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**Effective date:** \*

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**ACT SUMMARY**

- Clarifies that other sentencing criteria, in addition to mandatory prison terms, limit a court in its general discretion to determine the most effective way to sentence a felon in compliance with Ohio's purposes and principles of sentencing.
- Revises one of the factors that the court must consider in sentencing an offender for a felony of the fourth or fifth degree to require it to consider whether the offender committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance and adds a new factor to require it to consider whether the offender committed the offense while in possession of a firearm.
- Specifies that an attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the involved controlled substance is an offense of the same degree as the drug abuse offense attempted would be if it had been committed and involved an amount or number of unit doses of the controlled substance within the next lower range of controlled substance amounts and requires the sentencing court, when considering sentencing factors in relation to an

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

offense of that nature to consider the factors applicable to the felony category that the drug abuse offense attempted would be if it had been committed and involved that next lower amount or number of unit doses.

- Permits a court to order a felony prison sentence to be served consecutively to a felony prison sentence imposed by a court of another state or the United States.
- Requires the sentencing court, when considering sentencing factors in relation to an attempt to commit an offense that is not a drug abuse offense of the type described in the prior paragraph to consider the factors applicable to the felony category of the attempt instead of those applicable to the felony category of the offense attempted.
- Permits certain mandatory prison terms imposed for having a firearm while committing a felony to be imposed regardless of whether a prison term is imposed for the underlying felony and specifies how those mandatory prison terms must be served.
- Specifies that, if an offender who is sentenced to one or more community control sanctions absconds or otherwise leaves the jurisdiction of the court in which the offender resides without permission, or if the offender is confined in any institution for the commission of an offense while under a community control sanction, the period of the community control sanction ceases to run until the offender is brought before the court for further action.
- Redefines "economic loss" for the purpose of the Criminal Sentencing Law, as used in the law governing financial sanctions for felonies, to mean any economic detriment suffered by a victim as a result of the commission of a felony 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 felony.
- Changes the maximum amount that the court may impose upon a felon as a financial sanction of reimbursement of all or part of the costs of confinement to provide that the amount may not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing or the actual cost of the confinement.

- Provides that imposition of a financial sanction and execution on the financial sanction as a judgment does not preclude any other power of the court to impose or enforce sanctions on the offender.
- Limits to the "maximum prison term available for the offense" the amount of time that a person may be confined prior to delivery to the jailer, administrator, or keeper of a jail or facility when the person is sentenced for a felony and confined in a jail under a community control sanction, confined in a community-based correctional facility pursuant to a community control sanction, and confined for any reason arising out of the offense for which the person was convicted and sentenced.
- Specifically requires the reduction of a prisoner's mandatory prison sentence by the time served by the prisoner in jail prior to delivery of the prisoner into the custody of the Department of Rehabilitation and Correction (DRC).
- Modifies the definition of repeat violent offender, regarding the convictions that count as prior convictions.
- Requires the imposition of a mandatory prison term for certain third degree felonies (attempts to commit specified second degree felonies) that qualify a person as a repeat violent offender if the person previously has been convicted of or pleaded guilty to specified offenses in the definition of "repeat violent offender."
- Revises the notices that a court must provide to a convicted felon upon whom it imposes a prison term.
- Provides that if a DRC prisoner's stated prison term is five years and the prisoner is an eligible offender, the eligible offender may file a motion for judicial release after the eligible offender has served four years of the stated prison term and clarifies the time periods within which other categories of offenders may file such a motion.
- Redefines who qualifies as an "eligible offender" for purposes of applying for and being granted a judicial release.

- Repeals the requirement that the Adult Parole Authority give two weeks prior notice to the prosecuting attorney of the judicial release of specified convicts.
- Modifies, streamlines, and simplifies certain procedures under the judicial release law.
- Requires a court to consider a warden's report when considering a DRC prisoner for judicial release.
- Modifies the conditions with which misdemeanor offenders must comply when placed on probation or when their sentences are otherwise suspended and removes a specific firearms law-compliance condition.
- Requires a court sentencing a felony offender to one or more nonresidential sanctions to impose as a condition of the sanction that during the period of the sanction the felony offender must abide by the law and may not leave the state without the permission of the court or the offender's probation officer and removes a specific firearms law-compliance condition.
- Requires the sentencing court to determine at the time of sentencing if an offender is eligible for placement in a DRC program of shock incarceration or sentenced to prison for a felony for placement in a DRC intensive program prison.
- Permits the sentencing court to recommend an eligible offender for placement in a DRC program of shock incarceration or intensive program prison, disapprove placement of the offender in a program or prison of that type, or make no recommendation on placement of the offender.
- Requires DRC to notify the sentencing court of the offender's disposition if the court recommended an offender for placement in a DRC program of shock incarceration or intensive program prison.
- Requires the preparation and submission of a warden's report with the Adult Parole Authority's (APA's) notice to the court of common pleas of the pending transfer of a DRC prisoner to transitional control.

- Extends from ten to 30 days the time period for a sentencing court to notify the APA of its disapproval of the transfer of a DRC prisoner to transitional control.
- Reclassifies the offense of "contaminating a substance for human substance or use," in certain circumstances.
- Designates a violation of R.C. 2937.99, which pertains to a failure to appear after being released on recognizance, as the offense of "failure to appear" and modifies the penalty for the offense.
- Eliminates from the "prescription drug" exemption to the drug possession offenses the requirement that the prescription drug be in the original container in which it was dispensed to the person who obtained it under a prescription.
- For all drug trafficking offenses, all drug possession offenses, and the offense of "illegal cultivation of marihuana," redesignates the minimums and the maximums that delineate the ranges of controlled substance amounts that are used in determining the penalty for the particular violation.
- For the offenses of "trafficking in heroin" and "possession of heroin," includes references to unit doses as well as to grams in the ranges of controlled substance amounts used in determining the penalty for a particular violation.
- Modifies the elements of "aggravated funding of drug trafficking," "funding of drug trafficking," and "funding of marihuana trafficking" to provide that the offense is committed by providing money or other items of value to purchase a controlled substance for the purpose of selling or offering to sell the controlled substance only if the amount of the controlled substance equals or exceeds a specified amount.
- Modifies, and clarifies the application of, the major drug offender sentencing provisions of the Criminal Sentencing Law, and includes as a major drug offender a person who commits drug trafficking or drug possession offenses involving specified amounts of heroin in unit dose form or specified amounts of liquid L.S.D.

- Increases the penalty in specified circumstances for permitting drug abuse and applies the nuisance law to the involved premises.
- Reclassifies "illegal processing of drug documents" as a felony of the fifth degree in specified cases.
- Specifies that, if a convicted felon violates the conditions of a community control sanction imposed for the felony solely by reason of producing positive results on a drug test, the court, as punishment for the violation of the sanction, cannot order the offender imprisoned unless it makes specified determinations on the record.
- Repeals existing "treatment in lieu of conviction" provisions for persons charged with a crime who are drug dependent or in danger of becoming drug dependent and replaces them with new provisions for "intervention in lieu of conviction" for persons charged with a criminal offense when the court has reason to believe that drug or alcohol usage by the person was a factor leading to the person's criminal behavior.
- Specifies that the appeal as a matter of right that is granted, in certain circumstances, to defendants who are convicted of a felony and who are sentenced to the maximum prison term allowed for the offense does not apply when the maximum prison term imposed is required for the felony pursuant to the Drug Offenses Law or pursuant to any other Revised Code provision.
- Provides that a defendant may appeal as a matter of right a sentence that consists of an additional prison term of ten years imposed on a repeat violent offender.
- Provides that the restriction against the Adult Parole Authority granting a final release earlier than one year after a felony prisoner is released from an institution under post-release control applies only in relation to mandatory periods of post-release control.
- Specifies that, when a prisoner is released under post-release control or when a prisoner who under post-release control violates its sanctions or conditions, the conditions that the Parole Board or APA may impose relative to the post-release control or to the violation include any other community residential sanction, nonresidential sanction, or financial

sanction that the sentencing court was authorized to impose in sentencing the offender under the Criminal Sentencing Law.

- Specifies that any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or a division of a section of the Revised Code must be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of Ohio, another state, or the United States or under an existing or former municipal ordinance.
- Consolidates and relocates in the Criminal Code existing prohibitions against discharging a firearm upon or over a cemetery or within 100 yards of a cemetery, discharging a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or an inhabited dwelling, the property of another, or a charitable institution, and discharging a firearm upon or over a public road or highway.
- Revises the arrest and law enforcement powers of cemetery company or association watchmen, superintendents, gardeners, and agents, railroad union terminal company officers and agents, railroad conductors, ticket agents, and special policemen.
- Expands the existing "keeping a habitual resort for thieves, burglars, or robbers" provisions to also cover persons involved in specified types of felonious conduct.
- Repeals the existing prohibitions against fighting a duel, being a second to a person who fights a duel, challenging another to fight a duel, accepting a challenge to fight a duel, or knowingly being the bearer of a challenge to fight a duel.
- Repeals the existing Revised Code chapter that governs bridge companies incorporated to construct a bridge over a stream of water in Ohio and bridge companies incorporated to construct a bridge over the Ohio River.
- Changes the name of the State Criminal Sentencing Council to the State Criminal Sentencing Commission.

- Repeals the existing Revised Code section that contains the offense of "vehicular homicide," incorporates the current vehicular homicide prohibition within the statute that currently contains the prohibition constituting the offense of "aggravated vehicular homicide," modifies the elements of both of those prohibitions as they relate to drunken vehicular homicides and in other manners, enacts a new prohibition located in that statute that it names the offense of "vehicular manslaughter," and enacts a new sentencing structure for all of those prohibitions.
- Renames the offense of aggravated vehicular assault as "vehicular assault," modifies the penalties for that offense, and enacts a new offense that is named "aggravated vehicular assault."
- Modifies the elements of, and the additional special sanctions for, the offense of "involuntary manslaughter" when it is based on a misdemeanor offense.
- In the offense of state watercraft OMVI, modifies the list of prior convictions used in determining the offender's sentence.
- Replaces the terms "basic supervision" and "intensive supervision" with the terms "basic probation supervision" and "intensive probation supervision" and specifies that these new terms include both parole supervision and post-release control supervision.

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## CONTENT AND OPERATION

### General discretion of sentencing court

#### Prior law

R.C. 2929.12 provided that, unless a mandatory prison term was required by R.C. 2929.13(F) or R.C. 2929.14 (see "Mandatory prison terms relating to firearms specifications," "Jail time credit for felons receiving mandatory prison terms," and "Repeat violent offenders (RVOs)," below), a court that imposed a sentence under the Criminal Sentencing Law upon an offender for a felony had discretion to determine the most effective way to comply with Ohio's purposes and principles of sentencing. The court's discretion was "guided," though, in that it was required to consider specified factors, presumptions, and criteria in determining the sentence to impose. (R.C. 2929.12.)

### **Operation of the act**

The act expands the language that currently limits a court's discretion to determine a felony offender's sentence in circumstances in which a mandatory prison term is required. Under the act, a court that imposes sentence under the Criminal Sentencing Law upon an offender for a felony has discretion to determine the most effective way to comply with Ohio's purposes and principles of sentencing *unless otherwise required by R.C. 2929.13 or 2929.14*. This expansion recognizes that R.C. 2929.13 and 2929.14 contain limitations on a sentencing court's discretion, in addition to mandatory prison terms. (R.C. 2929.12(A).)

### **Sentencing guidelines**

#### **Guidelines for third and fourth degree felonies**

**Prior and continuing law.** R.C. 2929.13 specifies guidelines for a court to use in imposing a sentence upon a convicted felon. Under prior law, R.C. 2929.13(B) provided that, except in regards to specified offenses and circumstances for which a prison term was required to be imposed, in sentencing an offender for a felony of the fourth or fifth degree, the sentencing court was required to determine whether any of the following apply: (1) in committing the offense, the offender caused physical harm to a person, (2) in committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon, (3) in committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person, (4) the offender held a public office or position of trust, and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others, (5) the offender committed the offense for hire or as part of an organized criminal activity, (6) the offense was a fourth or fifth degree violation of specified sex offenses, (7) the offender previously served a prison term, and (8) the offender previously was subject to a community control sanction, and the offender committed another offense while under the sanction.

Under continuing law, if the court makes a finding described in the preceding paragraph (as amended by the act) and if the court, after considering other specified factors to be considered in felony sentencing, finds that a prison term is consistent with the state's purposes and principles of sentencing and finds that the offender is not amenable to an available community control sanction, the court must impose a prison term upon the offender. If the court does not make a finding described in the preceding paragraph and if the court, after considering

other specified factors to be considered in felony sentencing, finds that a community control sanction or combination of community control sanctions is consistent with the state's purposes and principles of sentencing, the court must impose a community control sanction or combination of community control sanctions upon the offender. (R.C. 2929.13(B).)

**Operation of the act.** The act revises the eighth factor, as described above, that the court must consider in sentencing an offender for a felony of the fourth or fifth degree. Under that factor as contained in the act, the court must consider whether the offender committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance. The act also adds a ninth factor, which requires the court to consider whether the offender committed the offense while in possession of a firearm. (R.C. 2929.13(B)(1)(h) and (i) and (2), 2929.19(B)(2)(a), and 2953.08(A)(2).)

#### **Guidelines for attempts**

**Drug abuse offenses.** The act enacts new law regarding the offense classification of an attempt to commit certain drug abuse offenses. Under the act, an attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved is an offense of the same degree as the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt. When considering sentencing factors in relation to an offender who is convicted of or pleads guilty to an attempt to commit a drug abuse offense of that type, the sentencing court must consider the factors applicable to the felony category that the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt. (R.C. 2923.02(E) and (F) and 2929.13(J)(2) and (K).)

**Other offenses.** The act requires the sentencing court, when considering sentencing factors in relation to an offender who is convicted of or pleads guilty to an attempt to commit an offense other than a drug abuse offense of the type described in the preceding paragraph, to consider the factors applicable to the felony category of the attempt instead of the factors applicable to the felony category of the offense attempted (R.C. 2929.13(J)(1)).

## **Multiple sentences**

### **Prior law**

Generally, a sentence of imprisonment was required to be served concurrently with any other sentence of imprisonment imposed by an Ohio court or the court of another state or the United States. In any case, a sentence of imprisonment for misdemeanor was required to be served concurrently with a sentence of imprisonment for felony served in a state or federal correctional institution.

A sentence of imprisonment for a misdemeanor was required to be served consecutively to any other sentence of imprisonment when the trial court specifies that it was to be served consecutively or when it was imposed for a misdemeanor violation of pandering sexually oriented matter involving a minor, escape, or possession of a deadly weapon while under detention. When consecutive sentences of imprisonment were imposed for misdemeanor, the term to be served was the aggregate of the consecutive terms imposed, except that the aggregate term to be served was prohibited from exceeding 18 months. (R.C. 2929.41.)

### **Operation of the act**

Under the act, if an Ohio court imposes a prison term upon the offender for the commission of a felony and a court of another state or the United States also has imposed a prison term upon the offender for the commission of a felony, the Ohio court may order that the offender serve the prison term it imposes consecutively to any prison term imposed upon the offender by the court of another state or the United States (R.C. 2929.41(B)(3)).

## **Mandatory prison terms relating to firearms specifications**

### **Prior law**

Generally, if an offender who was convicted of or pleaded guilty to a felony also was convicted of or pleaded guilty to certain firearms specifications, the court was required to impose on the offender one of the following additional prison terms (R.C. 2929.14(D)(1)(a)(i)):

(1) An additional prison term of six years if the specification charged the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony;

(2) An additional prison term of three years if the specification charged the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(3) An additional prison term of one year if the specification charged the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

In imposing the additional prison term described above, the court was required to impose it after imposing a prison term on the offender for the felony. The additional prison term could not be reduced pursuant to judicial release, for participation in certain educational, vocational, or treatment programs, or under any other provision of the Parole and Probation Laws or the Department of Rehabilitation and Correction Laws. A court could not impose more than one additional firearm prison term on an offender for felonies committed as part of the same act or transaction. If a court, under a separate provision, imposed an additional prison term of five years as a result of the offender being convicted of or pleading guilty to a specification of the type that charges the offender with committing the offense by discharging a firearm from a motor vehicle, the court could still impose an additional prison term of the type described in paragraph (1), (2), or (3), above. (R.C. 2929.14(D)(1)(a)(i).)

The court was not permitted to impose any of the additional firearm prison terms described in paragraphs (1), (2), or (3), above, or an additional prison term for committing any one of a group of specified felonies by discharging a firearm from a motor vehicle upon an offender for a conviction of the offense of having weapons under a disability unless the offender previously had been convicted of aggravated murder, murder, or any felony of the first or second degree and unless less than five years had passed since the offender was released from prison or post-release control, whichever was later, for the prior offense. (R.C. 2929.14(D)(1)(b).)

If a mandatory prison term was imposed upon an offender for having a firearm on or about the offender's person or under the offender's control while committing a felony or if a mandatory prison term was imposed upon an offender for committing any one of a group of specified felonies by discharging a firearm from a motor vehicle, the offender was required to serve the mandatory prison term consecutively to and prior to the prison term imposed for the underlying felony and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender (R.C. 2929.14(E)(1)).

### **Operation of the act**

The act removes the requirement that the mandatory prison terms relating to the firearms specifications described in paragraphs (1), (2), or (3), above, under "**Prior law**" be imposed as additional prison terms after the court imposes the prison term on an offender for the underlying felony. Thus, a prison term relating to any of those firearms specifications can be imposed under the act even if no prison term is imposed for the underlying offense. The act refers to these mandatory prison terms as "prison terms" rather than as "additional prison terms."

The prison term imposed as a result of the offender being convicted of or pleading guilty to a specification of the type that charges the offender with committing any one of a group of specified offenses by discharging a firearm from a motor vehicle continues to be designated as an "additional prison term" to be imposed after the prison term for the underlying offense.

The act clarifies that if a mandatory prison term is imposed upon an offender for having a firearm on or about the offender's person or under the offender's control while committing a felony and also for committing any one of a group of specified offenses by discharging a firearm from a motor vehicle, the offender must serve any of those mandatory prison terms consecutively to any other mandatory prison term of either of those types and must serve all mandatory prison terms of those types consecutively to and prior to any prison term imposed for the underlying felony and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender (R.C. 2929.14(D)(1) and (E)(1)).

The act makes technical revisions of a nonsubstantive nature to the provision relating to mandatory prison terms for persons convicted of the above-described firearms specifications (R.C. 2929.01(MM) and (NN), 2929.14(D)(1)(a), 2941.141, 2941.144, 2941.145, and 2941.146).

