



## **S.B. 208**

127th General Assembly  
(As Introduced)

**Sens. Grendell, Schaffer**

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### **BILL SUMMARY**

- Doubles the ranges of prison terms from which a sentencing court may impose a prison term on an offender who is convicted of a felony and also is convicted of a specification charging that the offender previously was convicted of two or more felonies.
- Establishes a presumption in favor of a sentencing court imposing the longest prison term authorized for the felony offense upon an offender convicted of a felony, if: (1) the offender is not subject to a sentence of death or life imprisonment or a mandatory prison term, and (2) the offender previously has been convicted of or pleaded guilty to that felony or an offense under an existing or former law of Ohio, another state, or the United States.

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### **CONTENT AND OPERATION**

#### **Background**

The existing Felony Sentencing Law is contained in R.C. 2929.11 to 2929.19. It requires a court that sentences an offender for a felony to hold a sentencing hearing before imposing the sentence, generally provides the court with "guided discretion" to determine the offender's sentence, and provides a continuum of sanctions from which the court generally may choose the sentence to impose, with the sanction options including a prison term, one or more community residential sanctions, one or more nonresidential sanctions, or one or more financial sanctions (collectively, the non-prison sanctions are referred to as "community control sanctions"). In some cases, though, the court is required to impose a mandatory prison term on the offender, in accordance with specified procedures and criteria. The Felony Sentencing Law sets forth principles and purposes of sentencing and numerous factors that must be considered in imposing sentence on a felon, and provides presumptions, standards, and criteria that apply

in determining the type of sentence or the appropriate sentence to impose. A summary of the Felony Sentencing Law is set forth in **COMMENT 1**. Some of the standards and criteria that must be considered under the Felony Sentencing Law in imposing sentence on a felon explicitly apply in cases in which the court imposing sentence, after application of the presumptions, standards, and criteria that apply in determining the type of sentence to impose, elects or is required to impose a prison sentence on the felon; these standards and criteria are discussed in detail below in "*Determination of prison term for a felony.*"

### *Determination of prison term for a felony*

#### *Existing law*

*Ranges of authorized prison terms.* Existing law provides that, except as otherwise provided in the Felony Sentencing Law and as except in relation to an offense for which a sentence of death or life imprisonment must be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender, the court must impose a definite prison term that must be one of the following: (1) for a felony of the first degree, a prison term of 3, 4, 5, 6, 7, 8, 9, or 10 years, (2) for a felony of the second degree, a prison term of 2, 3, 4, 5, 6, 7, or 8 years, (3) for a felony of the third degree, a prison term of 1, 2, 3, 4, or 5 years, (4) for a felony of the fourth degree, a prison term of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months, and (5) for a felony of the fifth degree, a prison term of 6, 7, 8, 9, 10, 11, or 12 months (R.C. 2929.14(A)).

*Shortest authorized prison term generally must be imposed.* Except as otherwise provided in the Felony Sentencing Law or as otherwise provided regarding the offense of "rape" or "gross sexual imposition" or in the Drug Offense Law, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term, the court must impose the shortest prison term authorized for the offense under the ranges summarized in the preceding paragraph, unless one or more of the following applies: (1) the offender was serving a prison term at the time of the offense, or previously had served a prison term, or (2) the court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others (R.C. 2929.14(B)).

*Longest authorized prison term generally may be imposed only in limited circumstances.* Except as otherwise provided in the Felony Sentencing Law or in the Drug Offense Law, the court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense under the ranges summarized in the second preceding paragraph only upon: (1) offenders who committed the worst forms of the offense or who pose the greatest likelihood

of committing future crimes, or (2) certain major drug offenders or certain repeat violent offenders (see the next paragraph). If the court imposes the maximum prison term allowed for the offense, it must make a finding that gives it reasons for imposing that prison term. (R.C. 2929.14(C) and 2929.19(B)(2)(d) and (e).)

**Mandatory prison terms.** For certain specified felony offenses, the Felony Sentencing Law requires a mandatory prison term for the offense and, generally, for those offenses, the sentencing court chooses the prison term to impose from the terms authorized for the offense under the ranges summarized in the third preceding paragraph. A summary of the specified felony offenses for which a mandatory prison term is required under this provision is contained in **COMMENT 1.**

