



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 330\*

129th General Assembly  
(As Reported by S. Judiciary)

Sen. Schiavoni

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## BILL SUMMARY

- Requires a court in determining the appropriate sentence to impose upon an offender for a felony offense or misdemeanor offense to consider the offender's military service record and whether the offender has an emotional, mental, or physical condition traceable to the offender's service in the United States armed forces that contributed to the offender's commission of the offense.

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## CONTENT AND OPERATION

### Factors considered in sentencing – addition of factors related to offender's military service

#### Current felony sentencing

Under the current Felony Sentencing Law, unchanged by the bill in this regard, unless a mandatory prison term or mandatory term of local incarceration is required or a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, 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 applicable under that Law (see "**Background**," below). Unless a mandatory prison term or mandatory term of local incarceration is required or a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, a court that imposes a sentence upon an offender for a felony may impose on the offender any sanction or combination of sanctions under R.C. 2929.14 to 2929.18. The sentence cannot impose an unnecessary burden on state or local

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\* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

government resources.<sup>1</sup> The sanctions under R.C. 2929.14 to 2929.18 are prison terms, community residential sanctions, nonresidential sanctions, and financial sanctions.<sup>2</sup>

The current Felony Sentencing Law includes provisions to provide guidance to courts in sentencing for a felony, depending upon the degree of the felony,<sup>3</sup> and identifies a series of "seriousness" and "recidivism" factors and other information that a court sentencing an offender for a felony must consider in determining the appropriate sentence for the offense.<sup>4</sup> The factors and other information that currently must be considered are described below in "**Background.**"

### **Current misdemeanor sentencing**

Under the current Misdemeanor Sentencing Law, unchanged by the bill in this regard, unless a mandatory jail term is required to be imposed by any Revised Code provision, a court that imposes a sentence upon an offender for a misdemeanor or minor misdemeanor has discretion to determine the most effective way to achieve the purposes and principles of sentencing applicable under that Law (see "**Background,**" below). Unless a specific sanction is required to be imposed or is precluded from being imposed by the section setting forth an offense or the penalty for an offense or by any provision of the Misdemeanor Sentencing Law, a court that imposes a sentence upon an offender for a misdemeanor may impose on the offender any sanction or combination of sanctions under R.C. 2929.24 to 2929.28. The court cannot impose a sentence that imposes an unnecessary burden on local government resources.<sup>5</sup> The sanctions under R.C. 2929.24 to 2929.28 are jail terms, community residential sanctions, nonresidential sanctions, other sanctions intended to discourage the offender from committing a similar offense, and financial sanctions.<sup>6</sup>

The current Misdemeanor Sentencing Law identifies a series of factors and other information that a court sentencing an offender for a misdemeanor must consider in determining the appropriate sentence for the offense.<sup>7</sup> The factors and other information that currently must be considered are described below in "**Background.**"

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<sup>1</sup> R.C. 2929.12(A) and 2929.13(A).

<sup>2</sup> R.C. 2929.14 to 2929.18, not in the bill.

<sup>3</sup> R.C. 2929.13(B) to (D).

<sup>4</sup> R.C. 2929.12, and R.C. 2929.19, not in the bill.

<sup>5</sup> R.C. 2929.22(A).

<sup>6</sup> R.C. 2929.24 to 2929.28, not in the bill.

<sup>7</sup> R.C. 2929.22(B) to (D).

## Operation of the bill

The bill expands the list of factors that a court sentencing an offender for a felony or for a misdemeanor must consider in determining the appropriate sentence for the offense so that, in addition to the factors and information that currently must be considered, the court must consider:<sup>8</sup>

(1) The offender's military service record.

(2) Whether the offender has an emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses.

## Background

### Sentencing Law purposes and principles of sentencing

Existing law, unchanged by the bill, provides the following purposes and principles of felony sentencing and of misdemeanor sentencing:<sup>9</sup>

(1) A court that sentences an offender for a felony, misdemeanor, or minor misdemeanor violation of any provision of the Revised Code, or of any municipal ordinance that is substantially similar to a misdemeanor or minor misdemeanor violation of a provision of the Revised Code, is to be guided by the overriding purposes of sentencing. The same purposes generally apply to both felony sentencing and misdemeanor sentencing, although some apply only to one or the other type of sentencing. The overriding purposes of sentencing are to protect the public from future crime by the offender and others and to punish the offender; for a felony, the overriding "protection" and "punishment" purposes are to accomplish those purposes using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court must consider the need for incapacitating the offender (felonies only), deterring the offender and others from future crime (felonies only), the impact of the offense upon the victim and the need for changing the offender's behavior (misdemeanors only), rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.