### **Community control sanctions**

#### **Continuing law**

Under continuing Criminal Sentencing Law, if in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions. The duration of all community control sanctions cannot exceed five years.

Continuing law sets forth procedures for supervision under the community control sanctions and procedures for enforcing the sanctions. If an offender who is

sentenced to one or more community control sanctions violates a condition of the sanctions, the sentencing court may impose a longer time under the sanction if the total time under the sanctions does not exceed the five-year limit, may impose a more restrictive sanction, or may impose a prison term on the offender (the prison term must be from the range of prison terms available for the offender for which the sanctions initially were imposed). If an offender, for a significant period of time, fulfills the conditions of a community control sanction in an exemplary manner, the court may reduce the period of time under the sanction or impose a less restrictive sanction. (R.C. 2929.15.)

### **Operation of the act**

The act specifies that, if an offender who is sentenced to one or more community control sanctions absconds or otherwise leaves the jurisdiction of the court in which the offender resides without obtaining permission from the court or the offender's probation officer to leave the court's jurisdiction, or if the offender is confined in any institution for the commission of an offense while under a community control sanction, the period of the community control sanction ceases to run *until the offender is brought before the court for further action* (R.C. 2929.15(A)).

### **Financial sanctions**

#### **Restitution**

**Continuing and prior law.** Under continuing Criminal Sentencing Law, the court imposing sentence for a felony may require the offender to make restitution to the victim or any survivor of the victim in an amount based on the victim's *economic loss* (see below). The court must order that the restitution be made 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, except that it may include a requirement that reimbursement be made to third parties for amounts paid to or on behalf of the victim or any survivor of the victim for economic loss resulting from the offense. The court may not require an offender to repay an insurance company for any amounts the company paid on behalf of the offender pursuant to a policy of insurance. At sentencing, the court must determine the amount of restitution to be made by the offender. All restitution payments must 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. The order to make restitution is a judgment in favor of the victim of the offender's criminal act, and the Revised Code specifies the methods by which the judgment may be enforced. (R.C. 2929.18(A)(1) and (D).)

Under prior law, "economic loss" meant any economic detriment suffered by a victim as a result of "criminally injurious conduct" (see below) and included 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 criminally injurious conduct (prior R.C. 2929.01(N)).

Under prior law, "criminally injurious conduct" meant, for the purposes of the Criminal Sentencing Law, either of the following (R.C. 2929.01(G), and R.C. 2743.51(C)(1) and (2)--not in the act):

(1) Generally, any conduct that occurred or was attempted in Ohio; posed a substantial threat of personal injury or death; and was punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person who engaged in the conduct lacked capacity to commit the crime under the laws of Ohio.

(2) Generally, any conduct that occurred or was attempted in another state, district, territory, or foreign country; posed a substantial threat of personal injury or death; and was punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person who engaged in the conduct lacked capacity to commit the crime under the laws of the state, district, territory, or foreign country in which the conduct occurred or was attempted.

(3) Any terrorism that occurred within or outside the territorial jurisdiction of the United States.

Criminally injurious conduct described above in (1) and (2) did not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applied: (a) the person who engaged in the conduct intended to cause personal injury or death, (b) the person who engaged in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a felony but for the fact that the person who engaged in the conduct lacked the capacity to commit the felony under the applicable law, (c) the person who engaged in the conduct was using the vehicle in a manner that constituted an OMVI violation, or (d) the conduct occurred on or after July 25, 1990, the person who engaged in the conduct was using the vehicle in a manner that constituted the offense of aggravated vehicle assault or a violation of any law that was substantially similar to the offense of aggravated vehicular homicide.

**Operation of the act.** The act revises the definition of "economic loss" to mean any economic detriment suffered by a victim as a result of *the commission of a felony* (rather than *as a result of criminally injurious conduct*) 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 felony.* It removes the definition of "criminally injurious conduct" from the definitional provisions for the Criminal Sentencing Law, because it is no longer used in that Law. (R.C. 2929.01(G) and (M) and cross-reference change in R.C. 2967.141(B).)

### **Reimbursement**

**Prior and continuing law.** Prior Criminal Sentencing Law authorized the court imposing a sentence upon an offender for a felony to sentence the offender to the financial sanction of reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following (R.C. 2929.18(A)(4)(a)):

(1) All or part of the costs of implementing any community control sanction;

(2) All or part of the costs of confinement under a sanction imposed for a felony, provided that the amount of reimbursement ordered pursuant to this provision could not exceed \$10,000 or the total amount of reimbursement the offender is able to pay as determined at a hearing, whichever amount was greater.

Under continuing law, a financial sanction generally is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the sanction is the judgment debtor. A financial sanction of reimbursement of the costs of confinement imposed 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 a financial sanction of reimbursement imposed upon an offender for costs incurred by a private provider of sanctions is a judgment in favor of the private provider. Continuing law specifies the methods by which the judgment may be enforced. (R.C. 2929.18(D).)

**Operation of the act.** The act changes the maximum amount that the court may impose as the financial sanction of reimbursement of all or part of the costs of confinement. Under prior law, the maximum amount of reimbursement was \$10,000 or the total amount of reimbursement the offender was able to pay as determined at a hearing, *whichever amount is greater*. Under the act, the maximum amount of reimbursement cannot exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and cannot exceed the actual cost of the confinement. (R.C. 2929.18(A)(4)(a)(ii).)

The act also provides that imposition of a financial sanction and execution on the financial sanction as a judgment does not preclude any other power of the court to impose or enforce sanctions on the offender, and clarifies that, in relation

to all financial sanctions imposed, the offender is the judgment debtor (R.C. 2929.18(D)).

The act also makes changes of a technical nature regarding reimbursement (R.C. 2929.223).

**Jail time credit for time served**

**Jail time credit for felons sentenced to a jail or community-based correctional facility**

**Prior and continuing law.** Under continuing law, the Department of Rehabilitation and Correction (hereafter, DRC) must reduce the stated prison term of a convicted felon or, if the felon is serving a prison term that includes parole eligibility, must reduce the minimum and maximum terms or the parole eligibility date of the felon by the total number of days that the felon was confined prior to the felon's arrival at the place where the felon is to serve the prison term. The number of days to be subtracted from the felon's sentence include all days the felon was confined for any reason arising out of the offense for which the felon was convicted and sentenced, including, but not limited to, the following: confinement in lieu of bail while awaiting trial, confinement for examination to determine the felon's competence to stand trial or sanity, and confinement while awaiting transportation to the place where the felon is to serve the felon's prison term. (R.C. 2967.191--not in the act.) Prior law did not specifically require that a felon serving a community residential sanction (e.g., a term in a jail or community-based correctional facility) receive credit for time served prior to serving the felon's sanction. Misdemeanants sentenced to a term of imprisonment in a jail or workhouse received a credit, similar to that prescribed in R.C. 2967.191, for time served prior to the delivery of the misdemeanor into the custody of the jailer (R.C. 2949.08(C)).

**Operation of the act.** Under the act, if a person is sentenced for a felony, the amount of time that a person is confined in a jail under a community control sanction, confined in a community-based correctional facility pursuant to a community control sanction, and confined for any reason arising out of the offense for which the person was convicted and sentenced prior to delivery to the jailer, administrator, or keeper must not exceed the maximum prison term available for that offense. Any term in a jail must be first reduced as described in the following paragraph by the total number of days the person was confined prior to delivery to the jailer, administrator, or keeper. Only after the term in the jail has been entirely reduced may the term in a community-based correctional facility be reduced pursuant to this provision. This provision does not affect the limitations placed on

the duration of a term in a jail (six or 12 months) or a community-based correctional facility (six months) under the Community Control Sanction Law.

Under the act, if a person is sentenced for a misdemeanor, the jailer in charge of a jail must reduce the sentence of a person delivered to the jailer's custody by the total number of days the person was confined for any reason arising out of the offense for which the person was convicted and sentenced, including, but not limited to: confinement in lieu of bail while awaiting trial, confinement for examination to determine the person's competence to stand trial or sanity, and confinement while awaiting transportation to the place where the person is to serve the person's community residential sanction. The record of the prisoner's conviction delivered to the jail or facility must specify the number of days the prisoner was so confined. (R.C. 2949.08.)

As used in the above provisions, "jail" has the same meanings as under the Criminal Sentencing Law (R.C. 2949.08(E) by reference to R.C. 2929.01). This definition of "jail" includes workhouses, so the act removes references to "workhouses" (R.C. 2949.08(A) and (C)).

#### **Jail time credit for felons receiving mandatory prison terms**

**Continuing law.** Under continuing law, a court must impose a mandatory prison term or terms for any of the following offenses and, except for the two exceptions noted below, may not reduce the term (R.C. 2929.13(F)): (1) aggravated murder when death is not imposed or murder, (2) rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape by force when the victim is under 13 years of age, (3) gross sexual imposition or sexual battery, if the victim is under 13 years of age, if the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and if the victim of the previous offense was under 13 years of age, (4) aggravated vehicular homicide, vehicular homicide, or aggravated vehicular assault when it is a felony and imposition of a prison term is required by the section containing the offense, (5) a first, second, or third degree felony drug offense for which the section containing the offense requires a mandatory prison term, (6) any other first or second degree felony if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to one of those offenses, (7) any offense, other than carrying concealed weapons, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to the portion of the sentence imposed for having the firearm, (8) corrupt activity when the most serious offense in the pattern of corrupt activity

that is the basis of the offense is a felony of the first degree, (9) any sexually violent offense for which the offender also is convicted of or pleads guilty to a sexually violent predator specification, and (10) an offense under R.C. 2921.36 involving conveyance of deadly weapons, dangerous ordnance, or drugs of abuse into a detention facility or a specified mental health or mental retardation facility, if the offender is an officer or employee of DRC.

There are two exceptions to the prohibition against reducing a mandatory prison term imposed for any of the above offenses--a court may reduce a mandatory prison term for one of the offenses when a reduction is specifically provided for under judicial release or when parole is authorized for the offense. Otherwise, a court is specifically prohibited from reducing a mandatory prison term imposed for any of the above offenses under judicial release, "earned credit," or any other provision of Chapter 2967. or Chapter 5120. (R.C. 2929.13(F).)

**Operation of the act.** The act creates an additional exception to the existing prohibition against reducing mandatory prison terms for the above enumerated offenses. The new exception is for reductions under the existing provision that requires DRC to reduce a felon's stated prison sentence by the amount of time the felon was confined prior to the delivery of the felon into the custody of DRC. (Fully discussed above under "**Jail time credit for felons sentenced to jail.**") (R.C. 2929.13(F) and, by reference, R.C. 2967.191--not in the act.)

### **Repeat violent offenders (RVOs)**

#### **Definition**

**Prior law.** Prior law defined "repeat violent offender," for purposes of the Criminal Sentencing Law, as a person to whom both of the following applied: (1) the person had been convicted of or had pleaded guilty to, and was being sentenced for committing, for complicity in committing, or for an attempt to commit, aggravated murder, murder, involuntary manslaughter, a felony of the first degree other than one set forth in the Drug Offenses Law, a felony of the first degree set forth in the Drug Offenses Law that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person, or a felony of the second degree that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person, and (2) the person either previously was convicted of or pleaded guilty to, and served a prison term for aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, complicity in or an attempt to commit any of the previously listed

offenses, an offense under an existing or former law of Ohio, another state, or the United States that was substantially equivalent to any of the previously listed offenses, or previously was adjudicated a delinquent child for committing an act that if committed by an adult would have been any of the previously listed offenses, the person was committed to the Department of Youth Services (hereafter DYS) for that delinquent act, and the juvenile court in which the person was adjudicated a delinquent child made a specific finding that the adjudication should be considered a conviction for purposes of a determination in the future pursuant to Chapter 2929. as to whether the person would be a repeat violent offender (R.C. 2929.01(EE)).

**Operation of the act.** The act modifies the "prior offense" portion of the definition of repeat violent offender, as set forth in clause (2) of the preceding paragraph. Under the act, that portion of the definition reads as follows (R.C. 2929.01(DD)(2)):

(2) Either of the following applies:

(a) The person previously was convicted of or pleaded guilty to, and served a prison term for, any of the following:

(i) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the Revised Code prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;

(ii) 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 listed under division (DD)(2)(a)(i) of this section ***and that resulted in the death of a person or in physical harm to a person*** (added by the act).

(b) The person previously was adjudicated a delinquent child for committing an act that if committed by an adult would have been an offense listed in division (DD)(2)(a)(i) or (ii) of this section, the person was committed to the department of youth services for that delinquent act, and the juvenile court in which the person was adjudicated a delinquent child

made a specific finding that the adjudication should be considered a conviction for purposes of a determination in the future pursuant to this chapter as to whether the person is a repeat violent offender.

### **Mandatory prison terms**

**Prior and continuing law.** Under continuing law, R.C. 2929.13(F) requires a court to impose a mandatory prison term or terms for certain specified offenses or categories of offenses. The offenses and categories of offenses for which a mandatory prison term is required are listed in the "**Prior and continuing law**" portion of "**Jail time credit for felons receiving mandatory prison terms,**" above. Except when judicial release is specifically authorized or when parole is authorized for the offense (note that, as described above, the act expands this exception), a court may not reduce the mandatory term or terms by judicial release, stated prison term reduction for participation in specified programs, or any other provision of R.C. Chapter 2967. or Chapter 5120. (R.C. 2929.13(F).)

**Operation of the act.** The act expands the above list of offenses for which a mandatory prison term is required by requiring the court to impose a mandatory prison term for a felony violation of the offense of involuntary manslaughter if a mandatory prison term is required for the violation and for any third degree felony that is listed in R.C. 2929.01(DD)(1) if the offender previously was convicted of or pleaded guilty to any offense listed in R.C. 2929.01(DD)(2)(a)(i) or (ii). The references to R.C. 2929.01(DD) are to the definition of repeat violent offender. The only felonies of the third degree listed in R.C. 2929.01(DD)(1) are "attempts to commit felonies of the second degree that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person." Therefore, the act requires the imposition of a mandatory prison term for any "attempt to commit a felony of the second degree that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person" if the offender previously was convicted of or pleaded guilty to "aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses or an offense under an existing or former law of Ohio, another state, or the United States that is or was equivalent to any of those offenses and resulted in the death of a person or in physical harm to a person." (R.C. 2929.13(F)(4) and (7) and 2929.01(DD).)

### **Appealable maximum sentences--repeat violent offenders**

See "**Appeal of felony sentence,**" below.

**Procedures to be followed prior to imposition of a prison term for a felony**

**Prior law**

If an offender was convicted of or pleaded guilty to a felony, prior law required the court to hold a sentencing hearing before imposing a sentence on the offender (R.C. 2929.19(A)(1)). Subject to specified provisions that applied when the offender had been adjudicated as being a sexually violent predator (not described in this final analysis), if the sentencing court determined at the sentencing hearing that a prison term was necessary or required, the court was required to do all of the following (R.C. 2929.19(B)(3)):

(1) Impose a stated prison term;

(2) Notify the offender that the Parole Board may extend the stated prison term if the offender commits any criminal offense while serving the prison term, that the extension will be administrative, be part of the offender's sentence, and be for 30, 60, or 90 days for each violation, that all extensions of any stated prison term for all violations may not exceed one-half of the term's duration, and that the sentence so imposed automatically includes any extension of the stated prison term by the Parole Board;

(3) Notify the offender that a period of post-release control will be imposed following the offender's release from prison if the offender is being sentenced for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person;

(4) Notify the offender that a period of post-release control may be imposed following the offender's release from prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to the provision described in the preceding paragraph;

(5) Notify the offender that if the offender violates a post-release control sanction imposed as a component of post-release control, all of the following apply: (a) the Adult Parole Authority (hereafter APA) or the Parole Board may impose a more restrictive post-release control sanction, (b) the Parole Board may increase the duration of the post-release control subject to a specified maximum, (c) the more restrictive sanction the Board imposes may consist of a prison term that cannot exceed nine months, and the maximum cumulative prison term so imposed for all violations of post-release control cannot exceed one-half of the stated prison term originally imposed upon the offender, and (d) if the violation of the sanction is a felony, the offender may be prosecuted for the felony, and, in

addition to any sentence it imposes on the offender for the new felony, the court may impose a prison term, subject to a specified maximum, for the violation.

### **Operation of the act**

The act modifies the above-described duties imposed upon a sentencing court. Under the act subject to specified provisions that apply when the offender has been adjudicated as being a sexually violent predator (not described in this final analysis), if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court must do all of the following (R.C. 2929.19(B)(3)):

(1) Impose a stated prison term;

(2) Notify the offender that, *as part of the sentence*, the Parole Board may extend the stated prison term for certain violations of prison rules for up to one-half of the stated prison term;

(3) Notify the offender that the offender will be supervised under the Post-release Control Law after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree in the commission of which the offender caused or threatened to cause physical harm to a person;

(4) Notify the offender that the offender may be supervised under the Post-release Control Law after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to the provision described in the preceding paragraph;

(5) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, and if the offender violates that supervision, the Parole Board may impose a prison term *as part of the sentence*, of up to one-half of the stated prison term originally imposed upon the offender.

### **Judicial release**

#### **Prior and continuing law**

Pursuant to prior R.C. 2929.20, a sentencing court could reduce an "eligible offender's" (see below) stated prison term through a judicial release upon the filing of a motion by the eligible offender or upon its own motion. An eligible offender could file the motion for judicial release with the sentencing court within one of the following four time periods: (1) if the stated prison term was imposed for a felony of the fourth or fifth degree, the eligible offender could file the motion at

any time between 30 and 90 days after the offender was delivered to a state correctional institution, (2) except as otherwise provided in (3) below, if the stated prison term was imposed for a felony of the first, second, or third degree, the eligible offender could file the motion not earlier than 180 days after the offender was delivered to a state correctional institution, (3) if the stated prison term was five years or more and less than ten years, the eligible offender could file the motion after the eligible offender had served five years of the stated prison term, (4) if the offender was sentenced to a mandatory prison firearms term pursuant to R.C. 2929.14(D)(1), as described above, and a consecutive prison term other than a mandatory prison term that was ten years or less, the offender could file the motion within the time authorized under (1), (2), or (3), above, for the felony that the prison term other than the mandatory prison term was imposed, but the time for filing the motion did not begin to run until after the expiration of the mandatory prison term. (R.C. 2929.20(B).)

Under continuing law, a court may not grant a judicial release to an eligible offender imprisoned for a felony of the first or second degree, or for certain Drug Abuse or Controlled Substance Law offenses, unless it makes certain specified findings regarding the appropriateness of the judicial release (R.C. 2929.20(H)).