Other provisions of the Felony Sentencing Law require a mandatory prison term that must be imposed when an offender is convicted of a felony committed in specified circumstances and also generally specify the length of the term. In some of those circumstances, the mandatory prison term is required if it is proved that, in addition to committing the felony in question, the offender engaged in another type of specified conduct in committing it. The mandatory prison term generally is imposed in addition to any prison term imposed for the underlying felony. The circumstances in which such a mandatory prison term is required include the offender's possession or use of a firearm while committing the underlying felony, the offender's possession or use of body armor while committing the felony, a determination that the offender is a repeat violent offender, a determination that the offender is a major drug offender (or another similar, specified determination), the imposition of sentence for felony OVI, the offender's conviction of aggravated vehicular homicide when the victim is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation or the offender is a multiple repeat OVI offender, the offender's commission of the felony while participating in a criminal gang, the offender's commission of a felony offense of violence while in a school safety zone or toward a person in a school safety zone, and the offender's commission of aggravated vehicular homicide committed in violation of R.C. 2903.06(A)(1), which involves alcohol and a vehicle, watercraft, or aircraft, when the offender has three or more prior convictions of a specified nature involving alcohol and a vehicle, watercraft, or aircraft. (R.C. 2929.14(D), (E), (I), (J), and (L).)

**Sexually violent predator sentencing.** Existing law provides a special sentencing mechanism, not further discussed in this analysis, that must be used if a person is convicted of or pleads guilty to: (1) a violent sex offense and a sexually violent predator specification, (2) a designated homicide, assault, or kidnapping offense, a sexual motivation specification, and a sexually violent predator specification, or (3) in specified circumstances, the offense of "rape," "attempted

rape," "kidnapping," "aggravated murder," or "murder" (R.C. 2929.14(G) and Chapter 2971.).

### **Operation of the bill**

**Longer authorized prison term for a felony, if two or more prior felony convictions.** The bill specifies longer ranges of prison terms from which a sentencing court may impose a prison term on an offender convicted of a felony who also is convicted of a specification charging that the offender previously was convicted of two or more felonies. The bill's ranges of prison terms are double the ranges of terms provided under existing law for the same degree of felony. Specifically, the bill provides that, except as provided in the provisions described above in "**Mandatory prison terms**" (other than those that relate to a criminal gang or a school safety zone) and "**Sexually violent predator sentencing**" under "**Existing law**" and in the provision described below in "**Sentencing presumption in favor of longest authorized prison term for a felony, if prior felony conviction,**" and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if an offender is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a specification enacted in the bill that charges that the offender previously has been convicted of or pleaded guilty to two or more felonies under an existing or former law of Ohio, another state, or the United States (see the next paragraph), and if the court imposing sentence upon the offender elects or is required to impose a prison term on the offender pursuant to the Felony Sentencing Law, rather than imposing a prison term under the existing provisions that set forth the ranges of authorized prison terms for the various degrees of felonies (see "**Ranges of authorized prison terms**" under "**Existing law,**" above), the court may impose a definite prison term that must be one of the following: (1) for a felony of the first degree, a prison term of 6, 8, 10, 12, 14, 16, 18, or 20 years, (2) for a felony of the second degree, a prison term of 4, 6, 8, 10, 12, 14, or 16 years, (3) for a felony of the third degree, a prison term of 2, 4, 6, 8, or 10 years, (4) for a felony of the fourth degree, a prison term of 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, or 36 months, and (5) for a felony of the fifth degree, a prison term of 12, 14, 16, 18, 20, 22, or 24 months. (R.C. 2929.14(D)(7).)

The bill bars the imposition of a sentence for a repeat offender under the provisions described in the preceding paragraph unless the document charging the felony for which sentence is being imposed specifies that the offender previously has been convicted of or pleaded guilty to two or more felonies under an existing or former law of Ohio, another state, or the United States, provides a form for the specification to be used under those provisions, and requires that the specification must be in substantially that form (R.C. 2941.1421).

**Sentencing presumption in favor of longest authorized prison term for a felony, if prior felony conviction.** The bill establishes a new sentencing presumption in favor of the longest prison term possible for an offender who is convicted of a felony and is a repeat offender. Under the bill, when a court imposes sentence upon an offender for the commission of a felony and the offender is not subject to a sentence of death or life imprisonment or a mandatory prison term, there is a presumption in favor of the court imposing the longest prison term authorized for the offense under the ranges summarized above in "**Ranges of authorized prison terms**" under "**Existing law**" if the offender previously has been convicted of or pleaded guilty to any felony under an existing or former law of Ohio, another state, or the United States. (R.C. 2929.14(D)(8).)

**Cross-references and conforming changes.** The bill amends existing provisions that specify the ranges of prison terms provided the various degrees of felonies, that provide that the shortest prison term authorized for a felony offense is the appropriate term unless a specified exception applies, that specify circumstances in which the longest prison term authorized for a felony offense may be imposed, that require a court that sentences a felon to give its reasons for the sentence in specified circumstances, and that provide in specified circumstances a right to appeal a sentence imposed for a felony that consisted of or included the maximum prison term allowed for the offender to include references to, or to conform to, the provisions described above in "**Longer authorized prison term for a felony, if two or more prior felony convictions**" and "**Sentencing presumption in favor of longest authorized prison term for a felony, if prior felony conviction**" (R.C. 2929.14(A), (B), and (C), 2929.19(B)(2)(d) and (e), and 2953.08(A)(1)).

