



## *Final Analysis*

*Michael J. O'Neill*

*Legislative Service Commission*

### **Am. S.B. 9**

123rd General Assembly  
(As Passed by the General Assembly)

**Sens. Mumper, Carnes, Drake, Johnson**

**Reps. Tiberi, Womer Benjamin, Evans, A. Core, Brading, Mottley, Roberts, Terwilleger, Sutton, Perry**

**Effective date:** \*

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#### **ACT SUMMARY**

- Adds a new factor that a court sentencing an offender for a felony must consider as indicating that the offender's conduct is *more serious* than conduct normally constituting the offense--that: (1) the offense is the offense of domestic violence, or the offense of felonious assault, aggravated assault, or assault involving a person who was a family or household member at the time of the offense, (2) the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and (3) the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of the children.
- Specifically authorizes the court to order an offender to obtain counseling as a possible community nonresidential sanction for an offender convicted of a felony offense of the type described in the factor summarized in the preceding paragraph.
- Adds a new factor that a court sentencing an offender for a misdemeanor must consider in favor of imposing imprisonment for the misdemeanor and, if the court decides to impose imprisonment, in favor of imposing a longer term--that: (1) the offense is the offense of domestic violence, or the offense of assault involving a person who was a family or household

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

- member at the time of the offense, (2) the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and (3) the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of the children.
- Specifically authorizes the court to order the offender to obtain counseling as an additional condition of probation or suspension of sentence for an offender convicted of a misdemeanor of the type described in the factor summarized in the immediately preceding paragraph.

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## CONTENT AND OPERATION

### Felony sentencing factors

#### Continuing law

In general. Continuing Felony Sentencing Law provides that, unless a mandatory prison term is required by law (pursuant to R.C. 2929.13(F) or 2929.14), a court that imposes a sentence upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing. In exercising that discretion, the court must consider the factors described below relating to the seriousness of the conduct and certain other statutory factors relating to the likelihood of the offender's recidivism and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing. The types of sentences that may be imposed include a prison term, one or more community residential sanctions, one or more community nonresidential sanctions, or one or more financial sanctions. (R.C. 2929.12(A) and R.C. 2929.15 to 2929.18--not in the act.)

Consideration of factors relating to the seriousness of the offender's conduct. Continuing law requires the court sentencing an offender for a felony to consider all of the following that apply regarding the offender, the offense, or the victim of the offense, and any other relevant factors, as indicating that the offender's conduct is *more serious* than conduct normally constituting the offense (R.C. 2929.12(B)): (1) the physical or mental injury suffered by the victim due to the offender's conduct was exacerbated because of the victim's physical or mental condition or age, (2) the victim suffered serious physical, psychological, or economic harm as a result of the offense, (3) the offender held a public office or position of trust in the community, and the offense related to that office or position, (4) the offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice, (5) the offender's professional reputation or occupation, elected office, or profession was

used to facilitate the offense or is likely to influence the future conduct of others, (6) the offender's relationship with the victim facilitated the offense, (7) the offender committed the offense for hire or as a part of an organized criminal activity, and (8) in committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

The sentencing court also must consider all of the following that apply regarding the offender, the offense, or the victim of the offense, and any other relevant factors, as indicating that the offender's conduct is *less serious* than conduct normally constituting the offense (R.C. 2929.12(C)): (1) the victim induced or facilitated the offense, (2) in committing the offense, the offender acted under strong provocation, (3) in committing the offense, the offender did not cause or expect to cause physical harm to any person or property, and (4) there are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

### **Operation of the act**

The act adds a ninth factor to the listed factors that a court sentencing an offender for a felony must consider as indicating that the offender's conduct is *more serious* than conduct normally constituting the offense. The new factor is that the offense is the offense of domestic violence or is the offense of felonious assault, aggravated assault, or assault involving a person who was a "family or household member" (see "**Definitions**," below) at the time of the offense, the offender "committed the offense in the vicinity" (see "**Definitions**," below) of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children. (R.C. 2929.12(B)(9).)

### **Misdemeanor sentencing factors**

#### **Continuing law**

Continuing Misdemeanor Sentencing Law provides that a court that imposes a sentence upon an offender for a misdemeanor must impose upon the offender a definite term of imprisonment, a fine, or both. In determining whether to impose imprisonment, a fine, or both, for a misdemeanor, and in determining the term of imprisonment and the amount and method of payment of a fine for a misdemeanor, the court must consider: (1) the risk that the offender will commit another offense and the need for protecting the public from the risk, (2) the nature and circumstances of the offense, (3) the offender's history, character, and condition and the offender's need for correctional or rehabilitative treatment, (4) any statement made by the victim under the Crime Victims Rights Law, and (5) the offender's ability and resources and the nature of the burden that payment of a

fine will impose on the offender. (R.C. 2929.22(A) and R.C. 2929.21--not in the act.)