Under prior law, a court could schedule a hearing on a motion for judicial release. The court could deny the motion without a hearing but could not grant the motion without a hearing. If a court denied a motion without a hearing, the court could consider a subsequent judicial release for that eligible offender on its own motion or a subsequent motion for judicial release filed by that eligible offender. If a court denied a motion after a hearing, the court could not consider a subsequent motion for judicial release for that offender. The court could hold only one hearing for any eligible offender.

If a court scheduled a hearing on a motion for judicial release, it was required to notify the eligible offender of the hearing, and the eligible offender promptly was required to serve a copy of the notice to the head of the state correctional institution in which he or she was confined. If the court scheduled a hearing, it promptly was required to give notice of the hearing to the prosecuting attorney of the county in which the eligible offender was indicted, and the prosecuting attorney was required to notify the victim of the offense or the victim's representative of the hearing. (R.C. 2929.20(C) and (D).)

At the hearing on a motion for judicial release, the court could order the eligible offender to attend, and the court was required to provide the eligible offender, the eligible offender's counsel, the prosecuting attorney, the victim or the victim's representative, and any other person likely to present additional information an opportunity to present written information relevant to the motion

and, if present, to present oral information relevant to the motion. The court was required to consider any statement of a victim made pursuant to the Crime Victims Rights Law provisions in R.C. 2930.14 and 2930.17 and any victim impact statement prepared pursuant to R.C. 2947.051. After ruling on the motion for judicial release, the court was required to notify the victim of the ruling. (R.C. 2929.20(F) and (G).)

If the court granted a motion for judicial release, the court was required to order the release of the eligible offender and was required to place the eligible offender under an appropriate community control sanction, under a mandatory firearm law-compliance condition of the type described in R.C. 2967.131(A), and under the supervision of the department of probation serving the court. The court was required to reserve the right to reimpose the reduced sentence if the offender violated the sanction. If the court reimposed the reduced sentence, it could do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation. The period of the community control sanction could not be longer than five years. The court, in its discretion, could reduce the period of the community control sanction by the amount of time the eligible offender spent in jail for the offense and in prison. (R.C. 2929.20(I).)

At least two weeks before any convict who was serving a sentence for committing a felony of the first, second, or third degree was released from confinement in any state correctional institution pursuant to a judicial release, the APA was required to send notice of the release to the prosecuting attorney of the county in which the convict was indicted (R.C. 2967.121(A)).

Prior law defined "eligible offender" for purposes of the judicial release procedures to mean any of the following: (1) a person who had been convicted of or pleaded guilty to a felony, who was serving a stated prison term of ten years or less, and who was not serving a mandatory prison term, (2) a person who had been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term and another prison term of ten years or less, and who had served the mandatory prison term, or (3) a person who had been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory firearms prison term pursuant to R.C. 2929.14(D)(1), as described above, and another prison term of ten years or less, who was required to serve the mandatory prison term and the other prison term consecutively, and who had served the mandatory prison term. "Eligible offender" did not include any of the following: (1) a person who had been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term pursuant to R.C. 2929.14(D)(2) or (3) (repeat violent offenders and major drug offenders) and another prison term of ten years or less, and who was required to serve the mandatory prison term and the other prison term consecutively, whether or not the person had served the mandatory prison term,

and (2) a person who had been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term pursuant to R.C. 2929.14(D)(1) and (2), or R.C. 2929.14(D)(3) and another prison term of ten years or less, and who was required to serve any of the mandatory prison terms and the other prison term consecutively, whether or not the person had served the mandatory prison terms. (R.C. 2929.20(A).)

### **Operation of the act**

The act continues to permit a sentencing court to reduce an eligible offender's stated prison term through a judicial release upon the filing of a motion by the eligible offender or upon its own motion, and additionally provides that the court may not reduce the stated prison term of an offender who is not an eligible offender (R.C. 2929.20(B)). To cover certain eligible offenders who are not specifically covered by prior law, the act adds the following time periods within which an eligible offender may file a motion for judicial release with the sentencing court (R.C. 2929.20(B)(1)(b) and (c)):

(1) If the stated prison term is five years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term.

(2) If the stated prison term is more than five years and less than ten years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term.

The act also modifies the provision of prior law that set the time period when the stated prison term was five years or more and less than ten years. Under prior law, the eligible offender was required to file the motion after the eligible offender had served five years of the stated prison term; in effect, this required someone sentenced to exactly five years to serve the whole term before being eligible for early release. The act provides that if the stated prison term is five years, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term, and, if the stated prison term is more than five years and less than ten years, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term. (R.C. 2929.20(B)(3) and renumbered 2929.20(B)(4).)

Additionally, the act restructures former R.C. 2929.20(B)(4) (renumbered in the act as R.C. 2929.20(B)(5)) to state that, if the offender's stated prison term

includes a mandatory prison term, the offender must file the motion " . . . within the time authorized under division (B)(1), (2), (3), or (4) of this section for the nonmandatory portion of the prison term, but the time for filing the motion does not begin to run until after the expiration of the mandatory portion of the prison term."

The act requires the eligible offender to promptly *give* (instead of *serve* as under prior law) a copy of the notice of a scheduled hearing on a motion for judicial release to the head of the state correctional institution in which the offender is confined (R.C. 2929.20(D)). The act requires the court to enter a ruling on a motion within ten days after a hearing on the motion if it *holds* (instead of *schedules* as under prior law) a hearing on the motion (R.C. 2929.20(C)).

The act continues the requirement that a court consider statements made by the victim and victim impact statements when considering a judicial release, and also requires the court to consider the warden's report as well. (R.C. 2929.20(G).) The act requires the court to place an offender who is given a judicial release under *appropriate community control conditions* instead of under a mandatory condition that the releasee abide by the law including the firearms and dangerous ordnance laws (R.C. 2929.20(I)).

The act repeals the requirement that the APA give two weeks prior notice to the prosecuting attorney of the judicial release of a convict who is serving a sentence for committing a felony of the first, second, or third degree (R.C. 2967.121(A)).

Finally, the act replaces the former definition of "eligible offender" with the following definition (R.C. 2929.20(A)):

"Eligible offender" means any person serving a stated prison term of ten years or less when either of the following applies:

- (1) The stated prison term does not include a mandatory prison term.
- (2) The stated prison term includes a mandatory prison term, and the person has served the mandatory prison term.

The act removes the provisions that state what "eligible offender" does not include (repeal of former R.C. 2929.20(A)(2)).

The act makes further changes to R.C. 2929.20 that are intended to streamline and simplify the section's language, as well as changes of a technical nature.

**Minimum terms of probation, sentence suspension, nonresidential sanction, post-release control, or other release**

**Misdemeanor offenders**

**Prior law.** Under prior law, when a misdemeanor offender was placed on probation or the sentence of a misdemeanor offender otherwise was suspended, the probation or other suspension was required to be at least on condition that, during the period of probation or other suspension, the offender abide by the law. "Abiding by the law" specifically included, but was not limited to, complying with the provisions of R.C. Chapter 2923. relating to the possession, sale, furnishing, transfer, disposition, purchase, acquisition, carrying, conveying, or use of, or other conduct involving, a firearm or dangerous ordnance. In addition to abiding by the law, the misdemeanor offender was required to not leave the state without the permission of the court or the offender's probation officer. In the interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior, the court could impose additional requirements on the offender, including but not limited to, requiring the offender to make restitution for all or part of the property damage that was caused by the offender's offense and for all or part of the value of the property that was the subject of any theft offense that the offender committed. Compliance with the additional requirements, also was a condition of the offender's probation or other suspension. (R.C. 2951.02(C).)

**Operation of the act.** The act continues to require that when a misdemeanor offender is placed on probation or a misdemeanor offender's sentence otherwise is suspended that the probation or other suspension be at least on the condition that, during the period of probation or other suspension, the offender must abide by the law and must not leave the state without the permission of the court or the offender's probation officer. The act removes the specific statement that "abiding by the law" specifically includes, but is not limited to, complying with the provisions of R.C. Chapter 2923. relating to the possession, sale, furnishing, transfer, disposition, purchase, acquisition, carrying, conveying, or use of, or other conduct involving, a firearm or dangerous ordnance. "Abiding by the law" still includes obeying the firearms laws; however, the act removes the explicit reference to those laws in relation to a misdemeanor offender's probation or sentence suspension. (R.C. 2951.02(C)(1).)

### **Felony offenders**

**Prior law.** Prior law provided that when a felony offender was sentenced to a nonresidential sanction the court was required to impose as a condition of the sanction that, during the period of the nonresidential sanction, the offender abide by the law, including, but not limited to, complying with the provisions of R.C. Chapter 2923. identified above. It also required the court to notify the offender of the ramifications of violating this condition, prohibited the court from eliminating this condition, and referred to it as the "mandatory condition imposed under R.C. 2951.02(C)(1)(b)." (R.C. 2929.15, 2929.17, 2929.19(B)(5), and 2951.02(C)(1)(b).)

Prior law further provided that the APA or, in the case of a conditional pardon, the Governor was required to include in the terms and conditions of a conditional pardon, parole, transitional control, other form of authorized release, or post-release control the condition that the individual or felon abide by the law, including, but not limited to, complying with the provisions of R.C. Chapter 2923. relating to the possession, sale, furnishing, transfer, disposition, purchase, acquisition, carrying, conveying, or use of, or other conduct involving, a firearm or dangerous ordnance during the period of the individual's or felon's conditional pardon, parole, transitional control, other form of authorized release, or post-release control. The condition that the individual or felon "abide by the law" was in addition to any other terms and conditions of a conditional pardon or parole, of transitional control, or of another form of authorized release from confinement in a state correctional institution that was granted to an individual and that involved the placement of the individual under the supervision of the APA, and in addition to any other sanctions of post-release control imposed on a felon. The post-release control provisions referred to this "abide by the law" condition as the "mandatory condition described in R.C. 2967.131(A)" and prohibited the Parole Board and the APA from eliminating the "mandatory condition." (R.C. 2967.131(A) and 2967.28.)

**Operation of the act.** The act removes the requirement that when a felony offender is sentenced to a nonresidential sanction the court must impose as a condition of the sanction that, during the period of the nonresidential sanction, the offender must abide by the law, including, but not limited to, complying with the firearms provisions of R.C. Chapter 2923. identified above (R.C. 2951.02(C)(1)(b)). It also removes all references to the "mandatory condition imposed under R.C. 2951.02(C)(1)(b)" and removes the prohibition against a court eliminating the "mandatory condition." (R.C. 2929.15, 2929.17, and 2929.19(B)(5).)

In the provisions dealing with conditional pardons, parole, transitional control, other forms of release, and post-release control, the act removes the specific statement that abiding by the law includes, but is not limited to, complying with the firearms provisions of R.C. Chapter 2923. relating to the possession, sale, furnishing, transfer, disposition, purchase, acquisition, carrying, conveying, or use of, or other conduct involving, a firearm or dangerous ordnance. It also removes the prohibition against the APA and the Parole Board eliminating the "mandatory condition" described in R.C. 2967.131(A) and all references to the "mandatory condition." (R.C. 2967.131(A) and 2967.28(D) and (F).)

The act substitutes for the deleted requirements provisions requiring the following:

(1) A court sentencing a felony offender to one or more nonresidential sanctions must impose as a condition of the sanction that, during the period of the sanction, the felony offender must abide by the law and may not leave the state without the permission of the court or the offender's probation officer (R.C. 2929.15(A)(1) and 2929.17).

(2) If a felony offender sentenced to a community control sanction commits a violation of the conditions of the community control sanction or of any law or leaves the state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender; the court must notify the offender of these possible ramifications (R.C. 2929.15(B) and 2929.19(B)(5)).

(3) A court sentencing a felony offender to any community control sanction or combination of community control sanctions must place the offender under the general control and supervision of a department of probation in the county that serves the court for purposes of reporting to the court a violation of any "condition" of the sanctions, a violation of law, or the departure of the offender from this state without permission of the court or the offender's probation officer. If the offender resides in another county and a county department of probation has been established in that county or that county is served by a multicounty probation department, the court may request the court of common pleas of that county to receive the offender into the general control and supervision of that county or multicounty department of probation for those reporting purposes, subject to the jurisdiction of the trial judge over and with respect to the person of the offender, and to the rules governing that department of probation. If there is no department of probation in the county that serves the court, regardless of the offender's county of residence, the court must place the offender under the

general control and supervision of the APA for those reporting purposes. (R.C. 2929.15(A)(2)(a).)

(4) The APA, the Parole Board, and the Governor must include in the terms and conditions of a conditional pardon, parole, transitional control, other form of release, or post-release control the condition that the individual or felon not leave the state without the permission of the court or the individual's or felon's parole officer and that the individual or felon abide by the law (R.C. 2967.131(A) and 2967.28(D)(1)).

(5) The Parole Board is prohibited from modifying a releasee's post-release control sanctions to permit the releasee to leave the state without the permission of the court or the releasee's parole or probation officer (sec. 2967.28(D)(2)).

The act also provides that, if a felony offender sentenced to community control sanctions violates any condition of the sanctions, violates any law, or departs from Ohio without permission of the court or the offender's probation officer, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction must report the violation or departure directly to the sentencing court or to the county or multicounty department of probation with general control and supervision over the offender, the officer of that department who supervises the offender, or, if there is no such department with general control and supervision over the offender under that division, the APA. If the public or private person or entity reports the violation or departure to the county or multicounty department of probation or the APA, the department's or APA's officers may treat the offender as if the offender were on probation and in violation of the probation and must report the violation of the condition of the sanction, the violation of law, or the departure from Ohio without permission of the court or the offender's probation officer to the sentencing court. (R.C. 2929.15(A)(2)(b).)

### **Notices for judicial vetoes of placement or release**

#### **Shock incarceration (boot camp) and intensive program prisons**

**Prior and continuing law.** The Director of DRC is required under continuing law to establish a pilot program of shock incarceration (commonly referred to as a "boot camp") that may be used for eligible offenders who are sentenced to serve a term of imprisonment under the custody of DRC and whom DRC, subject to the approval of the sentencing judge, may permit to serve their sentence as a sentence of shock incarceration. Prisoners disqualified from potential participation in an intensive program prison (see the next paragraph) are not "eligible offenders" for shock incarceration. Under prior law, *subject to disapproval by the sentencing judge*, if an eligible offender was sentenced to a

term of imprisonment under the custody of DRC, DRC could permit the eligible offender to serve the sentence as a sentence of shock incarceration. At least three weeks prior to permitting an eligible offender to serve a sentence of shock incarceration, DRC was required to notify the sentencing judge of the proposed shock incarceration and of the fact that the judge may disapprove it. If the sentencing judge disapproved shock incarceration for the eligible offender, the judge was required to notify DRC of the disapproval within ten days after receipt of the notice, and DRC could not permit the eligible offender to serve a sentence of shock incarceration. If the judge did not timely disapprove shock incarceration for the eligible offender, DRC could proceed with plans for the shock incarceration. (R.C. 5120.031(A)(4), (B)(1), and (C)(1).)

Continuing law also requires the DRC to develop and implement intensive program prisons for eligible male and female prisoners. Certain categories of prisoners are disqualified from potential participation in such a prison. The intensive program prisons must include institutions at which imprisonment of the type described in the Shock Incarceration Law is provided and prisons that focus on educational achievement, vocational training, alcohol and other drug abuse treatment, community service and conservation work, and other intensive regimens or combinations of intensive regimens. Under prior law, DRC could place an eligible prisoner in an intensive program prison *subject to the approval of the sentencing judge*. At least three weeks prior to placing a prisoner in an intensive program prison, DRC was required to give notice of the placement and of the fact that the judge could disapprove the placement. If the judge disapproved the placement, the judge was required to notify DRC of the disapproval within ten days after receipt of the notice. If the judge timely disapproved the placement, DRC could not proceed with it. If the judge did not timely disapprove of the placement, DRC may proceed with plans for it. (R.C. 5120.032(A) and (B).)

**Operation of the act.** The act revises the procedures governing the placement of a felon in a program of shock incarceration in an intensive program prison. It requires the court that sentences an offender for a felony, at the time of sentencing, to determine if the offender is eligible for placement in a program of shock incarceration or is eligible for placement in an intensive program prison and make a finding that gives its reasons for its determination. Under prior law, the court could disapprove of such a placement by DRC, but it did not make any determination of eligibility at the sentencing hearing. The act provides that the court may recommend the offender for placement in a program of shock incarceration, if eligible, or for placement in an intensive program prison, if eligible, disapprove placement of the offender in a program of shock incarceration or in an intensive program prison, regardless of eligibility, or make no recommendation on placement of the offender. If the court disapproves placement

of the offender in a program or prison of that nature, DRC may not place the offender in any program or prison of that nature.

If the court approves placement of the offender in a program of shock incarceration or in an intensive program prison, DRC must notify the court if the offender is subsequently placed in the recommended program or prison and must include with the notice a brief description of the placement. If the court approves either type of placement and DRC does not subsequently place the offender in the recommended program or prison, DRC must send a notice to the court indicating why the offender was not placed in the recommended program or prison. If the court does not make a recommendation under this provision with respect to an eligible offender, DRC must screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If the offender is suited and there is an available program of shock incarceration or an intensive program prison, at least three weeks before placing the offender in the program or prison, DRC must notify the court of the proposed placement of the offender and must include with the notice a brief description of the placement. The court has ten days from receipt of the notice to disapprove the placement. If the court disapproves, DRC may not make the placement, but, if the court does not timely disapprove, DRC may proceed with the placement. (R.C. 2929.14(K), 2929.19(D), 5120.031(C)(1), and 5120.032(B)(1)(a).)

### **Transitional control**

**Prior and continuing law.** Under continuing law, DRC is authorized to establish by rule a transitional control program for the purpose of closely monitoring a prisoner's adjustment to community supervision during the final 180 days of the prisoner's confinement. Under the program, the APA: (1) may transfer eligible prisoners to transitional control status under the program during the final 180 days of their confinement and under the terms and conditions established by DRC, (2) must provide for the confinement of each transferred eligible prisoner, and (3) must supervise each transferred eligible prisoner in one or more community control sanctions. Each eligible prisoner transferred to transitional control status under the program must be confined in a suitable licensed facility or must be confined in a residence DRC has approved for this purpose and be monitored pursuant to an electronic monitoring device. The rules must include criteria that define eligible prisoners, include criteria for approval as a residence for confinement of prisoners under the program, and procedures for DRC to approve those residences.