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## COMMENT

1. The existing Felony Sentencing Law is contained in R.C. 2929.11 to 2929.19. R.C. 2929.19(A)(1) requires a court that sentences an offender who is convicted of a felony to hold a sentencing hearing before imposing the sentence. R.C. 2929.12(A) specifies that, unless a mandatory prison term is required (see below), the sentencing court has discretion to determine the most effective way to comply with the principles and purposes of sentencing set forth in R.C. 2929.11 and that, in exercising that discretion, the court must consider "seriousness factors" and "recidivism factors" listed in R.C. 2929.12(B) to (E) that apply regarding the offender and may consider other relevant factors.

Except when a mandatory prison term is required for a convicted felon or when another specific sanction is required or prohibited for a convicted felon, the sentencing court, after considering the above-mentioned principles, purposes, and factors, and in accordance with certain "guidance" provided by statute (see the

next three paragraphs), has discretion to impose any sanction or combination of sanctions consisting of a prison term under R.C. 2929.14, one or more community residential sanctions under R.C. 2929.16, one or more nonresidential sanctions under R.C. 2929.17, or one or more financial sanctions under R.C. 2929.18 (collectively, the non-prison sanctions are referred to as "community control sanctions"). The duration of all community control sanctions so imposed cannot exceed five years. (R.C. 2929.13(A), 2929.15(A) to (C), 2929.16, 2929.17, and 2929.18; see **COMMENT 2**.)

Generally, in sentencing an offender for a felony of the fourth or fifth degree, the sentencing court must make certain initial determinations indicating the seriousness of the offense (e.g., in committing the offense the offender caused physical harm to a person, the offender held a public office or position of trust and the offense related to that office or position, the offender committed the offense for hire, or the offender committed the offense while in possession of a firearm, etc.) If the court makes any of the specified findings and, after considering the statutory sentencing factors, finds that a prison term is consistent with the purposes and principles of sentencing and 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 any of the specified findings and, after considering the statutory sentencing factors, finds that a community control sanction or combination of community control sanctions is consistent with the purposes and principles of sentencing, it must impose one or more community control sanctions upon the offender. If the court imposes a prison term for a felony of the fourth or fifth degree, or for a felony drug offense to which this provision applies, it generally must make a finding that gives its reasons for imposing the prison term. (R.C. 2929.13(B) and 2929.19(B)(2)(a); see **COMMENT 2**.)

Generally, in determining whether to impose a prison term as a sanction for a felony of the third degree or a felony drug offense that is a violation of a provision of R.C. Chapter 2925. and is specified as being subject to this provision, the sentencing court must comply with the purposes and principles of sentencing. (R.C. 2929.13(C).)

Generally, for a felony of the first or second degree and for other specified offenses (a felony drug offense under R.C. Chapter 2925., 3719., or 4729. for which a presumption in favor of a prison term is imposed and for a violation of R.C. 2907.05(A)(4) for which a presumption in favor of a prison term is imposed), it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing. Notwithstanding the presumption described in the preceding sentence, the sentencing court may impose one or more community control sanctions instead of a prison term on an offender for a felony of the first or

second degree or for one of the specified felony drug offenses for which a presumption in favor of a prison term is imposed if it finds that one or more community control sanctions: (a) would adequately punish the offender and protect the public from future crime, because the applicable statutory factors indicating a lesser likelihood of recidivism outweigh the applicable statutory factors indicating a greater likelihood of recidivism, and (b) would not demean the seriousness of the offense, because the applicable statutory factors indicating that the offender's conduct was less serious than conduct normally constituting the offense outweigh the applicable statutory factors indicating that the offender's conduct was more serious than conduct normally constituting the offense. If the court does not impose a prison term for a felony of the first or second degree or for any other of the specified offenses for which the presumption applies, it must make a finding that gives its reasons for not imposing the prison term and for overriding the presumption. (R.C. 2929.13(D) and 2929.19(B)(2)(b).)

For certain felonies, the Felony Sentencing Law requires a court sentencing a convicted felon to impose a mandatory prison term, and generally takes away the court's discretion to impose most other types of sanctions. When a mandatory prison term is required, the court cannot reduce the prison term pursuant to any provision of law other than when a judicial release is permitted or when the prison term is a term of life imprisonment and parole is authorized. If a mandatory prison term is required for a convicted felon, the court generally cannot impose a community control sanction other than a financial sanction on the offender, and it must select and impose on the offender a prison term (in some cases, the law mandates the actual term that must be imposed; in some cases, the court selects the term from the applicable range of prison terms set forth in R.C. 2929.14). (R.C. 2929.13(A) and (F), 2929.14(A), and 2929.15(A).)