(2) A sentence imposed for a felony, misdemeanor, or minor misdemeanor violation of a Revised Code provision or for a violation of a municipal ordinance that is

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<sup>8</sup> R.C. 2929.12(A) and (F) and 2929.22(B)(1)(f) and (g).

<sup>9</sup> R.C. 2929.11 and 2929.21, not in the bill.

subject to the provisions described in (1), above, must be reasonably calculated to achieve the two overriding purposes of sentencing described in that paragraph, 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 offenses committed by similar offenders.

(3) A court that imposes a sentence upon an offender for a felony, misdemeanor, or minor misdemeanor violation of a Revised Code provision or for a violation of a municipal ordinance that is subject to the provisions described in (1), above, cannot base the sentence upon the race, ethnic background, gender, or religion of the offender.

(4) The provisions described in (1) and (2), above, do not apply to any offense that is disposed of by a Traffic Violations Bureau of any court and do not apply to any violation of any provision of the Revised Code that is a minor misdemeanor and that is disposed of without a court appearance. The provisions described in (1) to (3), above, do not affect any penalties established by a municipal corporation for a violation of its ordinances.

### **Factors a court must consider in imposing sentence for a felony**

Currently, in determining the appropriate sentence for a felony, the court must consider the factors described below in (1) and (2) relating to the seriousness of the conduct and the factors described below in (3) and (4) relating to the likelihood of the offender's recidivism (the bill expands this requirement but does not change the factors described in (1) to (4), below) and, in addition, may consider any other factors that are relevant to achieving the purposes and principles of felony sentencing.<sup>10</sup>

(1) The sentencing court must consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense: (a) the physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim, (b) the victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense, (c) the offender held a public office or position of trust in the community, and the offense related to that office or position, (d) the offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice, (e) 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, (f) the offender's relationship with the victim facilitated the offense, (g) the offender committed the offense for hire or as a part of an

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<sup>10</sup> R.C. 2929.12(A) to (E).

organized criminal activity, (h) in committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion, and (i) if the offense is a violation of R.C. 2919.25 or a violation of R.C. 2903.11, 2903.12, or 2903.13 involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity 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.

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

(3) The sentencing court must 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: (a) at the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed pursuant to R.C. 2929.16, 2929.17, or 2929.18, or under post-release control pursuant to any provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-release control for a prior offense pursuant to R.C. 2967.16(B) or 2929.141, (b) the offender previously was adjudicated a delinquent child pursuant to R.C. Chapter 2151. prior to January 1, 2002, or pursuant to R.C. Chapter 2152., or the offender has a history of criminal convictions, (c) the offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to R.C. Chapter 2151. prior to January 1, 2002, or pursuant to R.C. Chapter 2152., or the offender has not responded favorably to sanctions previously imposed for criminal convictions, (d) 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 (e) the offender shows no genuine remorse for the offense.

(4) The sentencing court 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: (a) prior to committing the offense, the offender had not been adjudicated a delinquent child, (b) prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense, (c) prior to

committing the offense, the offender had led a law-abiding life for a significant number of years, (d) the offense was committed under circumstances not likely to recur, and (e) the offender shows genuine remorse for the offense.

### **Factors a court must consider in imposing sentence for a misdemeanor**

Currently, in determining the appropriate sentence for a misdemeanor, the court must consider all of the following factors: (1) the nature and circumstances of the offense or offenses, (2) whether the circumstances regarding the offender and the offense or offenses indicate that the offender has a history of persistent criminal activity and that the offender's character and condition reveal a substantial risk that the offender will commit another offense, (3) whether the circumstances regarding the offender and the offense or offenses indicate that the offender's history, character, and condition reveal a substantial risk that the offender will be a danger to others and that the offender's conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences, (4) whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious, and (5) whether the offender is likely to commit future crimes in general, in addition to the circumstances described in clauses (2) and (3) of this paragraph. This is the list of factors the bill expands.<sup>11</sup>

Also, unchanged by the bill, in determining the appropriate sentence for a misdemeanor, in addition to complying with the provisions described in the preceding paragraph, the court may consider any other factors that are relevant to achieving the purposes and principles of sentencing described above in "**Sentencing Law purposes and principles of sentencing.**"<sup>12</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	04-18-12
Reported, S. Judiciary	---

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<sup>11</sup> R.C. 2929.22(B)(1).

<sup>12</sup> R.C. 2929.22(B)(2).