Continuing law additionally provides that at least three weeks prior to transferring a prisoner to transitional control, the APA must give notice of the

pending transfer to the court of common pleas of the county in which the indictment against the prisoner was found and include with that notice the fact that the court may disapprove the transfer to transitional control. Under prior law, if the court disapproved of the transfer to transitional control, it was required to notify the APA within ten days after receipt of the notice of intent to transfer. Under continuing law, if the court timely disapproves the transfer to transitional control, the APA may not proceed with the transfer. If the court does not timely disapprove the transfer to transitional control, the APA may transfer the prisoner to transitional control. (R.C. 2967.26(A)(1) and (2).)

**Operation of the act.** Under the act, the APA continues to be required to give notice of the pending transfer of a prisoner to transitional control to the appropriate court of common pleas and include notice that the court may disapprove the transfer to transitional control. The act additionally requires the notice to include a report prepared by the head of the state correctional institution where the prisoner is confined. The head of that institution, upon the request of the APA, must provide to the APA for inclusion in the notice sent to the court, a report on the prisoner's conduct in the institution and in any institution from which the prisoner may have been transferred. The report must cover the prisoner's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the prisoner.

Additionally, the act extends from ten to 30 days the time period within which a court must notify the APA of its disapproval of the transfer of a prisoner to transitional control. (R.C. 2967.26(A)(2).)

### **Contaminating a substance for human consumption or use**

#### **Prior and continuing law**

Continuing R.C. 2927.24 generally prohibits a person from knowingly mingling a poison or other harmful substance with a food, drink, nonprescription drug, prescription drug, or pharmaceutical product, and from knowingly placing a poison or other harmful substance in a spring, well, reservoir, or public water supply, if the person knows or has reason to know that the food, drink, nonprescription drug, prescription drug, pharmaceutical product, or water may be ingested or used by another person. There are several exceptions for acts in compliance with prescriptions, laws, rules, and water safety procedures.

Whoever violates the above prohibitions is guilty of "contaminating a substance for human consumption or use," a felony of the first degree. Under prior law, if the offense involved an amount of poison or other harmful substance sufficient to cause death if ingested or used by a person or if the offense resulted in serious physical harm to another person, commission of the offense was "an

aggravated felony of the first degree," and the offender was required to be imprisoned for life. (R.C. 2927.24.)

### **Operation of the act**

The act reclassifies "contaminating a substance for human consumption or use" when the offense involves an amount of poison or other harmful substance sufficient to cause death if ingested or used by a person or results in serious physical harm to another person from an aggravated felony of the first degree with life imprisonment to life imprisonment with parole eligibility after serving 15 years of imprisonment. Felony Sentencing Law, as a result of changes enacted by Am. Sub. S.B. 2 of the 121st G.A., no longer includes "aggravated" felony classifications. (R.C. 2927.24(E)(1) and 2967.13(A)(6).)

### **Failure to appear**

#### **Prior and continuing law**

Under R.C. 2937.99, whoever is arrested and fails to appear as required after having been released on his or her own recognizance pursuant to R.C. 2937.29 must be sentenced as follows: (1) if the release was in connection with a felony or pending appeal after conviction of a felony, a fine of not more than \$5,000, imprisonment in a state correctional institution for not less than one nor more than five years, or both, or (2) if the release was in connection with a misdemeanor or for appearance as a witness, a fine of not more than \$1,000, imprisonment for not more than one year, or both. These penalties generally do not apply to misdemeanors and related ordinance offenses arising under the Motor Vehicle Licensing and Titling Laws, Driver's Licensing Laws, Financial Responsibility Law, traffic offenses and laws, Motor Vehicle Dealers Law, motor vehicle crimes, or Highway Load Limit Law; however, they do apply to OMVI and failing to stop after a motor vehicle accident. (R.C. 2937.99.)

#### **Operation of the act**

The act designates a violation of R.C. 2937.99 as the offense of "failure to appear." The act further provides that failure to appear is a felony of the fourth degree if the release on recognizance was in connection with a felony or pending appeal after conviction of a felony. Therefore, the act reduces the potential prison term and the potential fine for the offense (the potential prison term for a felony of the fourth degree is 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months and the potential fine is a maximum of \$5,000). The act also provides that failure to appear is a misdemeanor of the first degree if the release on recognizance was in connection with a misdemeanor or for appearance as a witness. The act, therefore, does not change the potential fine for the offense committed under these

circumstances but reduces the maximum potential prison term to six months. (R.C. 2937.99.)

### **Penalties for drug trafficking offenses**

#### **Redesignation of ranges of controlled substance amounts for determining penalty for drug trafficking offenses**

**Continuing law.** Continuing law prohibits a person from knowingly selling or offering to sell a controlled substance (R.C. 2925.03(A)). Depending upon the controlled substance involved, a violation of the prohibition is the offense of "aggravated trafficking in drugs" (if a Schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, or hashish is involved), "trafficking in drugs" (if a Schedule III, IV, or V controlled substance is involved), "trafficking in marihuana," "trafficking in cocaine," "trafficking in L.S.D.," "trafficking in heroin," or "trafficking in hashish."

**Operation of the act.** For all of the drug trafficking offenses, the act redesignates the ranges of controlled substance amounts that are used in determining the penalty for the particular violation. Each of those ranges consists of a specified minimum amount and a specified maximum amount. Under prior law, if the amount of the controlled substance involved in the particular violation *exceeds* the specified minimum amount for a particular range *but does not exceed* the specified maximum amount for that range, the penalties that correspond to that range apply to the violation. The act changes this to specify that, if the amount of the controlled substance involved *equals or exceeds* the specified minimum amount for that range *but is less than* the specified maximum amount for that range, the penalties for that range apply to the violation.

As an example, under prior law, if the amount of the drug involved in an "aggravated trafficking in drugs" violation *exceeded* the bulk amount *but did not exceed* five times the bulk amount, the violation generally was a felony of the third degree. However, under the act, if the amount of the drug involved in an "aggravated trafficking in drugs" violation *equals or exceeds* the bulk amount *but is less than* five times the bulk amount, the violation generally is a felony of the third degree. (R.C. 2925.03(C)(1)(c) to (f), (2)(c) to (e), (3)(c) to (f), (4)(c) to (g), (5)(c) to (g), (6)(c) to (g), and (7)(c) to (f).)

#### **Trafficking in heroin--unit dose ranges for determining penalty**

For the offense of "trafficking in heroin," the act modifies the prior ranges of controlled substance amounts that are used in determining the penalty for a particular violation to include references to *unit doses* as well as to *grams*, as

follows (R.C. 2925.03(C)(6)) (see **COMMENT 1** for a summary of the terms used in the following table):

<b>Amount of heroin involved and location of offense</b>	<b>Degree of offense</b>	<b>Presumption for or against prison term and mandatory prison term</b>
(1) Less than <i>10 unit doses</i> or 1 gram-- School or juvenile--	F5 F4	No presumption No presumption
(2) Equals or exceeds <i>10 unit doses</i> or one gram but is less than <i>50 unit doses</i> or 5 grams-- School or juvenile--	F4 F3	Presumption for Presumption for
(3) Equals or exceeds <i>50 unit doses</i> or 5 grams but is less than <i>100 unit doses</i> or 10 grams-- School or juvenile--	F3 F2	Presumption for Presumption for
(4) Equals or exceeds <i>100 unit doses</i> or 10 grams but is less than <i>500 unit doses</i> or 50 grams-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term
(5) Equals or exceeds <i>500 unit doses</i> or 50 grams but is less than <i>2,500 unit doses</i> or 250 grams--	F1	Mandatory prison term
(6) Equals or exceeds <i>2,500 unit doses</i> or 250 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

For purposes of the Drug Offenses Law (R.C. Chapter 2925.), R.C. 2925.01(E) defines a "unit dose" as an amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and is in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

***Classification of certain trafficking offenders as "major drug offenders"***

For the offenses of "aggravated trafficking in drugs," "trafficking in cocaine," "trafficking in L.S.D.," and "trafficking in heroin," in circumstances in which continuing law specifies that the offense is a felony of the first degree, requires the sentencing court to impose a mandatory prison term that consists of the maximum term prescribed for a felony of the first degree (i.e., ten years), and authorizes the court to impose an additional prison term prescribed for a major drug offender, the act specifies that the offender is classified in those

circumstances as a major drug offender (see "Major drug offender sentencing," below) (R.C. 2925.03(C)(1)(f), (4)(g), (5)(g), and (6)(g)).

### Drug possession offenses--exemption and penalties

#### Generally

Continuing law prohibits a person from knowingly obtaining, possessing, or using a controlled substance (R.C. 2925.11(A)). Depending upon the controlled substance involved, a violation of the prohibition is the offense of "aggravated possession of drugs" (if a Schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, or hashish is involved), "possession of drugs" (if a Schedule III, IV, or V controlled substance is involved), "possession of marihuana," "possession of cocaine," "possession of L.S.D.," "possession of heroin," or "possession of hashish."

#### Exemption from drug possession offenses for prescription drugs

Prior and continuing law. Prior law provided exemptions from the drug possession offenses for certain specified types of conduct. Among the exemptions was a provision that specified that the offenses did not apply to any person who obtained the controlled substance in question pursuant to a prescription issued by a licensed health care professional authorized to prescribe drugs, *where the drug was in the original container in which it was dispensed to the person*. Continuing law provides other exemptions for manufacturers, licensed health care professionals authorized to prescribe drugs, pharmacists, pharmacy owners, and other persons acting in accordance with the Controlled Substance and Pharmacy Laws and, in relation to anabolic steroids, persons conducting a federal government-approved steroid research project and persons who sell, prescribe, administer, etc., steroids for livestock use in accordance with federal law. (R.C. 2925.11(B).)

Operation of the act. The act eliminates from the "prescription exemption" the requirement that the controlled substance in question be in the original container in which it was dispensed to the person who obtained it. Thus, under the act, the possession offenses do not apply to any person who obtained the controlled substance in questions pursuant to a prescription issued by a licensed health care professional. (R.C. 2925.11(B)(4).)

#### Redesignation of ranges of controlled substance amounts for determining penalty for drug possession offenses

For all of the drug possession offenses, the act redesignates the ranges of controlled substance amounts that are used in determining the penalty for the particular violation. Each of those ranges consists of a specified minimum amount

and a specified maximum amount. Under prior law, except for the lowest ranges provided for possession of marijuana or possession of hashish, if the amount of the controlled substance involved in the particular violation *exceeded* the specified minimum amount for a particular range *but did not exceed* the specified maximum amount for that range, the penalties that correspond to that range applied to the violation. The act changes the ranges so that all of them specify that, if the amount of the controlled substance involved *equals or exceeds* the specified minimum amount for that range *but is less than* the specified maximum amount for that range, the penalties for that range apply to the violation.

As an example, under prior law, if the amount of the drug involved in an "aggravated possession of drugs" violation *exceeded* the bulk amount *but did not exceed* five times the bulk amount, the violation was a felony of the third degree. Under the act, if the amount of the drug involved in an "aggravated possession of drugs" violation *equals or exceeds* the bulk amount *but is less than* five times the bulk amount, the violation is a felony of the third degree. (R.C. 2925.11(C)(1)(b) to (e), (2)(b) to (d), (3)(b) to (f), (4)(b) to (f), (5)(b) to (f), (6)(b) to (f), and (7)(b) to (f).)

**Possession of heroin--unit dose ranges for determining penalty**

For the offense of "possession of heroin," the act modifies the ranges of controlled substance amounts that are used in determining the penalty for a particular violation to include references to *unit doses* as well as to *grams*, as follows (R.C. 2925.11(C)(6)) (see **COMMENT 1** for a summary of the terms used in the following table):

Amount of heroin involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than 10 unit doses or 1 gram--	F5	Presumption against
(2) Equals or exceeds 10 unit doses or one gram but is less than 50 unit doses or 5 grams--	F4	No presumption
(3) Equals or exceeds 50 unit doses or 5 grams but is less than 100 unit doses or 10 grams--	F3	Presumption for
(4) Equals or exceeds 100 unit doses or 10 grams but is less than 500		

<b>Amount of heroin involved</b>	<b>Degree of offense</b>	<b>Presumption for or against prison term and mandatory prison term</b>
<i>unit doses or 50 grams--</i>	F2	Mandatory prison term
(5) Equals or exceeds <i>500 unit doses or 50 grams but is less than 2,500 unit doses or 250 grams--</i>	F1	Mandatory prison term
(6) Equals or exceeds <i>2,500 unit doses or 250 grams--</i>	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

See "*Trafficking in heroin--unit dose ranges for determining penalty,*" above for definition of "unit dose."

*Classification of certain drug possession offenders as "major drug offenders"*

The act specifies that an offender who commits "aggravated possession of drugs," "possession of cocaine," "possession of L.S.D.," or "possession of heroin" is a major drug offender when the offense is a felony of the first degree, the sentencing court must impose a mandatory prison term that consists of the maximum term for a felony of the first degree, and the court may impose an additional prison term prescribed for a major drug offender (see "*Major drug offender sentencing,*" below) (R.C. 2925.11(C)(1)(e), (4)(f), (5)(f), and (6)(f)).

*Penalties for illegal manufacture of drugs and illegal cultivation of marihuana*

*Continuing and prior law*

Continuing law prohibits a person from knowingly cultivating marihuana or knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance (R.C. 2925.04(A)).

A violation of the prohibition that involves a controlled substance other than marihuana is "illegal manufacture of drugs." If the drug involved is a Schedule I or II controlled substance other than marihuana, the offense is a felony of the second degree, and the sentencing court generally must impose a mandatory prison term from the range of terms prescribed for a felony of the second degree. If the drug involved is a Schedule III, IV, or V controlled substance, the offense is a felony of the third degree, and there is a presumption for a prison term. (R.C. 2925.04(C)(1) to (3).)

A violation of the prohibition that involves marihuana is "illegal cultivation of marihuana." Under prior law, "illegal cultivation of marihuana" was punished as follows (R.C. 2925.04(C)(4)):

Amount of marihuana involved in offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) <i>Less than 100 grams--</i>	Minor misdemeanor	
(2) <i>Equals or exceeds 100 grams or more and does not exceed 200 grams--</i>	M4	
(3) <i>Exceeds 200 grams but does not exceed 1,000 grams--</i>	F5	Presumption against
(4) <i>Exceeds 1,000 grams but does not exceed 5,000 grams--</i>	F3	No presumption
(5) <i>Exceeds 5,000 grams but does not exceed 20,000 grams--</i>	F3	Presumption for
(6) <i>Exceeds 20,000 grams--</i>	F2	Mandatory 8-year prison term

Under continuing law for both offenses, in specified circumstances and in addition to any other sanction imposed for the offense, the court must impose upon the offender a mandatory fine as specified in R.C. 2929.18(B)(1), revoke or suspend the offender's driver's or commercial driver's license or permit, and comply with specified professional licensing entity notification provisions. Further, for the offense of illegal manufacture of drugs, the major drug offender sentencing provisions, as described below in "*Major drug offender sentencing*," apply. (R.C. 2925.04(A), (C), (D), and (E).)

### *Operation of the act*

The act changes the sentencing provisions for the offenses of illegal manufacture of drugs and illegal cultivation of drugs in the following ways:

(1) For illegal cultivation of marihuana, it redesignates the ranges of marihuana amounts that are used in determining the penalty for the violation. Each of those ranges consists of a specified minimum amount and a specified maximum amount. Under prior law, except for the lowest range, if the amount of the marihuana involved in the violation *exceeded* the specified minimum amount for a particular range *but did not exceed* the specified maximum amount for that range, the penalties that correspond to that range applied to the violation. The act changes the ranges so that all of them specify that, if the amount of the marihuana

involved *equals or exceeds* the specified minimum amount for that range *but is less than* the specified maximum amount for that range, the penalties for that range apply to the violation. For example, under prior law, if the amount of the marihuana involved *exceeded* 200 grams *but did not exceed* 1,000 grams, the violation was a felony of the fifth degree; under the act, if the amount of the marihuana involved *equals or exceeds* 200 grams *but is less than* 1,000 grams, the violation is a felony of the fifth degree. (R.C. 2925.04(C)(4).)

(2) For illegal manufacture of drugs, it clarifies the application of the major drug offender sentencing provisions (see "**Major drug offender sentencing**," below) (R.C. 2925.04(E)).

### **Funding of drug trafficking offenses**

#### **Prior and continuing law**

Prior law prohibited a person from knowingly providing money or other items of value to another person with the purpose that the recipient of the money or items of value use them to obtain any controlled substance for the purpose of selling or offering to sell the controlled substance or for the purpose of committing the offense of illegal manufacture of drugs or illegal cultivation of marihuana.

Under continuing law, a violation of the prohibition that involves a Schedule I or II controlled substance, with the exception of marihuana, is the offense of "aggravated funding of drug trafficking." The offense is a felony of the first degree, and the court generally is required to impose a mandatory prison term consisting of one of the prison terms prescribed for a felony of the first degree. A violation of the prohibition that involves a Schedule III, IV, or V controlled substance is the offense of "funding of drug trafficking." The offense is a felony of the second degree, and the court is required to impose a mandatory prison term consisting of one of the prison terms prescribed for a felony of the second degree. A violation of the prohibition that involves marihuana is the offense of "funding of marihuana trafficking." The offense is a felony of the third degree, and the court is required to impose a mandatory prison term consisting of one of the prison terms prescribed for a felony of the third degree. (R.C. 2925.05(A) and (C).)

For all three of the offenses, in specified circumstances, continuing law requires the court, in addition to any other sanction imposed for the offense, to impose upon the offender a mandatory fine as specified in R.C. 2929.18(B)(1), revoke or suspend the offender's driver's or commercial driver's license or permit, and comply with specified professional licensing entity notification provisions. Further, for the offense of aggravated funding of drug trafficking, the major drug offender sentencing provisions, as described below in "**Major drug offender sentencing**," apply. (R.C. 2925.05(D) and (E).)

### Operation of the act

The act modifies the elements of the prohibition that comprises the offenses of "aggravated funding of drug trafficking," "funding of drug trafficking," and "funding of marihuana trafficking" as they relate to the provision of money or other items of value to a person with the purpose that the recipient use them to obtain a controlled substance for the purpose of selling or offering to sell the controlled substance. Under the act, the prohibition prohibits a person from knowingly providing money or other items of value to another person with the purpose that the recipient of the money or items of value use them to obtain any controlled substance for the purpose of committing the offense of illegal manufacture of drugs or illegal cultivation of marihuana or *for the purpose of selling or offering to sell the controlled substance in the following amount* (R.C. 2925.05(A)):

(1) If the drug to be sold or offered for sale is any compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, or Schedule III, IV, or V, an amount of the drug that equals or exceeds the bulk amount of the drug;

(2) If the drug to be sold or offered for sale is marihuana or a compound, mixture, preparation, or substance other than hashish containing marihuana, an amount of the marihuana that equals or exceeds 200 grams;

(3) If the drug to be sold or offered for sale is cocaine or a compound, mixture, preparation, or substance containing cocaine, an amount of the cocaine that equals or exceeds five grams if the cocaine is not crack cocaine or equals or exceeds one gram if the cocaine is crack cocaine;

(4) If the drug to be sold or offered for sale is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., an amount of the L.S.D. that equals or exceeds ten unit doses of solid L.S.D. or equals or exceeds one gram of liquid L.S.D.;

(5) If the drug to be sold or offered for sale is heroin or a compound, mixture, preparation, or substance containing heroin, an amount of the heroin that equals or exceeds ten unit doses or equals or exceeds one gram;

(6) If the drug to be sold or offered for sale is hashish or a compound, mixture, preparation, or substance containing hashish, an amount of the hashish that equals or exceeds ten grams of solid hashish or equals or exceeds two grams of liquid hashish.

