



## CRIMINAL SENTENCING COMMISSION

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# FELONY SENTENCING REFERENCE GUIDE

The Felony Sentencing Quick Reference Guide summarizes the statutory provisions governing Ohio's felony sentencing scheme. The sections below outline the relevant considerations at each stage of the sentencing process, and the guide is updated as necessary to reflect new legislative revisions as well as Supreme Court of Ohio opinions. Further information and instruction on felony sentencing is available through reference to the Criminal Sentencing Commission's Uniform Sentencing Entry package and instructions, which will be hyperlinked within the Quick Reference Guide.

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## UNIFORM SENTENCING ENTRY (USE)

The complex, intricate process of felony sentencing in Ohio makes ensuring clear, comprehensible sentences of the utmost import for the administration of justice and promoting confidence in the system. As such, Chief Justice Maureen O'Connor asked the Commission to convene an ad hoc committee on uniform sentencing entry (USE). The committee developed a USE that prescribes the most clear and concise minimum language required to comply with Criminal Rule 32<sup>1</sup> and existing case law, and establishes standardized, common data essential for identifying relationships and trends common to all felony courts.<sup>2</sup>

Further, there are certain important elements that precede sentencing but are not essential to the minimum language required for a USE – especially in light of recent Supreme Court of Ohio decisions and the ever-changing statutory provisions regarding sentencing. Thus, the committee also developed companion method of conviction (plea) entries, as well as entries memorializing the other manners in which a felony criminal case may be disposed.

Additionally, throughout the work of the committee, there was a common thread to the discussion centered squarely on the notion of what the committee coined “good civics.” In other words, there are a number of standardized documents and notices that are used with regularity and recommended for use but not required by law for sentence or other disposition. The committee agreed that the Commission should obtain these documents from individual jurisdictions and serve as a repository to make them available.

After approximately one year of work and collaboration with the Ohio Common Pleas Judges Association, Ohio Prosecuting Attorneys Association, Supreme Court of Ohio, Ohio Judicial Conference, Ohio Clerk of Courts Association, Ohio Chief Probation Officers Association, and Ohio felony court administrators, among others, a “package” of documents for felony sentencing was endorsed, including:

- A USE;
- Method of conviction entries; and
- “Good civics” forms and notices.

The goal, in part, was to design a “living document” that will be adapted as law, rules, and practices dictate. Accordingly, the Commission is monitoring legislation and Supreme Court of Ohio case decisions to keep the USE and associated documents current with any necessary changes, notifying practitioners of those changes, and working with jurisdictions to provide training as the entry is adopted.

Judges and courts are in various stages of implementing the USE and associated documents. Additional information on the topics covered in the Felony Sentencing Guide can be found in the USE package instructions.

1 [sc.ohio.gov/LegalResources/Rules/criminal/CriminalProcedure.pdf](https://sc.ohio.gov/LegalResources/Rules/criminal/CriminalProcedure.pdf)

2 For details, email [Sara.Andrews@sc.ohio.gov](mailto:Sara.Andrews@sc.ohio.gov)

*The adoption of the package of felony sentencing documents is the first step to begin standardized, aggregate felony sentencing data collection in Ohio – the Ohio Sentencing Data Platform.*

It provides the foundation to create a timely, accurate, comprehensive, searchable, and shared (felony) sentencing database to help inform decision making and give judges the tools and information needed to impose sentences in accordance with the purposes and principles of felony sentencing. We believe we can do this in a way that is efficient, reduces duplication, and does not fiscally or administratively burden local government.

The Sentencing Commission has partnered with the University of Cincinnati to develop the Ohio Sentencing Data Platform, which includes a web-based application courts can use to create their sentencing entries in USE format. This application integrates with existing court practice to minimize workload impact in creating a sentencing entry. The application is currently being tested, with plans to roll the application out to additional courts in the summer of 2021.

Courts and practitioners interested in more information on the USE package can contact:

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## PURPOSES & PRINCIPLES OF SENTENCING [R.C. 2929.11(A)]

### Overriding Purposes:

To protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender while “using the **minimum sanctions** that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.”

### Principles:

- Always consider the need for incapacitation, deterrence, rehabilitation of the offender, and restitution to the victim and/or the public [R.C. 2929.11(A)].
- Sentences should be commensurate with, and not demeaning to, the seriousness of offender’s conduct and its impact on the victim, and consistent with sentences for similar crimes by similar offenders [R.C. 2929.11(B)].
- Courts shall not sentence based on the offender’s race, ethnicity, gender, or religion [R.C. 2929.11(C)].

## SERIOUSNESS & RECIDIVISM FACTORS: CONSIDER IN EVERY CASE

The court must weigh the following factors, if present, as well as any other relevant factors.

### A. OFFENDER'S CONDUCT MORE SERIOUS [R.C. 2929.12(B)]

- Injury exacerbated by victim's physical or mental condition or age;
- Victim suffered serious physical, psychological, or economic harm;
- Offender held public office or position of trust related to the offense;
- Offender's occupation, elected office, or profession obliged the offender to prevent the offense or to bring those committing it to justice;
- Offender's professional reputation or occupation, elected office, or profession facilitated the offense or is likely to influence others' conduct;
- Offender's relationship with the victim facilitated the offense;
- Offender acted for hire or as part of organized criminal activity;
- Offender was motivated by prejudice based on race, ethnicity, gender, sexual orientation, or religion; and
- In a domestic violence or assault case, offender is parent or custodian, the victim was a family or household member, and the offense was committed in the vicinity of one or more children other than the victim.

