132nd General Assembly [[View March 22, 2019 Version](#)]

October 1, 2020 – Amended by House Bill 66, 133rd General Assembly [[View October 1, 2020 Version](#)]

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Section 2929.32 | Additional fines for certain offenses.

Ohio Revised Code / Title 29 Crimes-Procedure /

Chapter 2929 Penalties And Sentencing

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Effective: January 1, 2004 **Latest Legislation:** House Bill 490 - 124th General Assembly

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(A)(1) Subject to division (A)(2) of this section, notwithstanding the fines prescribed in section [2929.02](#) of the Revised Code for a person who is convicted of or pleads guilty to aggravated murder or murder, the fines prescribed in section [2929.18](#) of the Revised Code for a person who is convicted of or pleads guilty to a felony, the fines prescribed in section [2929.28](#) of the Revised Code for a person who is convicted of or pleads guilty to a misdemeanor, the fines prescribed in section [2929.31](#) of the Revised Code for an organization that is convicted of or pleads guilty to an offense, and the fines prescribed in any other section of the Revised Code for a person who is convicted of or pleads guilty to an offense, a sentencing court may impose upon the offender a fine of not more than one million dollars if any of the following applies to the offense and the offender:

(a) There are three or more victims, as defined in section [2969.11](#) of the Revised Code, of the offense for which the offender is being sentenced.

(b) The offender previously has been convicted of or pleaded guilty to one or more offenses, and, for the offense for which the offender is being sentenced and all of

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1990, would have been an aggravated felony of the first degree.

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(2) If the offense in question is a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the court shall impose upon the offender the mandatory fine described in division (B) of section 2929.18 of the Revised Code, and, in addition, may impose a fine under division (A)(1) of this section, provided that the total of the mandatory fine and the fine imposed under division (A)(1) of this section shall not exceed one million dollars. The mandatory fine shall be paid as described in division (D) of section 2929.18 of the Revised Code, and the fine imposed under division (A)(1) of this section shall be deposited pursuant to division (B) of this section.

(B) If a sentencing court imposes a fine upon an offender pursuant to division (A)(1) of this section, all moneys paid in satisfaction of the fine or collected pursuant to division (C)(1) of this section in satisfaction of the fine shall be deposited into the crime victims recovery fund created by division (D) of this section and shall be distributed as described in that division.

(C)(1) Subject to division (C)(2) of this section, notwithstanding any contrary provision of any section of the Revised Code, if a sentencing court imposes a fine upon an offender pursuant to division (A)(1) of this section or pursuant to another section of the Revised Code, the fine shall be a judgment against the offender in favor of the state, and both of the following apply to that judgment:

(a) The state may collect the judgment by garnishing, attaching, or otherwise executing against any income, profits, or other real or personal property in which the offender has any right, title, or interest, including property acquired after the imposition of the fine, in the same manner as if the judgment had been rendered

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garnishment, attachment, or other execution shall be distributed as otherwise provided by law for the distribution of money paid in satisfaction of a fine.

(b) The provisions of Chapter 2329. of the Revised Code relative to the establishment of court judgments and decrees as liens and to the enforcement of those liens apply to the judgment.

(2) Division (C)(1) of this section does not apply to any financial sanction imposed pursuant to section [2929.18](#) of the Revised Code upon a person who is convicted of or pleads guilty to a felony.

(D) There is hereby created in the state treasury the crime victims recovery fund. If a sentencing court imposes a fine upon an offender pursuant to division (A)(1) of this section, all moneys paid in satisfaction of the fine and all moneys collected in satisfaction of the fine pursuant to division (C)(1) of this section shall be deposited into the fund. The fund shall be administered and the moneys in it shall be distributed in accordance with sections [2969.11](#) to [2969.14](#) of the Revised Code.

Available Versions of this Section

January 1, 2004 – House Bill 490, 124th General Assembly [[View January 1, 2004 Version](#)]

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