The act generally retains the penalties for all three of the offenses. However, for aggravated funding of drug trafficking, it clarifies the application of the major drug offender sentencing provisions (see "Major drug offender sentencing," below) (R.C. 2925.05(C) to (E)).

### Major drug offender sentencing

#### Prior and continuing law

**In general.** The prior Criminal Sentencing Law provided that, except when an offender committed aggravated murder or rape and the penalty imposed for the offense was life imprisonment or committed murder, *if the offender committed a drug trafficking offense, the offense of illegal manufacture of drugs or illegal cultivation of marihuana, or a drug possession offense and the involved R.C. section required the imposition of a ten-year prison term on the offender or if a court imposing a sentence upon an offender for a felony found that the offender was guilty of a specification that the offender was a "major drug offender"* (see "Definition of major drug offender," below), the court was required to impose upon the offender for the felony violation a ten-year prison term that could not be reduced pursuant to a judicial release or any other provision of law (R.C. 2929.14(D)(3)(a)).

Under continuing law, a court that imposes a prison term on an offender under the provision described in the preceding paragraph may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to the term imposed under the provision described in the preceding paragraph and, if applicable, under the existing provisions requiring the imposition of firearms prison terms or repeat violent offender prison terms (see R.C. 2929.14(D)(1) and (2)), makes both of the following findings: (1) the terms so imposed are inadequate to punish the offender and protect the public from future crimes, because the applicable factors under a separate provision (R.C. 2929.12) of the Criminal Sentencing Law indicating a greater likelihood of recidivism outweigh the applicable factors under that provision indicating a lesser likelihood of recidivism, and (2) the terms so imposed are demeaning to the seriousness of the offense because one or more of the factors under that provision indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that provision indicating that the offender's conduct is less serious than conduct normally constituting the offense (R.C. 2929.14(D)(3)(b)).

**Specific Drug Offenses Law, Controlled Substances Law, and Pharmacy Law provisions.** Prior law specified that, for various violations of the Drug Offenses Law, the law governing controlled substances (R.C. Chapter 3719.), and

the law governing pharmacies and pharmacists (R.C. Chapter 4729.), notwithstanding the prison term otherwise authorized or required for the violation, if the violation involves the sale, offer to sell, or possession of a Schedule I or II controlled substance, *with the exception of marihuana*, and if the offender, as a result of the violation was a "major drug offender" (see "**Definition of major drug offender**," below), the court, in lieu of the prison term that otherwise was authorized or required, was required to impose upon the offender the mandatory prison term specified in the second preceding paragraph and could impose an additional prison term under the provision described in the immediately preceding paragraph. The provision described in this paragraph applied regarding the Drug Offenses Law offenses of "corrupting another with drugs," "illegal manufacture of drugs," "aggravated funding of drug trafficking," and "illegal dispensing of drug samples," felony violations of R.C. 3719.07, 3719.08, 3719.16, 3719.161, and 3719.172(C) and (D), and felony violations of R.C. 4729.37, 4729.51(C), 4729.54(J), and 4729.61. (R.C. 2925.02(E), 2925.04(E), 2925.05(E), 2925.36(E), 2929.14(D)(3), 3719.99(D)(1), and 4729.99(E)(2).)

**Definition of major drug offender.** Prior law defined "major drug offender," for purposes of the Criminal Sentencing Law, as an offender who was convicted of or pleaded guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consisted of or contained: (1) at least 1,000 grams of hashish, (2) at least 100 grams of crack cocaine, (3) at least 1,000 grams of cocaine that is not crack cocaine, (4) at least 250 grams of heroin, (5) at least 5,000 unit doses of L.S.D., or (6) at least 100 times the amount of any other Schedule I or II controlled substance other than marihuana that is necessary to commit a drug trafficking offense under R.C. 2925.03, a drug possession offense under R.C. 2925.11, illegal manufacture of drugs, illegal cultivation of marihuana, aggravated funding of drug trafficking, funding of drug trafficking, funding of marihuana trafficking, or illegal administration of anabolic steroids, which offense was a felony of the third degree and was based on the possession of, sale of, or offer to sell the controlled substance (R.C. 2929.01(Y)).

**Major drug offender specification.** Continuing law provides that courts are to determine the issue of whether an offender is a major drug offender, and that the determination by a court that an offender is a major drug offender is precluded unless the indictment, count in the indictment, or information charging the offender specifies that the offender is a major drug offender. The specification must be stated at the end of the body of the indictment, count, or information, in substantially the following form:

"SPECIFICATION (or, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or prosecuting attorney's name when

appropriate) further find and specify that (set forth that the offender is a major drug offender)." (R.C. 2941.1410.)

### **Operation of the act**

The act modifies, and clarifies the application of, the major drug offender sentencing provisions of the Felony Sentencing Law as follows:

(1) It modifies the provisions to clarify that, if an offender is convicted of a drug trafficking offense or a drug possession offense and the applicable section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, the court must impose upon the offender for the felony violation a ten-year prison term that cannot be reduced, and the court may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to the ten-year term and, if applicable, under the provisions requiring firearms prison terms or repeat violent offender prison terms imposed on the offender, makes the findings specified under continuing law. Related to this change, the act clarifies that, in circumstances in which an offender is convicted of a drug trafficking offense or a drug possession offense and the applicable section currently requires the imposition of a ten-year prison term on the offender, the offender, as a result of the conviction, is classified as a major drug offender, and a major drug offender specification is not required. The act also removes an erroneous reference to illegal manufacture of drugs and illegal cultivation of marihuana from the provision that refers to offenses in which the specified Revised Code section requires the imposition of a ten-year sentence, because a ten-year sentence never is required for those offenses. (R.C. 2925.03(C)(1)(f), (4)(g), (5)(g), and (6)(g), 2925.11(C)(1)(e), (4)(f), (5)(f), and (6)(f), 2929.01(X), 2929.14(D)(3), and 2941.1410.)

(2) It modifies the provisions to clarify that, if an offender commits a felony offense of "corrupting another with drugs," "illegal manufacture of drugs," "aggravated funding of drug trafficking," "funding of drug trafficking," or "illegal dispensing of drug samples" under the Drug Offenses Law, a felony violation of R.C. 3719.07, 3719.08, 3719.16, 3719.161, or 3719.172(C) or (D), or a felony violation of R.C. 4729.37, 4729.51(C), 4729.54(J), or 4729.61 that includes the sale, offer to sell, or possession of a Schedule I or II controlled substance other than marihuana, and if the court imposing *sentence upon the offender finds that the offender is guilty of a specification as described in R.C. 2941.1410 charging that the offender is a major drug offender* (see "**Major drug offender specification**," above), the court, in lieu of any other prison term provided, is required to impose upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant, and the court may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to

the ten-year term and, if applicable, under provisions requiring firearms prison terms or repeat violent offender prison terms (see R.C. 2929.14(D)(1) and (2)), makes both of the findings required under existing law. (R.C. 2925.02(E), 2925.04(E), 2925.05(E), 2925.36(E), 2929.14(D)(3), 2941.1410, 3719.99(D)(1), and 4729.99(E)(2).)

(3) It expands the definition of "major drug offender" to incorporate language referring to drug trafficking and drug possession offenses that involve *unit doses of heroin* or *L.S.D. in a liquid form*. This change is consistent with the act's changes that provide penalties for the trafficking offenses and the possession offenses when they involve unit doses of heroin, as described above in "**Trafficking in heroin--unit dose ranges for determining penalty**" and "**Possession of heroin--unit dose ranges for determining penalty**" (the former discussion also includes a definition of "unit dose") and with trafficking penalties involving L.S.D. in a liquid form. Under the act, a "major drug offender" includes, in addition to the offenders specified under existing law, an offender who is convicted of or pleads guilty to the possession, sale of, or offer to sell, any drug, compound, mixture, preparation, or substance that consists of or contains at least 2,500 unit doses of heroin or at least 500 grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form. (R.C. 2929.01(X).)

#### **Penalties for permitting drug abuse**

The act increases the penalty for the continuing offense of "permitting drug abuse," in certain circumstances. Under prior law, the offense generally was a misdemeanor of the first degree but was a felony of the fifth degree if the felony drug abuse offense that the offender permitted to occur on his or her premises or in his or her vehicle was the offense of corrupting another with drugs or one of the drug trafficking offenses under R.C. 2925.03 that was committed in the vicinity of a school or in the vicinity of a juvenile. The act eliminates the requirement that the offense be committed in the vicinity of a school or in the vicinity of a juvenile in order to be a felony. Under the act, permitting drug abuse is a felony of the fifth degree if the felony drug abuse offense that the offender permitted to occur on his or her premises or in his or her vehicle is the offense of corrupting another with drugs or one of the drug trafficking offenses under R.C. 2925.03 regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile.

The act also enacts a new provision that specifies that any premises or real estate that is permitted to be used for the offense of permitting drug abuse in circumstances in which it involves premises or real estate constitutes a nuisance subject to abatement under the state's Nuisance Law. (R.C. 2925.13(F).)

## **Penalties for illegal processing of drug documents**

### **Prior and continuing law**

Continuing law contains a series of prohibitions that pertain to the processing or use of specified drug documents. The prohibitions prohibit a person from doing any of the following (R.C. 2925.23(A) to (D)):

(1) Knowingly making a false statement in any prescription, order, report, or record required under the Controlled Substances Law or the Pharmacy Law;

(2) Intentionally making, uttering, or selling, or knowingly possessing a false or forged prescription, uncompleted preprinted prescription blank used for writing a prescription, official written order, license for a terminal distributor of dangerous drugs required under R.C. 4729.60, or registration certificate for a wholesale distributor of dangerous drugs required under R.C. 4729.60;

(3) By theft, acquiring any prescription, uncompleted preprinted prescription blank used for writing a prescription, official written order, blank official written order, license or blank license for a terminal distributor of dangerous drugs required under R.C. 4729.60, or registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs required under R.C. 4729.60;

(4) Knowingly making or affixing any false or forged label to a package or receptacle containing any dangerous drugs.

A violation of any of the prohibitions is the offense of "illegal processing of drug documents." Under prior law, if the drug involved in the offense is a compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana, the offense was a felony of the fourth degree, and there was no presumption for or against imposing a prison sentence. If the drug involved in the offense was a dangerous drug or a compound, mixture, preparation, or substance included in Schedule III, IV, or V or is marihuana, the offense was a felony of the fifth degree, and there is no presumption for or against imposing a prison sentence. The court, in addition to any other sanction imposed for the offense, was required to suspend the offender's driver's or commercial driver's license or permit and comply with specified professional licensing entity notification provisions. (R.C. 2925.23(F) and (G).)

### **Operation of the act**

The act modifies the penalties for the offense of illegal processing of drug documents. Under the act, if the offender violates the prohibition set forth above

in paragraph (2) of "Prior and continuing law" based on the making, uttering, selling, or possession of an uncompleted prescription blank, a license for a terminal distributor of dangerous drugs, or a registration certificate for a wholesale distributor of dangerous drugs, or violates the prohibition set forth above in paragraph (3) of "Prior and continuing law" based on the acquisition by theft of an uncompleted preprinted prescription blank, a blank official written order, a license or blank license for a terminal distributor of dangerous drugs, or a registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs, the offense is a felony of the fifth degree. In all other circumstances, the act retains the penalties provided under prior law. (R.C. 2925.23(F) and (G).)

**Drug or alcohol treatment, or imprisonment, as a sanction for a violation of a community control sanction imposed for a felony drug offense or felony offense**

**Prior law**

Prior law provided that, if an offender who was convicted of a felony drug offense in violation of a provision of the Drug Offenses Law, the Controlled Substance Law, or the Pharmacy Law violated the conditions of a community control sanction imposed for the offense solely by possessing or using a controlled substance and if the offender had not failed to meet the conditions of any drug treatment program in which the offender was ordered to participate as a sanction for the offense, the court, as punishment for the violation of the sanction, was required to order that the offender participate in a drug treatment program or in alcoholics anonymous, narcotics anonymous, or a similar program if the court determined that an order of that nature was consistent with the purposes and principles of sentencing set forth in the Criminal Sentencing Law. If the court determined that an order of that nature would not be consistent with those purposes and principles or if the offender violated the conditions of a drug treatment program in which the offender participated as a sanction for the offense, the court was authorized to impose on the offender a sanction authorized for the violation of the sanction, including a prison term. (R.C. 2929.13(E)(2).)

**Operation of the act**

The act replaces the above-described provisions with provisions that specify that, if an offender who was convicted of *any felony* violates the conditions of a community control sanction imposed for the offense solely by reason of producing positive results on a drug test, the court, as punishment for the violation of the sanction, *cannot* order that the offender be *imprisoned* unless the court determines on the record either of the following: (1) the offender had been ordered as a sanction for the felony to participate in a drug treatment program, in a drug

education program, or in narcotics anonymous or a similar program, and the offender continued to use illegal drugs after a reasonable period of participation in the program, or (2) the imprisonment of the offender for the violation is consistent with the purposes and principles of sentencing set forth in the Criminal Sentencing Law (R.C. 2929.13(E)(2)).

### **Treatment or intervention in lieu of conviction**

#### **Prior law**

Prior law provided that, if a court had reason to believe that an offender charged with a felony or misdemeanor was a drug dependent person or was in danger of becoming a drug dependent person, the court was required to accept, prior to the entry of a plea, that offender's request for *treatment in lieu of conviction*. If the offender requested treatment in lieu of conviction, the court was required to stay all criminal proceedings pending the outcome of the hearing to determine whether the offender was eligible for treatment in lieu of conviction and, at the conclusion of the hearing, was required to enter its findings and accept the offender's plea.

An offender who requested treatment in lieu of conviction was eligible for that treatment if the court found that: (1) the offender's drug dependence or danger of drug dependence was a factor leading to the criminal activity with which the offender was charged, and rehabilitation through treatment would substantially reduce the likelihood of additional criminal activity, (2) the offender had been accepted into a program licensed by the Department of Alcohol and Drug Addiction Services, a program certified by the Department, a public or private hospital, the Veterans Administration or another agency of the federal government, private care or treatment rendered by a physician or a psychologist licensed in the state, or another appropriate drug treatment facility or program, (3) if the offender was convicted of a misdemeanor, the offender would be eligible for probation, provided an R.C. 2951.02(D) criterion did not apply to the offender, or, if the offender was convicted of a felony, the offender would be eligible for a community control sanction, (4) the offender was not a repeat offender or dangerous offender, and (5) the offender was not charged with the offense of corrupting another with drugs, illegal manufacture of drugs, or illegal cultivation of marijuana, a drug trafficking offense, or a drug possession offense that was not a minor drug possession offense. Upon a finding of that nature and if the offender enters a plea of guilty or no contest, the court could stay all criminal proceedings and order the offender to a period of rehabilitation. If a plea of not guilty was entered, a trial was required to precede further consideration of the offender's request for treatment in lieu of conviction.

The offender and the prosecuting attorney were required to be afforded the opportunity to present evidence to establish eligibility or ineligibility for treatment in lieu of conviction, and the prosecuting attorney could make a recommendation to the court concerning whether the offender should receive treatment in lieu of conviction. Upon the offender's request and to aid the offender in establishing the offender's eligibility for treatment in lieu of conviction, the court could refer the offender for medical and psychiatric examination to the Department of Mental Health, to a state facility designated by the Department, to a psychiatric clinic approved by the Department, or to a facility or program described in clause (2) of the preceding paragraph.

An offender found to be eligible for treatment in lieu of conviction and ordered to a period of rehabilitation was required to be placed under the control and supervision of the county probation department or the APA, as if the offender were on probation or were under a community control sanction. The court was required to order a period of rehabilitation to continue for any period that the judge or magistrate determines. The period of rehabilitation could be extended, but the total period could not exceed three years. The period of rehabilitation was required to be conditioned upon the offender's voluntary entrance into an appropriate drug treatment facility or program, faithful submission to prescribed treatment, and any other conditions the court ordered. Treatment of a person ordered to such a period of rehabilitation could include hospitalization under close supervision or otherwise, release on an outpatient status under supervision, and other treatment or after-care that the appropriate drug treatment facility or program considered necessary or desirable to rehabilitate that person. Persons released from hospitalization or treatment but still subject to the ordered period of rehabilitation could be rehospitalized or returned to treatment at any time it became necessary for their treatment and rehabilitation.

If the appropriate drug treatment facility or program reported to the probation officer that the offender had successfully completed treatment and was rehabilitated, the court could dismiss the charges pending against the offender. If the facility or program reported to the probation officer that the offender had successfully completed treatment and was rehabilitated or had obtained maximum benefits from treatment and had completed the period of rehabilitation and other conditions ordered by the court, the court was required to dismiss the charges pending against the offender. If the facility or program reported to the probation officer that the offender failed treatment, failed to submit to or follow the prescribed treatment, or became a discipline problem, if the offender did not satisfactorily complete the rehabilitation period or the other conditions ordered by the court, or if the offender violated the conditions of the rehabilitation period, the offender was required to be arrested and removed from the facility or program, and the court immediately was required to hold a hearing to determine if the offender

failed treatment, failed to submit to or follow the prescribed treatment, did not satisfactorily complete the rehabilitation period or any other condition ordered by the court, or violated any condition of the rehabilitation period. If the court so determined, it immediately was required to enter an adjudication of guilt and impose upon the offender a term of imprisonment.

At any time and for any appropriate reason, the offender, the offender's probation officer, the authority or department that had the duty to control and supervise the offender, or the facility or program could petition the court to reconsider, suspend, or modify its order for treatment concerning that offender. The appropriate drug treatment facility or program was required to report to the authority or department that had the duty to control and supervise the offender at any periodic reporting period the court required and whenever the offender was changed from an inpatient to an outpatient, was transferred to another treatment facility or program, failed treatment, failed to submit to or follow the prescribed treatment, became a discipline problem, did not satisfactorily complete the rehabilitation period or other conditions ordered by the court, had violated the conditions of the period of rehabilitation, was rehabilitated, or obtained the maximum benefit of treatment.