The offenses for which a mandatory prison term is required are (R.C. 2929.13(F)(1) to (14)): (a) "aggravated murder" when death is not imposed or "murder," (b) "rape," regardless of the circumstances involved, or an attempt to commit "rape" by force when the victim is under 13, (c) "gross sexual imposition," if the victim is under 13, and either: (i) 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 the victim of the previous offense was under 13, or (ii) the offense was committed on or after August 3, 2006, and evidence other than the testimony of the victim was admitted in the case corroborating the violation, (d) "sexual battery" if the victim is under 13 and either: (i) the offense was committed prior to August 3, 2006, the offender previously was convicted of or pleaded guilty to "rape," the former offense of "felonious sexual penetration," or "sexual battery" and the victim of the previous offense was under 13, or (ii) the offense was committed on or after August 3, 2006, (e) "involuntary manslaughter," "aggravated vehicular homicide," "vehicular

homicide," "aggravated vehicular assault," "vehicular assault," "felonious assault," "aggravated assault," or "assault" when it is a felony and when the section containing the offense requires a prison term, (f) a first, second, or third degree felony drug offense for which the Drug Offense Law requires a mandatory prison term, (g) any first or second degree felony that is not described in clauses (a) to (e), if the offender previously was convicted of "aggravated murder," "murder," any first or second degree felony, or an offense under an existing or former law of any jurisdiction substantially equivalent to one of those offenses, (h) any third degree felony that either is "involuntary manslaughter" or an attempt to commit a felony of the second degree that is an offense of violence and involved an attempt to cause or resulted in serious physical harm to a person if the offender previously was convicted of or pleaded guilty to any of the following: (i) "aggravated murder," "murder," "involuntary manslaughter," "rape," the former offense of "felonious sexual penetration," a felony of the first or second degree that resulted in the death of or physical harm to a person, or complicity in or an attempt to commit any of those offenses, or (ii) an offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to an offense listed in the preceding clause and that resulted in the death of or physical harm to a person, (i) any felony, other than "carrying a concealed weapon," if the offender had a firearm while committing the felony, with respect to a portion of the sentence imposed pursuant to R.C. 2929.14(D)(1)(a) for having the firearm, (j) any felony offense of violence if the offender had body armor while committing the offense, with respect to the portion of the sentence imposed pursuant to R.C. 2929.14(D)(1)(d) for having the body armor, (k) "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, (l) any violent sex offense or designated homicide, assault, or kidnapping offense if, in relation to that offense, the offender is adjudicated a sexually violent predator, (m) "illegal conveyance of weapons onto the grounds of a detention facility or mental retardation and developmental disabilities institution" or "illegal conveyance of drugs of abuse onto the grounds of a detention facility or mental retardation and developmental disabilities institution," if the offender is a Department of Rehabilitation and Correction officer or employee, (n) "aggravated vehicular homicide" if the victim of the offense is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation, with respect to the portion of the sentence imposed pursuant to R.C. 2929.14(D)(5), and (o) "aggravated vehicular homicide" if the offender has been convicted of or pleaded guilty to three or more state OVI or state OVUAC offenses or equivalent offenses, or three or more violations of any combination of those offenses, with respect to the portion of the sentence imposed pursuant to R.C. 2929.14(D)(6). Other circumstances in which a mandatory prison term is required are described in the **CONTENT AND OPERATION** portion of this analysis under **"Determination of prison term for a felony."**

2. The Ohio Supreme Court has held that certain provisions of the Felony Sentencing Law that require specified types of judicial factfinding (instead of factfinding by a jury) before imposition of certain types of sentence for a felony are unconstitutional. The provisions the Court found to be unconstitutional are: (a) R.C. 2929.14(B) and (C) and 2929.19(B)(2), which require judicial factfinding before imposition of a sentence greater than the maximum term authorized by a jury verdict or admission of the defendant, (b) R.C. 2929.14(E)(4) and 2929.41(A), which require judicial findings of fact not proven to a jury or admitted by the defendant before imposition of consecutive sentences, and (c) former R.C. 2929.14(D)(2)(b) which required judicial factfinding before repeat violence offender penalty enhancements could be imposed and R.C. 2929.14(D)(3)(b), which requires judicial factfinding before major drug offender penalty enhancements may be imposed. The Court severed those provisions from the Felony Sentencing Law and held that judicial factfinding is not required for a sentencing court to impose the types of sentences to which the provisions pertain. *State v. Foster* (2006), 109 Ohio St.3d 1.

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## HISTORY

ACTION	DATE
Introduced	08-14-07

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