Continuing law specifies that the court must consider the following factors in favor of imposing imprisonment for a misdemeanor, but that the factors do not control the court's discretion: (1) the offender is a repeat or dangerous offender, and (2) regardless of whether the offender knew the victim's age, the victim of the offense was 65 years of age or older, permanently and totally disabled, or less than 18 years of age at the time of the commission of the offense. Additionally, the court must consider against imposing imprisonment for a misdemeanor the criteria included in the continuing Felony Sentencing Law, described in "*Consideration of factors relating to the seriousness of the offender's conduct*," above, that mitigate the seriousness of the offense and that indicate that the offender is unlikely to commit future crimes, but the criteria do not control the court's discretion. The criteria listed and referred to in this paragraph do not limit the matters that a court may consider in determining whether to impose imprisonment for a misdemeanor. (R.C. 2929.22(B) to (D).)

#### *Operation of the act*

The act adds a third factor to the listed factors that a court sentencing an offender for a misdemeanor must consider in favor of imposing imprisonment for the misdemeanor. The new factor is that the offense is the offense of domestic violence or is the offense of assault involving a person who was a "family or household member" (see "*Definitions*," below) at the time of the offense, the offender "committed the offense in the vicinity" (see "*Definitions*," below) of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of the children. It also specifies that, if the offense for which sentence is being imposed is the offense of domestic violence or is the offense of assault involving a person who was a family or household member at the time of the offense and the court decides to impose a term of imprisonment on the offender, the new factor must be considered in favor of imposing a longer term of imprisonment. (R.C. 2929.22(B)(1)(c) and (B)(2).)

#### *Counseling for certain offenders who commit assaultive offense in sight or hearing of children*

##### *Sentence imposed for a felony*

*Continuing law*. The continuing Felony Sentencing Law specifies that if a court is sentencing an offender for a felony and if, in sentencing the offender, the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment on the offender, the court may directly impose a sentence that

consists of one or more "community control sanctions." A community control sanction is a "residential sanction," a "nonresidential sanction," or a "financial sanction." The duration of all community control sanctions so imposed cannot exceed five years. (R.C. 2929.01(F) and R.C. 2929.15--not in the act.)

R.C. 2929.17 governs the imposition of nonresidential sanctions upon a convicted felon. It specifies that nonresidential sanctions include, but are not limited to, the following: (1) a term of day reporting, (2) a term of electronically monitored house arrest, a term of electronic monitoring without house arrest, or a term of house arrest without electronic monitoring, (3) a term of community service of up to 500 hours or, if the court determines that the offender is financially incapable of fulfilling a financial sanction, a term of community service as an alternative to a financial sanction, (4) a term in a drug treatment program with a level of security for the offender as determined necessary by the court, (5) a term of intensive supervision, (6) a term of basic supervision, (7) a term of monitored time, (8) a term of drug and alcohol use monitoring, (9) a curfew term, (10) a requirement that the offender obtain employment, (11) a requirement that the offender obtain education or training, (12) provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation, or (13) a license violation report. (R.C. 2929.17.)

**Operation of the act.** The act adds a 14th nonresidential sanction to the existing list of specified nonresidential sanctions. The new sanction provides that, if the offense for which sentence is being imposed is the offense of domestic violence or is the offense of felonious assault, aggravated assault, or assault involving a person who was a "family or household member" (see "**Definitions**," below) at the time of the offense, if the offender "committed the offense in the vicinity" (see "**Definitions**," below) of one or more children who are not victims of the offense, and if the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of the children, the court may impose a requirement that the offender obtain counseling. The act specifies that the new sanction does not limit the court in requiring the offender to obtain counseling for any offense or in any circumstance not specified in the new sanction. (R.C. 2929.17(N).)

### **Sentence imposed for a misdemeanor**

**Continuing law.** The Misdemeanor Sentencing Law specifies that, at the time of sentencing and after sentencing, when imprisonment is imposed for a misdemeanor, the court may do any of the following: (1) suspend the sentence and place the offender on probation pursuant to R.C. 2951.02 (see below), (2) suspend the sentence pursuant to R.C. 2951.02 upon any terms the court considers appropriate, (3) permit the offender to serve the offender's sentence in intermittent

confinement, overnight, or on weekends, or both, or at any other time or times that will allow the offender to continue at the offender's occupation or care for the offender's family, or (4) require the offender to serve a portion of the offender's sentence, which may be served in intermittent confinement, and suspend the balance of the sentence pursuant to R.C. 2951.02 upon any terms that the court considers appropriate, or suspend the balance of the sentence and place the offender on probation pursuant to that section. (R.C. 2929.51--not in the act.)