If, on the motion of an offender ordered to a rehabilitation period, the court found that the offender had successfully completed the rehabilitation period ordered by the court, was rehabilitated, was no longer drug dependent or in danger of becoming drug dependent, and had completed all other conditions, the court was required to dismiss the proceeding against the offender. Successful completion of a rehabilitation period under this provision was required to be without adjudication of guilt and was not a criminal conviction for purposes of disqualifications or disabilities imposed by law and upon conviction of a crime, and the court could order the sealing of records in the manner provided in the Conviction Records Sealing Law.

An offender charged with a drug abuse offense, other than a minor misdemeanor offense involving marijuana, who otherwise was eligible for treatment in lieu of conviction could request and could be ordered to a period of rehabilitation even though certain specified findings that otherwise would be required for eligibility were not made. An order to rehabilitation under this provision was subject to the conditions that the court required but could not be conditioned upon entry into an appropriate drug treatment facility or program. (R.C. 2951.041.)

### Operation of the act

The act repeals the "treatment in lieu of conviction" provisions described above and replaces them with new "intervention in lieu of conviction" provisions. Under the act, if an offender is charged with a criminal offense and the court has reason to believe that drug or alcohol usage by the offender *was a factor* leading to the offender's criminal behavior, the court may accept, prior to the entry of a guilty plea, the offender's request for *intervention in lieu of conviction*. The request must include a waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment, and arraignment, unless the hearing, indictment, or arraignment already has occurred. The court may reject an offender's request without a hearing. If the court elects to consider an offender's request, it must conduct a hearing to determine whether the offender is eligible for intervention in lieu of conviction and must stay all criminal proceedings pending the outcome of the hearing. If the court schedules a hearing, it must order an assessment of the offender for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan. The victim notification provisions of R.C. 2930.08(C) apply in relation to any hearing held under this provision.

Under the act, an offender is eligible for intervention in lieu of conviction if the court finds all of the following: (1) the offender previously has not been convicted of or pleaded guilty to a felony, previously has not been through intervention in lieu of conviction or any similar regimen, and is charged with a felony for which the court, upon conviction, would impose sentence under a provision of the Criminal Sentencing Law that requires in certain circumstances the imposition of a community control sanction or with a misdemeanor, (2) the offense is not a felony of the first, second, or third degree, is not an offense of violence, is not aggravated vehicular homicide or aggravated vehicular assault, is not state OMVI or a violation of a substantially similar municipal ordinance, and is not an offense for which a sentencing court is required to impose a mandatory prison term, a mandatory term of local incarceration, or a mandatory term of imprisonment in a jail, (3) the offender is not charged with the offense of corrupting another with drugs, illegal manufacture of drugs, illegal cultivation of marijuana, or illegal administration of anabolic steroids, a drug trafficking offense, or a drug possession offense when the offense is a felony of the first, second, or third degree, (4) the offender is not charged with a drug possession offense that is a felony of the fourth degree, or the offender is charged with such an offense that is a felony of the fourth degree, and the prosecutor in the case has recommended that the offender be classified as being eligible for intervention in lieu of conviction under this provision, (5) the offender has been assessed by an appropriately licensed provider, certified facility, or licensed and credentialed professional, including, but not limited to, a program licensed by the Department

of Alcohol and Drug Addiction Services, a program certified by that Department, a public or private hospital, the United States Department of Veterans Affairs, another appropriate agency of the United States government, or a licensed physician, psychiatrist, psychologist, independent social worker, professional counselor, or chemical dependency counselor for the purpose of determining the offender's eligibility and recommending an appropriate plan, (6) the offender's drug or alcohol usage *was a factor* leading to the criminal offense with which the offender is charged, intervention in lieu of conviction would not demean the seriousness of the offense, and intervention would substantially reduce the likelihood of any future criminal activity, (7) the alleged victim of the offense was not 65 years of age or older, permanently and totally disabled, under 13 years of age, or a peace officer at the time of the alleged offense, and (8) the offender is willing to comply with all terms and conditions imposed by the court, as described below.

At the conclusion of the hearing, the court must enter its determination as to whether the offender is eligible for intervention in lieu of conviction and as to whether to grant the offender's request. If the court finds that the offender is eligible and grants the offender's request, it must accept the offender's plea of guilty and waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment, and arraignment, unless the hearing, indictment, or arraignment has already occurred. In addition, the court then may stay all criminal proceedings and order the offender to comply with all terms and conditions imposed by the court as described below. If the court finds that the offender is not eligible or does not grant the offender's request, the criminal proceedings against the offender must proceed as if the offender's request for intervention in lieu of conviction had not been made.

If the court grants an offender's request for intervention in lieu of conviction, it must place the offender under the general control and supervision of the county probation department, the APA, or another appropriate local probation or court services agency, if one exists, as if the offender was subject to a community control sanction imposed as a sentence for a felony under the Criminal Sentencing Law or was on probation under that Law. The court must establish an intervention plan for the offender, the terms and conditions of which must require the offender, for at least one year from the date on which the court grants the order of intervention in lieu of conviction, to abstain from the use of illegal drugs and alcohol and to submit to regular random testing for drug and alcohol use and may include any other treatment terms and conditions, or terms and conditions similar to community control sanctions, that are ordered by the court.

If the court grants an offender's request for intervention in lieu of conviction and finds that the offender has successfully completed the intervention plan for the

offender, including the requirement that the offender abstain from using drugs and alcohol for a period of at least one year from the date on which the court granted the order of intervention in lieu of conviction and all other terms and conditions ordered by the court, the court must dismiss the proceedings against the offender. Successful completion of the intervention plan and period of abstinence must be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime. The court may order the sealing of records related to the offense in question in the manner provided in the Conviction Records Sealing Law.

If the court grants an offender's request for intervention in lieu of conviction and the offender fails to comply with any term or condition imposed as part of the intervention plan for the offender, the supervising authority for the offender promptly must advise the court of this failure, and the court must hold a hearing to determine whether the offender failed to comply with any term or condition imposed as part of the plan. If the court determines that the offender has failed to comply with any of those terms and conditions, it must enter a finding of guilty and impose an appropriate sanction under the Criminal Sentencing Law. (R.C. 2951.041 and repeal of former R.C. 2951.041 by Section 2.)

The act modifies several other provisions to conform their terminology to the changes described above (R.C. 2935.36(A)(4), 3719.121(C), 3719.70(B)(2), 4715.30(F), 4730.25(G), and 4731.22(I)).

### **Appeal of felony sentence**

#### **Prior and continuing law**

**Defendant's right to appeal.** In addition to any other right to appeal and except as described to the contrary below, a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant on one of the following grounds (R.C. 2953.08(A)):

(1) Under prior law, the sentence consisted of or included the maximum prison term allowed for the offense by the Criminal Sentencing Law provision contained in R.C. 2929.14(A) and was not imposed pursuant to a portion of that Law that permits the imposition of the maximum term (R.C. 2929.14(D)(3)(b)), and either the court imposed the sentence for only one offense, or the court imposed the sentence for two or more offenses arising out of a single incident and imposed the maximum prison term for the offense of the highest degree.

(2) Under continuing law, the sentence consisted of or included a prison term, the offense for which it was imposed is a felony of the fourth or fifth degree or is a felony drug offense that is a violation of the Drug Offenses Law and that is

specified as being subject to R.C. 2929.13(B) for purposes of sentencing, and the court did not specify at sentencing that it found one or more statutorily specified factors apply relative to the defendant. If the court specifies that it found one or more of those factors to apply relative to the defendant, the defendant is not entitled under this provision to appeal as a matter of right the sentence imposed upon the offender.

(3) Under continuing law, the person was convicted of or pleaded guilty to a sexually violent offense, was adjudicated as being a sexually violent predator, and was sentenced pursuant to R.C. 2971.03(A)(3), if the minimum term of the indefinite term imposed pursuant to that provision is the longest term available for the offense from among the range of terms listed in R.C. 2929.14.

(4) Under continuing law, the sentence is contrary to law.

(5) Under continuing law, the sentence consisted of an additional prison term of ten years imposed pursuant to R.C. 2929.14(D)(3)(b), including the major drug offender sentencing provisions.

Under continuing law, in addition to the above-described right to appeal a sentence, a defendant who is convicted of or pleads guilty to a felony may seek leave to appeal a sentence imposed upon the defendant on the basis that the sentencing judge has imposed consecutive sentences under R.C. 2929.14(E)(3) or (4) and that the consecutive sentences exceed the maximum prison term allowed by division (A) of that section for the most serious offense of which the defendant was convicted. Upon the filing of a motion under this provision, the court of appeals may grant leave to appeal the sentence if the court determines that the allegation included as the basis of the motion is true. (R.C. 2953.08(C).)

**Prosecution's right to appeal.** Under continuing law, in addition to any other right to appeal and except as described to the contrary below, a prosecuting attorney, a city director of law, village solicitor, or similar municipal chief legal officer, or the Attorney General, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony or, in the circumstances described below in paragraph (3), the modification of a sentence imposed upon such a defendant, on any of the following grounds (R.C. 2953.08(B)):

(1) The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed, as set forth in R.C. 2929.13 or R.C. Chapter 2925.

(2) The sentence is contrary to law.

(3) The sentence is a modification under the provision governing judicial releases (R.C. 2929.20) of a sentence that was imposed for a felony of the first or second degree.

**Exception to right of appeal.** Under continuing law, a sentence imposed upon a defendant is not subject to review under the above-described provisions if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge. A sentence imposed for aggravated murder or murder is not subject to review under the above-described provisions. (R.C. 2953.08(D).)

**Appeal procedures.** Continuing law specifies procedures to be followed regarding an appeal of a sentence and the actions that a court hearing an appeal may take if it makes specified findings.

Continuing law contains special provisions that apply regarding an appeal of a modification of a sentence made pursuant to a judicial release. A judgment or final order of a court of appeals regarding a sentence appeal under the above-described provisions may be appealed, by leave of court, to the Supreme Court. (R.C. 2953.08(F) to (H).)

### **Operation of the act**

The act modifies the first ground for which a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed, as set forth above in paragraph (1) of "**Defendant's right to appeal.**" Under the act, that ground is modified so that it states that "the sentence consisted of or included the maximum prison term allowed for the offense by the Criminal Sentencing Law provision contained in R.C. 2929.14(A), the sentence was not imposed pursuant to a specified portion of that Law that permits the imposition of the maximum term (R.C. 2929.14(D)(3)(b)), *the maximum prison term was not required for the offense pursuant to the Drug Offenses Law or any other provision of the Revised Code*, and either the court imposed the sentence for only one offense, or the court imposed the sentence for two or more offenses arising out of a single incident and it imposed the maximum prison term for the offense of the highest degree. (R.C. 2953.08(A)(1).)

The act also adds a new ground upon which a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right an additional ten-year prison term imposed under a provision applicable to RVOs. The defendant may appeal the sentence as a matter of right if the sentence consisted of an additional prison term of ten years imposed pursuant to the provision that applies regarding repeat violent offenders, set forth in R.C. 2929.14(D)(2)(b)). (R.C. 2953.08(A)(5).) Continuing law contains a similar appeal provision for the

additional term received by a major drug offender, but prior law contained no language regarding repeat violent offenders.

### **Final release of prisoners on post-release control; conditions of release**

#### **Prior and continuing law**

**Imposition of a period of post-release control.** Continuing law specifies that each felon who is sentenced to a prison term for a felony of the first or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person is subject to a *mandatory period of post-release control* imposed by the Parole Board after the offender's release from imprisonment. Unless reduced by the Board under a specified authorization to do so, a period of post-release control required by this provision is one of the following periods: (1) for a felony of the first degree or for a felony sex offense, five years, (2) for a felony of the second degree that is not a felony sex offense, three years, and (3) for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened physical harm to a person, three years. (R.C. 2967.28(B).)

Continuing law also provides that, if a felon is sentenced to a prison term for a felony of the third, fourth, or fifth degree that is not subject to a mandatory period of post-release control as described in the preceding paragraph, the Parole Board, in accordance with specified procedures, *may determine that a period of post-release control is necessary* for that offender and subject that offender to a period of post-release control of up to three years after the offender's release from imprisonment (R.C. 2967.28(C)).

**Conditions of post-release control.** Under continuing law, if a period of post-release control is required for a prisoner, or if the Parole Board decides to impose a discretionary period of post-release control for a prisoner, before the prisoner is released from imprisonment, the Board must impose upon the prisoner one or more post-release control sanctions to apply during the prisoner's period of post-release control. Under prior law, the Board also was required to impose the "mandatory condition described in R.C. 2967.131(A)" (see "**Minimum terms of probation, sentences suspension, etc.**" above) and could impose any other conditions of release under the post-release control sanction that the Board considers appropriate. Under continuing law, after considering specified materials, the Board must determine which post-release control sanction or combination of post-release control sanctions is reasonable under the circumstances. In the case of a prisoner convicted of a felony of the fourth or fifth degree other than a felony sex offense, the Board must presume that monitored

time is the appropriate post-release control sanction unless it determines that a more restrictive sanction is warranted. A post-release control sanction takes effect upon the prisoner's release from imprisonment. (R.C. 2967.28(D)(1).)

**Final release of prisoner who is under post-release control.** Prior law provided that, when a prisoner who had been released from a state correctional institution under a period of post-release control had faithfully performed the conditions and obligations of the released prisoner's post-release control sanctions and had obeyed the APA's rules and regulations that applied to the released prisoner, the APA, upon the recommendation of DRC's Superintendent of Parole Supervision, could enter upon its minutes a final release and, upon the entry of the final release, was required to issue to the released prisoner a certificate of final release. The APA was prohibited from granting a final release earlier than one year after the released prisoner was released from the institution under a period of post-release control, or, in the case of a released prisoner whose sentence was life imprisonment, earlier than five years after the released prisoner was so released from the institution. A prisoner who had been granted a final release under this provision, or under a similar final release provision that applied regarding prisoners released from an institution on parole (R.C. 2967.16(A)), was restored to the rights and privileges forfeited by a conviction. (R.C. 2967.16(B) and (C).)

#### **Operation of the act**

The act modifies the final release provision that previously applied regarding prisoners released under post-release control to specify that the one-year restriction on granting a final release to a prisoner under post-release control applies *only if the period of post-release control is a mandatory period of post-release control imposed under R.C. 2967.28(B)*, as described above. Under this change, the one-year restriction does not apply regarding a prisoner who is released under a period of post-release control that is imposed in the discretion of the Parole Board under R.C. 2967.28(C), as described above. The act does not change the existing five-year limitation on granting a final release to a prisoner whose sentence is life imprisonment and who is released under a period of post-release control. (R.C. 2967.16(B).)

The act also specifies that the "additional" appropriate conditions of release that the Parole Board may impose upon a prisoner released under a post-release control sanction may include any community residential sanction, nonresidential sanction, or financial sanction that the sentencing court was authorized to impose in sentencing the offender under the Criminal Sentencing Law (R.C. 2967.28(D)(1)).

## **Violation of a post-release control sanction**

### **Prior law**

Under prior law, if a post-release control sanction was imposed upon an offender, the offender upon release from imprisonment was under the general jurisdiction of the APA and generally was supervised by DRC's Parole Supervision Section parole and field officers, as if the offender had been placed on parole. If the offender violated the post-release control sanction or the "mandatory condition described in R.C. 2967.131(A)" (see "**Minimum terms of probation, sentences suspension, etc.**" above), the public or private person or entity that operated or administered, or comprised, the sanction was required to report the violation directly to the APA or the APA officer who supervised the offender. The APA's officers could treat the offender as if the offender were on parole and in violation of the parole.

If the APA determined that a releasee had violated a post-release control sanction or the "mandatory condition" imposed upon the releasee and that a more restrictive sanction was appropriate, it could impose a more restrictive sanction upon the releasee, or could report the violation to the Parole Board for a hearing. The APA was prohibited from increasing the duration of the releasee's post-release control, imposing as a post-release control sanction a residential sanction that included a prison term, or eliminating the "mandatory condition."

### **Operation of the act**

The act specifies that the "more restrictive appropriate sanction" that the APA may impose upon a releasee who has violated a post-release control sanction or other condition of post-release control may include any other community residential sanction, nonresidential sanction, or financial sanction that the sentencing court was authorized to impose in sentencing the offender under the Criminal Sentencing Law (R.C. 2967.28(F)(2)).

## **Violating parole by committing a felony**

### **Continuing law**

Under continuing law, a releasee who has violated any post-release control sanction or the "mandatory condition" imposed upon the releasee by committing a felony may be prosecuted for the new felony, and, upon conviction, the court must impose sentence for the new felony. In addition to the sentence imposed for the new felony, the court may impose a prison term for the violation, and the term imposed for the violation must be reduced by the prison term that is administratively imposed by the Parole Board or APA as a post-release control

sanction. The maximum prison term for the violation shall be either the maximum period of post-release control for the earlier felony minus any time the releasee has spent under post-release control for the earlier felony or 12 months, whichever is greater. A prison term imposed for the violation must be served consecutively to any prison term imposed for the new felony. A prison term imposed for the violation, and a prison term imposed for the new felony, must not count as, or be credited toward, the remaining period of post-release control imposed for the earlier felony. (R.C. 2967.28(F)(4).)

### **Operation of the act**

The act expands this provision to also apply to parolees who violate any condition of parole by committing a felony. Under the act, a parolee who has violated any condition of parole by committing a felony may be prosecuted for the new felony, and, upon conviction, the court must impose sentence for the new felony. In addition to the sentence imposed for the new felony, the court may impose a prison term for the violation, and the term imposed for the violation must be reduced by any prison term that is administratively imposed by the Parole Board or APA as a post-release control sanction. The provisions that apply to penalties imposed for violations of post-release control do not apply to parolees. (R.C. 2967.28(F)(4).)

### **Rule of construction regarding references in the Revised Code to prior convictions**

In continuing law, numerous sections use as a criterion in conferring a benefit on a person or in imposing a penalty on a person the fact that the person previously had or had not been convicted of or pleaded guilty to a violation of a specified section or sections of the Revised Code. Some, but not all, of those sections also include in that criterion the fact that the person previously had been convicted of or pleaded guilty to a violation of an existing or former municipal ordinance, an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to the specified section or sections of the Revised Code.

