



Dennis M. Papp

Bill Analysis
Legislative Service Commission

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(As Introduced)

Sen. Mumper

BILL 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 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, the offender committed the offense in the sight or hearing 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.
- 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 the offense is the offense of domestic violence, or the offense of assault involving a person who was a family or household member at the time of the offense, the offender committed the offense in the sight or hearing 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.
- 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.

CONTENT AND OPERATION

Felony sentencing factors

Existing law

In general. The existing Felony Sentencing Law provides that, unless a mandatory prison term is required by law (pursuant to existing 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 set forth in existing R.C. 2929.11 (see **COMMENT 1**). In exercising that discretion, the court must consider the factors described below relating to the seriousness of the conduct and certain other statutory factors (see **COMMENT 2**) 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 2929.15 to 2929.18.)

Consideration of factors relating to the seriousness of the offender's conduct. Existing 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 bill

The bill 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 the bill enacts 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 sight or hearing" (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. (R.C. 2929.12(B)(9).)

Misdemeanor sentencing factors

Existing law

The existing 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 existing 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. 2929.21 and 2929.22(A).)

Existing 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 existing Felony Sentencing Law, described in "Consideration of factors relating to the seriousness of the offender's conduct," above and in COMMENT 2, 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 bill

The bill 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 the bill enacts 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 sight or hearing" (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

Existing law. The existing 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" described in existing R.C. 2929.16, a "nonresidential sanction" described in existing R.C. 2929.17, or a "financial sanction" described in existing R.C. 2929.18. The duration of all community

control sanctions so imposed cannot exceed five years. (R.C. 2929.01(F) and 2929.15.)

Existing 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 pursuant to R.C. 2951.02(F) 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 bill. The bill 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 sight or hearing" (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 bill 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

Existing law. The existing 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 existing R.C. 2951.02 (see below), (2) suspend the sentence pursuant to existing 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 existing 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.)

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. Existing 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 bill. The bill 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 enacted by the bill 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 sight or hearing" (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 bill 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 bill specifies that, for purposes of all of its provisions described above:

(1) An offense is "committed in the sight or hearing of a child" if the offender commits the offense within the sight or hearing of 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 the sight or hearing of 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 existing R.C. 2919.25).

COMMENT

1. Existing law provides that a court that sentences an offender for a felony is to be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court must consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both. A sentence imposed for a felony must be reasonably calculated to achieve the above-described two overriding purposes of felony sentencing, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders. A court that imposes a sentence for a felony cannot base that sentence upon the offender's race, ethnic background, gender, or religion. (R.C. 2929.11.)

2. Existing law requires the court sentencing an offender for a felony to consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is *likely to commit* future crimes (R.C. 2929.12(D)): (1) at the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a community control sanction or financial sanction imposed pursuant to the Felony Sentencing Law, or under post-release control for an earlier offense, (2) the offender previously was adjudicated a delinquent child pursuant to the Juvenile Court Law, or the offender has a history of criminal convictions, (3) the offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to the Juvenile Court Law, or the offender has not responded favorably to sanctions previously imposed for criminal convictions, (4) the offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse, and (5) the offender shows no genuine remorse for the offense.

The sentencing court also must consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is *not likely to commit* future crimes (R.C. 2929.12(E)): (1) prior to committing the offense, the offender had not been adjudicated a delinquent child, (2) prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense, (3) prior to committing the offense, the offender had led a law-abiding life for a significant number of years, (4) the offense was committed under circumstances not likely to recur, and (5) the offender shows genuine remorse for the offense.

HISTORY

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