In determining whether to suspend a sentence of imprisonment imposed upon an offender for a misdemeanor and place the offender on probation or whether to otherwise suspend a sentence of imprisonment imposed upon an offender for a misdemeanor, the court must consider the risk that the offender will commit another offense and the need for protecting the public from the risk, the nature and circumstances of the offense, and the history, character, and condition of the offender. Continuing law does all of the following regarding the use of probation or sentence suspension for a misdemeanor: (1) it specifies that certain specified misdemeanor offenders, in certain specified circumstances, *never* can be placed on probation or otherwise have the offender's sentence of imprisonment suspended, (2) it lists ten factors and specifies that the court must consider them *in favor of* placing a misdemeanor offender on probation or *in favor of* otherwise suspending the offender's sentence of imprisonment, but that the factors do not control the court's decision, and (3) it lists four factors and specifies that the court must consider them *against* placing a misdemeanor offender on probation or *against* otherwise suspending the offender's sentence of imprisonment, but that the factors do not control the court's decision. The listed factors described above in clauses (2) and (3) cannot be construed to limit the matters that may be considered in determining whether to suspend sentence of imprisonment and place a misdemeanor offender on probation or whether to otherwise suspend the offender's sentence of imprisonment.

When a misdemeanor offender is placed on probation or the sentence of that type of offender otherwise is suspended pursuant to law, the probation or other suspension is at least on condition that, during the period of probation or other suspension, the offender must abide by the law, including, but not limited to, complying with certain provisions of the Weapons Law and cannot leave Ohio without the permission of the court or probation officer. In the interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior, the court may impose additional requirements on the offender. Compliance with the additional requirements also is a condition of the offender's probation or other suspension.

Additionally, when a misdemeanor offender is placed on probation or the sentence of that type of offender otherwise is suspended, the court may require the

offender, as a condition of the probation or suspension, in addition to the conditions of probation or other suspension otherwise imposed, and in accordance with specified criteria and limitations, to perform supervised community service work under the authority of health districts, park districts, counties, municipal corporations, townships, other political subdivisions of the state, or agencies of the state or any of its political subdivisions, or under the authority of charitable organizations that render services to the community or its citizens. The period of community service work so imposed cannot exceed an aggregate of 200 hours. (R.C. 2951.02.)

**Operation of the act.** The act adds a new condition to the listed existing conditions that may be imposed on a specified type of misdemeanor offender who is placed on probation or whose sentence otherwise is suspended. The new condition specifies that, if the offense for which sentence is being imposed is the offense of domestic violence or is the offense of assault involving a person who was a "family or household member" (see "**Definitions**," below) at the time of the offense, if the offender "committed the offense in the vicinity" (see "**Definitions**," below) of one or more children who are not victims of the offense, and if the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of the children, the court may impose as a requirement of the probation or suspension of sentence that the offender obtain counseling. Compliance with this new condition will be a condition of the offender's probation or suspension of sentence. The act specifies that this new condition does not limit the court in imposing a requirement that the offender obtain counseling for any offense or in any circumstance not specified in the new condition. (R.C. 2951.02(C)(1)(a)(ii).)

### **Definitions**

The act specifies that, for purposes of all of its provisions described above:

(1) An offense is "committed in the vicinity of a child" if the offender commits the offense within 30 feet of or within the same residential unit as a child who is under 18 years of age, regardless of whether the offender knows the child's age and regardless of whether the offender knows the offense is being committed within 30 feet of or within the same residential unit as the child (R.C. 2929.01(NN)).

(2) "Family or household member" means any of the following: (a) any of the following who is residing or has resided with the offender: a spouse, a person living as a spouse (i.e., a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the

date of the alleged commission of the act in question), or a former spouse of the offender; a parent or a child of the offender, or another person related by consanguinity or affinity to the offender; or a parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender, or (b) the natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent (R.C. 2901.01(OO), by reference to R.C. 2919.25--not in the act).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	pp. 26-27
Reported, S. Judiciary	03-11-99	p. 191
Passed Senate (29-4)	03-17-99	pp. 211-212
Reported, H. Criminal Justice	06-30-99	p. 1162
Passed House (96-0)	10-12-99	pp. 1246-1247
Senate concurred in House amendments (33-0)	10-13-99	p. 1066

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