Under the act, any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or a division of a section of the Revised Code must be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of Ohio, another state, or the United States or under an existing or former municipal ordinance. In addition, the provision in continuing law that requires that sections of the Revised Code defining offenses or

penalties be strictly construed against the state, and liberally construed in favor of the accused, is made subject to this new provision. (R.C. 2901.04.)

### **Prohibitions related to the discharge of a firearm**

#### **Prior law**

Prior law contained a number of prohibitions against the discharge, in specified circumstances, of a firearm. The prohibitions barred a person from doing any of the following:

(1) Without permission from the proper officials, discharging a firearm upon or over a cemetery or within 100 yards of a cemetery unless the person is on his or her own land. A violation of the prohibition was a misdemeanor of the fourth degree. (R.C. 3773.05 and 3773.99(A).)

(2) Discharging a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or an inhabited dwelling, the property of another, or a charitable institution; however, this prohibition does not prevent or prohibit the owner of an enclosure from discharging firearms upon the enclosure. A violation of the prohibition was a misdemeanor of the fourth degree. (R.C. 3773.21 and 3773.99(A).)

(3) Discharging a firearm upon or over a public road or highway. A violation of the prohibition was a misdemeanor of the first degree. (R.C. 3773.211 and 3773.99(C).)

#### **Operation of the act**

The act repeals R.C. 3773.05, 3773.21, and 3773.211, as described above in "**Prior law**," and enacts a new section in the Criminal Code that contains the prohibitions previously contained in the repealed sections and that is the offense of "discharge of a firearm at or near prohibited premises." The prohibitions contained in the new offense and the penalties applicable to violations of the prohibitions are the same as the prohibitions and penalties under the repealed sections, as described above in "**Prior law**." (Section 2 of the act--repeal of R.C. 3773.05, 3773.21, and 3773.211, and R.C. 2923.162 and 3773.99.)

### **Law enforcement powers of certain nontraditional law enforcement officers**

#### **Cemetery company or association personnel**

**Prior and continuing law.** Continuing law prohibits a person from violating a bylaw, rule, or regulation adopted by the officers of a cemetery company or association, or by a board of township trustees having charge of

township cemeteries, with reference to the protection, good order, and preservation of cemeteries, and the trees, shrubbery, structures, and adornments of the cemeteries. Prior law authorized watchmen, superintendents, gardeners, or agents of a cemetery company or association to arrest on view a person found violating the above-described prohibition and bring the person before a judge of a county court or municipal court with jurisdiction for trial. (R.C. 1721.19.)

**Operation of the act.** The act replaces the prior arrest authority of the specified personnel of a cemetery company or association with a new enforcement provision. Under the act, a watchperson, superintendent, gardener, or agent of a cemetery company or association who has probable cause to believe that a person has violated the above-described prohibition may detain the person in a reasonable manner and for a reasonable length of time within the property of the cemetery company or association, for the purpose of recovering any property involved in the violation, causing an arrest to be made by a peace officer, or obtaining an arrest warrant. A watchperson, superintendent, gardener, or agent acting under authority of this provision is prohibited from searching the person detained, searching or seizing any property belonging to the person detained without the person's consent, or using undue restraint upon the person. Any peace officer, as defined in R.C. 2935.01 (see **COMMENT 2**), may arrest without a warrant any person who the officer has probable cause to believe has committed any act in violation of the above-described prohibition that also is a violation of law and must make the arrest within a reasonable period of time after the commission of the violation. (R.C. 1721.19.)

#### **Union terminal company personnel**

**Prior and continuing law.** Continuing law provides that the board of directors of a union terminal company (a type of railroad company established under existing R.C. 4953.01) may pass bylaws, rules, and regulations for its government and for the regulation of the depot and depot grounds and its business, requires the board to appoint such officers and agents as are necessary, and requires the board to adopt and post conspicuously in the passenger depot rules and regulations to control the conduct of all runners, solicitors, hackmen, and drivers of vehicles within the depot and depot grounds. Prior law, also provided that the officers and agents of a union terminal company had the same authority to arrest and bring to justice pickpockets, thieves, persons who violated the public peace, persons who violated any rules and regulations posted as described above, and persons who committed crimes and misdemeanors on the depot grounds, as constables possess within their respective townships. (R.C. 4953.07 and 4953.11.)

**Operation of the act.** The act replaces the former arrest authority of officers and agents of a union terminal company with a new enforcement

provision. Under the act, an officer or agent of a union terminal company who has probable cause to believe that a person is a pickpocket, is a thief, has violated the public peace, has violated any of the posted rules or regulations, or has committed any crime or misdemeanor on the depot grounds may detain the person in a reasonable manner and for a reasonable length of time within the property of the union terminal company, for the purpose of recovering any property involved in the violation, causing an arrest to be made by a peace officer, or obtaining an arrest warrant. An officer or agent of a union terminal company acting under this authority is prohibited from searching the person detained, searching or seizing any property belonging to the person detained without the person's consent, or using undue restraint upon the person. Any peace officer, as defined in existing R.C. 2935.01 (see **COMMENT 2**), may arrest without a warrant any person who the officer has probable cause to believe is a pickpocket, is a thief, has violated any posted rule or regulation that also is a violation of law, or has committed any crime or misdemeanor on the depot grounds and must make the arrest within a reasonable period of time after the commission of the act or violation that is the basis of the arrest. (R.C. 4953.11.)

### **Railroad conductors, ticket agents, and certain special police officers**

**Prior law.** Prior law provided that the conductor of every train carrying passengers, and the ticket agent and special policemen (see **COMMENT 3**) employed in or about a railroad or interurban railroad station, had the powers, duties, and responsibilities of police officers while on duty on the train or cars, or in or about the station, and could wear the badge of a special policeman. When a passenger was guilty of an offense on a passenger train or the cars of an interurban railroad carrying passengers, the conductor of the train or cars could arrest and take the passenger before a magistrate having cognizance of the offense in any county in which the train or cars ran, and file an affidavit before the magistrate charging the passenger with the offense; this provision and a separate provision authorizing a conductor to eject passengers for certain conduct did not affect the liability of a railroad company for damages caused by the conductor's conduct. (R.C. 4973.23 and 4973.25.)

**Operation of the act.** The act replaces the former police powers of railroad conductors, ticket agents, and special police officers with new enforcement provisions. Under the act, the conductor of any train carrying passengers or of the cars of any interurban railroad carrying passengers, and a ticket agent employed in or about a railroad or interurban railroad station, while on duty on the train or cars, or in or about the station, who has probable cause to believe that a person has committed an offense may detain the person in a reasonable manner and for a reasonable length of time within the train, the cars, or the station, for the purpose of recovering any property involved in the offense, causing an arrest to be made by

a peace officer, or obtaining an arrest warrant. A conductor or ticket agent acting under this authority is prohibited from searching the person detained, searching or seizing any property belonging to the person detained without the person's consent, or using undue restraint upon the person. Any peace officer, as defined in R.C. 2935.01 (see **COMMENT 2**), may arrest and detain without a warrant any person who the officer has probable cause to believe has committed any violation of law and must make the arrest within a reasonable period of time after the commission of the act or violation that is the basis of the arrest. This provision and a separate provision authorizing a conductor to eject passengers for certain conduct (not in the act) do not affect the liability of a railroad company for damages caused by the conductor's conduct. (R.C. 4973.23 and 4973.25.)

### **Keeping a resort for thieves, burglars, or robbers**

#### **Continuing law**

Continuing law specifies that a house or building that is used or occupied as a habitual resort for thieves, burglars, or robbers is a public nuisance, and the court may order the nuisance abated. It prohibits a person from keeping a house that is a habitual resort for thieves, burglars, or robbers, from letting a house be so kept, or from knowingly permitting a house that the person has let be so kept. A violation of this prohibition is a misdemeanor of the fourth degree. (R.C. 3767.12 and 3767.99(B).)

#### **Operation of the act**

The act expands the "keeping a resort for thieves" provisions to also cover persons involved in specified types of felonious conduct. Under the act, a house or building that is used or occupied as a habitual resort for thieves, burglars, or robbers, *or for persons who are conspiring or planning to commit, who are fleeing after having committed or after attempting to commit, or who are in hiding after having committed or after attempting to commit, "felonious conduct"* (see below) is a public nuisance, and the court may order the nuisance abated. Under the act, the prohibition is expanded to prohibit a person from keeping a house that is a habitual resort for thieves, burglars, or robbers, *or for persons who are conspiring or planning to commit, who are fleeing after having committed or after attempting to commit, or who are in hiding after having committed or after attempting to commit, "felonious conduct,"* from letting a house be so kept, or from knowingly permitting a house that the person has let be so kept. A violation of this prohibition continues to be a misdemeanor of the fourth degree. For purposes of these provisions, "felonious conduct" means an offense that is a felony or a delinquent act that would be a felony if committed by an adult. (R.C. 3767.12, and R.C. 3767.99(B)--not in the act.)

## **Dueling**

### **Prior law**

Prior law prohibited a person from fighting a duel, being a second to a person who fights a duel, challenging another to fight a duel, accepting a challenge to fight a duel, or knowingly being the bearer of a challenge to fight a duel. A violation of any of the prohibitions was a felony of the fourth degree. (R.C. 3773.07 and 3773.99(B).)

### **Operation of the act**

The act repeals the duel-related prohibitions described above (Section 2-- repeal of R.C. 3773.07, and R.C. 3773.99).

## **Bridge companies**

### **Prior law**

Prior R.C. Chapter 1741. governed bridge companies incorporated to construct a bridge over a stream of water in Ohio and bridge companies incorporated to construct a bridge over the Ohio River. (R.C. Chapter 1741.)

One of the provisions specified that a bridge company authorized by its charter to take tolls above certain statutorily specified rates, could charge and receive the following rates, and no more: (1) for each foot passenger, 1¢, (2) for each horse, mule, or ass one year old and upward, 3¢, (3) for each horse and rider, 10¢, (4) for every chaise, chariot, gig, or other two-wheeled or four-wheeled pleasure carriage drawn by one horse, 15¢, (5) for every such vehicle drawn by two horses, 25¢, (6) for every such vehicle drawn by four horses, 30¢, (7) for every sled or sleigh drawn by one horse or other animal, 10¢, plus 3¢ for each additional animal drawing such sled or sleigh, (8) for every wagon drawn by one horse or other animal, 10¢, plus 3¢ for each additional animal drawing such wagon, (9) for every wagon drawn by two horses or other animals, 15¢, plus 3¢ for each additional animal drawing such wagon, (10) for each head of neat cattle, six months old or upward, 1¢, and (11) for each head of sheep, goats, or hogs, ½¢. This provision did not affect any company in whose charter special rates were provided and did not give any power to the General Assembly to alter or amend such a charter. A bridge company, before receiving tolls upon its bridge, was required to set up and keep in a conspicuous place on its bridge a board on which were written, painted, or printed, in a plain and legible manner, the rates of toll charged at the bridge. (R.C. 1741.02.)

Another provision specified that a company incorporated to construct a bridge over the Ohio River could fix and collect reasonable rates of toll for all persons, animals, vehicles, and property passing over the bridge, but at no time could the rates exceed those collected at the Covington-Cincinnati bridge. The company was required to set up and keep in a conspicuous place, at each end of its bridge, a board on which the rates were written, painted, or printed, in a plain and legible manner. (R.C. 1741.08.)

A third provision specified that a bridge owner or company could make and enforce any rule that it deemed necessary to preserve and protect its property and to collect its tolls and could prevent any person from crossing a bridge owned by it on foot or by riding, or from driving a team, a vehicle, or stock on the bridge, who failed to pay the regular fare when it is demanded. The policeman or watchman of the bridge was granted all the powers of policemen of cities, and was authorized to arrest without warrant, at or upon the bridge, any person who violated the law, or the rules of the owner of the bridge, and take the person before the proper civil authority. (R.C. 1741.14.)

### **Operation of the act**

The act repeals Chapter 1741., the law governing bridge companies, in its entirety (Section 2 of the act--repeal of R.C. 1741.01, 1741.02, 1741.03, 1741.04, 1741.05, 1741.06, 1741.07, 1741.08, 1741.09, 1741.10, 1741.11, 1741.12, 1741.13, 1741.14, and 1741.99).

### **State Criminal Sentencing Commission**

The act renames the State Criminal Sentencing Council as the State Criminal Sentencing Commission. Until 1996, the entity was known as the State Criminal Sentencing Commission. (R.C. 181.21, 181.22, 181.23, 181.24, and 181.25.)

### **Vehicular homicide, vehicular assault, and involuntary manslaughter offenses**

#### **Vehicular homicide offenses**

##### **Prior and continuing law--offense of aggravated vehicular homicide.**

Continuing law prohibits any person, while operating or participating in the operation of a "motor vehicle," motorcycle, snowmobile, locomotive, watercraft, or aircraft, from *recklessly* causing the death of another or the "unlawful termination of another's pregnancy." A violation of the prohibition is the offense of "aggravated vehicular homicide." The offense generally is a felony of the third degree. Under prior law, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, the offense of "vehicular

homicide" or "aggravated vehicular assault," or the offense of "involuntary manslaughter" in a case in which the offender was subject to the special sanctions provided for that offense in specified circumstances in which it was vehicle-related and alcohol-related (hereafter, "R.C. 2903.04(D) sanctions"), it was a felony of the second degree. (R.C. 2903.06(A) and (B).)

Under prior law, if the jury or judge as trier of fact found that an offender convicted of aggravated vehicular homicide was under the influence of alcohol, a drug of abuse, or both at the time of the commission of the offense, then the offender's driver's or commercial driver's license or permit or nonresident operating privilege was required to be permanently revoked. When the trier of fact determined whether the offender was under the influence of alcohol, a drug of abuse, or both, the concentration of alcohol in the offender's blood, breath, or urine could be considered as competent evidence, and the offender was required to be presumed to have been under the influence of alcohol if there was at the time the bodily substance was withdrawn for a chemical test a concentration of .10 of one per cent or more by weight of alcohol in the offender's blood, .10 of one gram or more by weight of alcohol per 210 liters of the offender's breath, or .14 of one gram or more by weight of alcohol per 100 milliliters of the offender's urine. (R.C. 2903.06(B).)

Further, the offender was required to be sentenced to a mandatory prison term and was not eligible for a sentence to a community control sanction, for judicial release, or for earned credits if any of the following applied (R.C. 2903.06(C)): (1) the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, involuntary manslaughter when the offender was subject to the R.C. 2903.04(D) sanctions, state watercraft OMVI (R.C. 1547.11), vehicular homicide, aggravated vehicular assault, state OMVI or state OMVUAC, driving with a suspended license (R.C. 4511.192), driving under suspension or revocation in violation of license restrictions, driving under OMVI suspension or revocation, or driving under financial responsibility law suspension or revocation (R.C. 4507.02(B) and (D)), R.C. 4507.38 or 4507.39 as they existed prior to September 24, 1986, a violation of a municipal ordinance that is substantially similar to vehicular homicide, aggravated vehicular assault, state OMVI, state OMVUAC, or driving with a suspended license, a violation of a municipal ordinance that is substantially similar to R.C. 4507.38 or 4507.39 as they existed prior to September 24, 1986, or a violation of a municipal ordinance that is substantially similar to involuntary manslaughter when R.C. 2903.04(D) would apply, (2) the offender has accumulated 12 points pursuant to the state's Motor Vehicle Law within one year of the offense, or (3) in the commission of the offense the offender was driving under suspension or operating a motor vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse.

**Prior law--offense of vehicular homicide.** Prior law prohibited any person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from *negligently* causing the death of another or the unlawful termination of another's pregnancy. A violation of the prohibition was the offense of "vehicular homicide." The offense generally was a misdemeanor of the first degree. But, if the offender previously had been convicted of or pleaded guilty to vehicular homicide, the offense of aggravated vehicular homicide or aggravated vehicular assault, or the offense of involuntary manslaughter when the R.C. 2903.04(D) sanctions apply, or if at the time of the commission of the offense the offender's driver's or commercial driver's license or permit or nonresident operating privilege was suspended or revoked it was a felony of the fourth degree. (R.C. 2903.07(A) and (B).)

Provisions similar to the mandatory license revocation and mandatory prison term provisions described above in "**Prior and continuing law--offense of aggravated vehicular homicide**" also applied, in similar circumstances, in relation to the offense of vehicular homicide (R.C. 2903.07(B) and (C)).

**Operation of the act--generally.** The act repeals the Revised Code section containing the offense of vehicular homicide, incorporates the vehicular homicide prohibition within the statute containing the offense of aggravated vehicular homicide, modifies the elements of, and penalties for, both of those offenses, and enacts a new, related offense that it names "vehicular manslaughter." The prohibitions that constitute those offenses are consolidated within the Revised Code section that previously contained only the offense of aggravated vehicular homicide. (Section 2--repeal of R.C. 2903.07; R.C. 2903.06.)

**Operation of the act--prohibitions.** The consolidated provisions of the act prohibit a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy in any of the following ways (R.C. 2903.06(A)):

(1) As a proximate result of the offender's committing state OMVI or a violation of a municipal ordinance substantially equivalent to state OMVI;

(2) *Recklessly* (similar to the offense of aggravated vehicular homicide under prior law);

(3) *Negligently* (similar to the offense of vehicular homicide under prior law);

(4) As a proximate result of the offender's committing a minor misdemeanor violation of the state's Motor Vehicle Law (R.C. Title 45) or a

violation of a municipal ordinance that, regardless of whether the ordinance classifies the violation as a minor misdemeanor or as a different degree of misdemeanor, is substantially similar to a minor misdemeanor violation of the state's Motor Vehicle Law. (R.C. 2903.06(A).)

**Operation of the act--penalties.** The act generally repeals the existing sentencing structure and special sanctions for aggravated vehicular homicide and vehicular homicide and enacts a new sentencing structure for those offenses and for violations of the new prohibitions. It designates, and penalizes, violations of the prohibitions described in the preceding paragraph as follows:

(1) A violation of the prohibition set forth in clause (1) of "**Prohibitions,**" above, is designated as the offense of "aggravated vehicular homicide." A violation of the prohibition generally is a felony of the second degree. However, if at the time of the offense, the offender was driving under a suspension imposed under the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions,**" above, any "traffic-related homicide, manslaughter, or assault offense" (see "**Definition,**" below), three prior state OMVI or state OMVUAC violations or violations of substantially equivalent municipal ordinances within the previous six years, or a second or subsequent felony state OMVI violation, it is a felony of the first degree. The court is required to impose a mandatory prison term on the offender, and the offender is not eligible for a sentence to a community control sanction, for judicial release, or for earned credits. The court also is required to permanently revoke the offender's driver's or commercial driver's license, temporary instruction permit, or nonresident operating privilege under R.C. 4507.16. (R.C. 2903.06(B)(1)(a), (C), and (D)(1).)

(2) A violation of the prohibition set forth in clause (2) of "**Prohibitions,**" above, also is designated as the offense of "aggravated vehicular homicide." A violation of the prohibition generally is a felony of the third degree. However, if at the time of the offense, the offender was driving under a suspension under the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions,**" above, or any other "traffic-related homicide, manslaughter, or assault offense," it is a felony of the second degree. If the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions,**" above, or a violation of R.C. 2903.08 as modified by the act (see "**Vehicular assault offenses,**" below), or if, at the time of the violation, the offender was driving under suspension under Chapter 4507., the court is required to impose a mandatory prison term on the offender, and the offender is not eligible for a sentence to a community control sanction, for judicial release, or for earned credits. The court also is required to suspend the offender's driver's or commercial driver's license,

temporary instruction permit, or nonresident operating privilege for a definite period of three years to life. (R.C. 2903.06(B)(1)(b), (C), and (D)(1).)

(3) A violation of the prohibition set forth in clause (3) of "**Prohibitions**," above, is designated as the offense of "vehicular homicide." A violation of the prohibition generally is a misdemeanor of the first degree. However, if, at the time of the offense, the offender was driving under a suspension imposed under the Revised Code, or if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions**," above, or any other "traffic-related homicide, manslaughter, or assault offense," it is a felony of the fourth degree. In the same circumstances as are described in the preceding paragraph relative to aggravated vehicular homicide, the court is required to impose a mandatory prison term on the offender, and the offender is not eligible for a sentence to a community control sanction, for judicial release, or for earned credits. The court also is required to suspend the offender's driver's or commercial driver's license, temporary instruction permit, or nonresident operating privilege for a definite period of one to five years or, if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions**," above or any "traffic-related homicide, manslaughter, or assault offense," for a definite period of two to ten years. (R.C. 2903.06(B)(2) and (C).)

(4) A violation of the prohibition set forth in clause (4) of "**Prohibitions**," above, is designated as the offense of "vehicular manslaughter." A violation of the prohibition generally is a misdemeanor of the second degree. However, if, at the time of the offense, the offender was driving under a suspension imposed under Chapter R.C. 4507. or if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions**," above, or any other "traffic-related homicide, manslaughter, or assault offense," it is a misdemeanor of the first degree. The court also is required to suspend the offender's driver's or commercial driver's license, temporary instruction permit, or nonresident operating privilege for a definite period of three months to two years, or if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions**," above, or any "traffic-related homicide, manslaughter, or assault offense," for a definite period of one to five years. (R.C. 2903.06(B)(3).)

**Operation of the act--violations of equivalent municipal ordinances.** The act also provides that a court imposing a sentence upon an offender for any violation of a municipal ordinance substantially equivalent to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter also must impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating

privilege that is equivalent in length to the suspension required for that offense (R.C. 4507.1613).

**Operation of the act--definition.** The act defines the term "traffic-related homicide, manslaughter, or assault offense," for purposes of R.C. 2903.06, as a violation of R.C. 2903.06 as modified by the act or as it existed before the act's effective date, a violation of R.C. 2903.08 as modified by the act or as it existed before the act's effective date (see "**Vehicular assault offenses**," below), a violation of R.C. 2903.07 as repealed by the act, or the offense of involuntary manslaughter when R.C. 2903.04(D) applies. For purposes of R.C. 2903.06, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former Ohio law, or current or former law of another state or the United States. (R.C. 2903.06(D)(1)(b) and (2).)

### **Vehicular assault offenses**

**Prior law--offense of aggravated vehicular assault.** Prior law prohibited any person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from *recklessly* causing serious physical harm to another person or "another's unborn." A violation of the prohibition was the offense of "aggravated vehicular assault." The offense generally was a felony of the fourth degree, but, if the offender previously had been convicted of or pleaded guilty to aggravated vehicular assault, the offense of vehicular homicide or aggravated vehicular homicide, or the offense of involuntary manslaughter when the R.C. 2903.04(D) sanctions applied, it was a felony of the third degree. (R.C. 2903.08(A) and (B).)

Provisions similar to the mandatory license revocation and mandatory prison term provisions described above in "**Prior and continuing law--offense of aggravated vehicular homicide**" also applied, in similar circumstances, in relation to the offense of aggravated vehicular assault (R.C. 2903.08(B) and (C)).

**Operation of the act--generally.** The act renames the prior offense of aggravated vehicular assault as "vehicular assault" and modifies the penalties for the prior offense of aggravated vehicular assault. The act also enacts a new offense that it names "aggravated vehicular assault." The prohibitions that constitute those offenses are located within the Revised Code section that under prior law contained only the offense of aggravated vehicular assault. (R.C. 2903.08.)

**Operation of the act--prohibitions.** The act's prohibitions prohibit a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing serious physical harm to another person or another's unborn in either of the following ways (R.C. 2903.08(A)): (1) as a proximate result of the offender's committing state OMVI or a violation of a municipal ordinance substantially similar to state OMVI, or (2) *recklessly* (similar to the offense of aggravated vehicular assault under prior law).

**Operation of the act--penalties.** The act generally repeals the previous sentencing structure and special sanctions for the prior aggravated vehicular assault and enacts a new sentencing structure for the new aggravated vehicular assault and the new "vehicular assault." It designates, and penalizes, violations of the prohibitions described in the preceding paragraph as follows:

(1) A violation of the prohibition set forth in clause (1) of "**Prohibitions**," above, is designated as the offense of "aggravated vehicular assault." A violation of the prohibition generally is a felony of the third degree. However, if, at the time of the offense, the offender was driving under a suspension imposed under the Revised Code or the offender previously has been convicted of or pleaded guilty to a violation of either of the prohibitions set forth in "**Prohibitions**," above, any other "traffic-related homicide, manslaughter, or assault offense" (see "**Definition**," below), three prior state OMVI or state OMVUAC violations or violations of a substantially equivalent municipal ordinance within the previous six years, or a second or subsequent felony state OMVI violation, it is a felony of the second degree. The court is required to impose a mandatory prison term on the offender, and the offender is not eligible for a sentence to a community control sanction, for judicial release, or for earned credits. The court also is required to suspend the offender's driver's or commercial driver's license, temporary instruction permit, or nonresident operating privilege for a definite period of two to ten years or, if the offender previously has been convicted of or pleaded guilty to a violation of either of the prohibitions set forth in "**Prohibitions**," above, or a traffic-related homicide, manslaughter, or assault offense, for a definite period of three years to life. (R.C. 2903.08(B)(1), (C), and (D)(1).)

(2) A violation of the prohibition set forth in clause (2) of "**Prohibitions**," above, is designated as the offense of "vehicular assault." A violation of the prohibition generally is a felony of the fourth degree. However, if, at the time of the offense, the offender was driving under a suspension imposed under R.C. Chapter 4507. or if the offender previously has been convicted of or pleaded guilty to a violation of either of the prohibitions set forth in "**Prohibitions**," above, or, any other "traffic-related homicide, manslaughter, or assault offense," it is a felony of the third degree. If the offender previously has been convicted of or pleaded

guilty to a violation of either of the prohibitions set forth in "**Prohibitions**," above, or a violation of R.C. 2903.06 as modified by the act, or if, at the time of the violation, the offender was driving under suspension imposed under the Revised Code, the court is required to impose a mandatory prison term on the offender, and the offender is not eligible for a sentence to a community control sanction, for judicial release, or for earned credits. The court also is required to suspend the offender's driver's or commercial driver's license, temporary instruction permit, or nonresident operating privilege for a definite period of one to five years or, if the offender previously has been convicted of or pleaded guilty to a violation of either of the prohibitions set forth in "**Prohibitions**," above, or a traffic-related homicide, manslaughter, or assault offense, for a definite period of two to ten years. (R.C. 2903.08(B)(2), (C), and (D).)

**Operation of the act--definition.** The act specifies that the definition of the term "traffic-related homicide, manslaughter, or assault offense" that is described above in "**Vehicular homicide offenses**" and the statement regarding inclusion of municipal ordinance violations and violations of current or former laws of Ohio, another state, or the United States within penalty and suspension enhancement provisions, also apply for purposes of R.C. 2903.08 as modified by the act (R.C. 2903.08(D)(2) and (F)).

### **Involuntary manslaughter**

**Prior law.** Prior law prohibited any person from doing either of the following: (1) causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony (hereafter, the "felony-related prohibition"), or (2) causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a misdemeanor of the first, second, third, or fourth degree or a minor misdemeanor (hereafter, the "misdemeanor-related prohibition"). A violation of either prohibition constituted the offense of "involuntary manslaughter." A violation of the felony-related prohibition was a felony of the first degree, and a violation of the misdemeanor-related prohibition was a felony of the third degree. (R.C. 2903.04(A) to (C).)

In addition to any penalty imposed upon the offender under the above-described provisions and the Felony Sentencing Law, if the felony or misdemeanor that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that was the basis of the offender's commission of the involuntary manslaughter included, as an element of that felony or misdemeanor offense, the offender's operation or participation in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft while the offender

was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, both of the following apply (R.C. 2903.04(D)(1)):

(1) The offender's driver's or commercial driver's license or permit or nonresident operating privilege was required to be permanently revoked pursuant to the state's Motor Vehicle Law.

(2) The offender was not eligible for a sentence to a community control sanction or for judicial release if any of the following apply relative to the offender: (a) the offender previously had been convicted of or pleaded guilty to involuntary manslaughter in circumstances in which the felony or misdemeanor that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that was the basis of the offender's commission of the involuntary manslaughter included, as an element of that felony or misdemeanor offense, the offender's operation or participation in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, (b) the offender previously had been convicted of or pleaded guilty to a violation of a municipal ordinance that was substantially similar to involuntary manslaughter, and the felony or misdemeanor that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that was the basis of the offender's violation of the municipal ordinance included, as an element of that felony or misdemeanor offense, the offender's operation or participation in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, (c) the offender previously had been convicted of or pleaded guilty to a violation of any of a list of motor vehicle operation-related offenses, (d) the offender had accumulated 12 points pursuant to the state's Motor Vehicle Law within one year of the offense, or (e) the offender was driving under suspension at the time the offender committed the offense.

In determining, for purposes of the above-described provisions, whether an offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse at the time of the commission of the offender's commission of the involuntary manslaughter, the trier of fact could consider as competent evidence the concentration of alcohol in the offender's blood, breath, or urine as shown by a chemical test taken pursuant to the state's Implied Consent Law. The offender was presumed to have been under the influence of alcohol if there was, at the time the bodily substance was withdrawn for the chemical test, a concentration of .10 of one per cent or more by weight of alcohol in the offender's blood, .10 of one gram or more by weight of alcohol per 210 liters of the offender's breath, or .14 of one

gram or more by weight of alcohol per 100 milliliters of the offender's urine. (R.C. 2903.04(D)(2).)

**Operation of the act--generally.** The act modifies the elements of, and the additional special sanctions for, involuntary manslaughter. (R.C. 2903.04.)

**Operation of the act--prohibitions.** The act does not change the felony-related prohibition included within the offense but modifies the language of the misdemeanor-related prohibition included within it (R.C. 2903.04(A) and (B)). Under the act, the latter prohibition prohibits a person from causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a misdemeanor of any degree, a "regulatory offense" (the act does not define this term, but it appears to refer to a regulatory offense contemplated by the Criminal Sentencing Commission's Misdemeanor Report), or a minor misdemeanor, other than one of the following (R.C. 2903.04(B)):

- (1) A minor misdemeanor violation of the state's Motor Vehicle Law;
- (2) A violation of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to a minor misdemeanor violation of the state's Motor Vehicle Law.

**Operation of the act--penalties.** The act retains the prior penalty structure for the offense, so that a violation of the felony-related prohibition remains a felony of the first degree, and a violation of the modified misdemeanor-related prohibition is a felony of the third degree. However, the act repeals the special sanctions that are provided for the offense under prior law and replaces them with special sanctions that specify that, if the felony, misdemeanor, or regulatory offense that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that is the basis of the offender's commission of the involuntary manslaughter was a state OMVI or state OMVUAC violation or a violation of a substantially equivalent municipal ordinance or included as an element of the felony, misdemeanor, or regulatory offense the offender's operation or participation in the operation of a snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or both, the court is required to impose a mandatory prison term on the offender from the range of prison terms authorized by law for that level of felony, and the court is required to permanently revoke the offender's driver's or commercial driver's license, temporary instruction permit, or nonresident operating privilege. (R.C. 2903.04(C) and (D).)

**Conforming changes regarding vehicular homicide and vehicular assault offenses**

The act modifies a number of existing provisions, generally by changing cross-references or making other technical changes, to conform them to its changes described above relative to the vehicular homicide and vehicular assault offenses (R.C. 2743.51(P), 2901.01(B)(2)(a), 2903.09(C)(1), 2919.22(E)(5) and (G), 2929.13(F), 2930.01(A), 2935.36(A), 2951.02(A) and (G), 4503.19, 4503.233(A), 4507.021(G), 4507.16(A), (B), (D), (F), and (G), 4507.162(A) and (C), 4507.164(B), 4507.169(E), 4511.191(F) and (I), 4511.193(B), 4511.195(B), 4511.196, and 4511.99(A) and (N)).

**State Watercraft OMVI**

**Prior and continuing law--offense and penalties**

Continuing R.C. 1547.11(A) and (B) prohibit a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on the waters of Ohio if any of the following applies (hereafter, a violation of any of the prohibitions is referred to as "state watercraft OMVI"):

(1) Regardless of the person's age, any of the following applies: (a) the person is under the influence of alcohol, a drug of abuse, or the combined influence of alcohol and a drug of abuse, (b) the person has a concentration of .10 of one per cent or more by weight of alcohol in his or her blood, (c) the person has a concentration of .14 of one gram or more by weight of alcohol per 100 milliliters of his or her urine, or (d) the person has a concentration of .10 of one gram or more by weight of alcohol per 210 liters of his or her breath.

(2) The person is under 21 years of age and any of the following applies: (a) the person has a concentration of at least .02 of one per cent but less than .10 of one per cent or more by weight of alcohol in his or her blood, (b) the person has a concentration of at least .028 of one gram but less than .14 of one gram or more by weight of alcohol per 100 milliliters of his or her urine, or (c) the person has a concentration of at least .02 of one gram but less than .10 of one gram or more by weight of alcohol per 210 liters of his or her breath.

State watercraft OMVI is a misdemeanor of the first degree, and the offender must be punished as follows (R.C. 1547.99(G)):

(1) Except as described in paragraph (2) or (3), the court must sentence the offender to a term of imprisonment of three consecutive days, may sentence the offender to a longer term of imprisonment authorized for misdemeanors of the first

degree, and must impose a fine of not less than \$150 nor more than \$1,000. The court may suspend the mandatory three days of imprisonment in specified circumstances.

(2) If, within five years of the offense, the offender has been convicted of or pleaded guilty to one violation of State Watercraft OMVI, of a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device while under the influence of alcohol, a drug of abuse, or both, or a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device with a prohibited concentration of alcohol in the blood, breath, or urine, or of a violation of R.C. 2903.06 or 2903.07 (aggravated vehicular homicide and vehicular homicide) in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or both, the court must sentence the offender to a term of imprisonment of ten consecutive days, may sentence the offender to a longer term of imprisonment authorized for a misdemeanor of the first degree, and must impose a fine of not less than \$150 nor more than \$1,000.

(3) If, within five years of the offense, the offender has been convicted of or pleaded guilty to more than one violation of a type specified in paragraph (2), above, the court must sentence the offender to a term of imprisonment of 30 consecutive days, may sentence the offender to a longer term of imprisonment of not more than one year, and must impose a fine of not less than \$150 nor more than \$1,000.

#### **Operation of the act--penalties**

The act modifies the list of prior convictions used for determining the penalty for State Watercraft OMVI so that it refers to a violation of R.C. 2903.06(A)(1) under the act (aggravated vehicular homicide based on the offender's commission of state OMVI or a violation of a substantially equivalent municipal ordinance), or the offense of aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter or of the former offense of aggravated vehicular homicide or vehicular homicide as they existed before the act's effective date in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or both. (R.C. 1547.99(G)(2) and (3).)

#### **"Basic supervision" and "intensive supervision"**

The act replaces the terms "basic supervision" and "intensive supervision" with the terms "basic probation supervision" and "intensive probation supervision" and specifies that these new terms include both parole supervision and post-release control supervision (R.C. 2929.01(C) and (T) and 2929.17(E) and (F)).

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## COMMENT

1. "Mandatory prison term," when used in a chart in this final analysis, means a prison term that a court is required to impose, selected from the range of prison terms authorized for a felony of the appropriate level; in some cases, the court must impose the maximum term from the range, specified in the tables. "Permissive additional prison term of one to ten years," when used in a chart, means an additional prison term of 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years that a court is authorized to impose upon a major drug offender if the court determines it necessary to punish the offender and protect the public or to underscore the seriousness of the offense. "School" and "juvenile," when used in a chart, mean that the penalty for an offense involving a certain amount of a controlled substance is enhanced when the offense is committed in the vicinity of a school or in the vicinity of a juvenile. If "school" or "juvenile" do not appear in a chart, the penalty listed for the offense applies regardless of the location of the offense.

2. R.C. 2935.01 specifies that "peace officer" includes a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to law, metropolitan housing authority police officer, regional transit authority police officer, state university law enforcement officer, Department of Public Safety liquor control investigator or food stamp trafficking agent, Ohio veterans' home policeman, township police constable or police officer, and, for certain specified law enforcement purposes, the Superintendent and troopers of the State Highway Patrol.

3. Separate provisions of law, not affected by the act, authorize the Governor, upon the application of a railroad company, to appoint and commission any persons that the railroad company designates to act as police officers for and on the premises of the railroad company, its affiliates and subsidiaries, or elsewhere, when directly in the discharge of their duties. Police officers so appointed, within the time set by the Ohio Peace Officer Training Commission, must successfully complete a Commission-approved training program and be certified by the Commission. They hold office for three years unless, for good cause shown, their commission is revoked by the Governor or the railroad company, and they have the powers of, and are subject to the liabilities of, municipal police officers while discharging the duties for which they are appointed. (R.C. 4973.17 to 4973.19.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-16-99	pp. 204-205
Reported, S. Judiciary	05-19-99	p. 456
Passed Senate (32-0)	05-25-99	pp. 478-479
Reported, H. Criminal Justice	10-13-99	pp. 1267-1268
Passed House (95-0)	10-19-99	pp. 1286-1291
Senate concurred in House amendments (33-0)	10-20-99	pp. 1098-1099

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