### B. OFFENDER'S CONDUCT LESS SERIOUS [R.C. 2929.12(C)]

- Victim induced and/or facilitated the offense;
- Offender acted under strong provocation;
- Offender did not cause or expect to cause physical harm to person or property; and
- Substantial grounds exist to mitigate the offender's conduct, even if they do not constitute a defense.

### C. OFFENDER'S RECIDIVISM MORE LIKELY [R.C. 2929.12(D)]

- Offense was committed while on bail, awaiting sentencing, on felony community control or post-release control (PRC), or after PRC unfavorably terminated;
- Offender has a history of criminal convictions or juvenile delinquency adjudications;
- Offender has not responded favorably to sanctions previously imposed in adult or juvenile court;
- Offender shows pattern of alcohol/drug use related to offense and doesn't acknowledge it or refuses treatment; and
- Offender shows no genuine remorse.

### D. OFFENDER'S RECIDIVISM LESS LIKELY [R.C. 2929.12(E)]

- Offender has no prior juvenile delinquency adjudication and/or no prior adult conviction;
- Offender has led a law-abiding life for a significant number of years;
- Offense was committed under circumstances unlikely to recur; and
- Offender shows genuine remorse.

### E. OFFENDER'S VETERAN STATUS [R.C. 2929.12(F)]

## PRETRIAL DIVERSION

County prosecuting attorneys are permitted to establish pretrial diversion programs under standards approved by the presiding judge in their jurisdiction pursuant to R.C. 2935.36. Programs and availability may vary by jurisdiction but are generally aimed at helping defendants with a low risk for recidivism avoid criminal conviction. Model diversion application and acceptance entries are available as part of the uniform sentencing entry (USE) package.

- Pretrial diversion eligibility is determined by the charge or nature of the offense or offenses involved [R.C. 2935.36(A)(1-5)].
- Defendants accepted into diversion must, in writing, waive their speedy trial rights, agree to tolling of the statute of limitations, and agree to pay any supervision fees established under the program [R.C. 2935.36(B)].
- Victims of the criminal offenses and the arresting officers may object to offender's acceptance [R.C. 2935.36(C)].
- Successful completion of the diversion program results in a dismissal of the charges against the defendant. Unsuccessful termination from the program results in the defendant being brought to trial on the charges [R.C. 2935.36(D)].

## INTERVENTION IN LIEU OF CONVICTION

Defendants who allege that one of four types of conditions were a factor contributing to their commission of the offenses with which they are charged may request that the trial court grant intervention in lieu of conviction (ILC). If ILC is granted and successfully completed, the defendant may have the charges against them dismissed and are eligible to have those charges sealed as a dismissal [R.C. 2951.041]. Model ILC application and acceptance entries are available as part of the USE package. Recent changes to the ILC statute made in [133 GA House Bill 1](#), effective April 12, 2021, are noted in bold.

**Procedure:** The application requesting intervention in lieu must contain a waiver of applicable speedy trial rights and an allegation that one of the following contributed to their commission of the criminal offense(s):

- Drug or alcohol use by the defendant;
- Mental illness;
- Intellectual disability; or
- The defendant was a victim of human trafficking [R.C. 2905.32] or compelling prostitution [R.C. 2907.21].

The court may then schedule a hearing to determine the defendant's eligibility for ILC. **A hearing is mandatory if the defendant alleges drug or alcohol use as a factor.** If a hearing is ordered, the court must order the defendant assessed for program eligibility and a recommended intervention plan. **For allegations of drug or alcohol use, this includes assessment by an addiction services provider** [R.C. 2951.041(A)(1)]

Whether an defendant is eligible for ILC is determined pursuant to R.C. 2951.041(B)(1-10), and include consideration of defendant's criminal history, the nature of the offenses charged and the victims involved, the assessment ordered, and whether ILC would reduce the likelihood of recidivism and not demean the seriousness of the offense.

**All felony sex offenses are excluded from ILC eligibility. At the hearing, the court shall presume ILC is appropriate, and must state the reasons for a denial of ILC in a written entry.**

If the defendant is found appropriate for ILC, the court accepts but does not file, a guilty plea and speedy trial rights waiver from them, and stays all criminal proceedings, placing them under supervision for completion of the intervention plan imposed for at least one, but up to five years. The intervention plan must include drug and alcohol abstinence, treatment, and testing, along with other conditions the court finds appropriate [R.C. 2951.041(C-D)].

Successful completion of ILC results in dismissal of the charges, **sealable immediately as dismissals pursuant to R.C. 2953.51-56**. Failure to comply with conditions imposed may result in revocation and the defendant being found guilty pursuant to the plea and sentenced [R.C. 2951.041(E-F)].

## DISCRETIONARY PRISON TERMS AND COMMUNITY CONTROL

Unless a prison term is mandatory for an offense or specification, the sentencing court has the option to either place a defendant under the court's supervision on community control with a reserved prison sentence, or to impose a prison term for the offense. The form and structure of the Uniform Sentencing Entry and its instructions lead courts through the necessary considerations and findings when imposing sentences.

### A. COMMUNITY CONTROL

Courts may place a defendant under a period of supervision by their probation department with appropriate residential and nonresidential sanctions as conditions of that community control, and a reserved prison term selected from the sentencing range for the offense. If the defendant is later found to be in violation of community control, the court may:

- Extend the defendant's period of supervision, up to a maximum of five years of supervision;
- Impose additional or more restrictive sanctions; and
- Revoke the defendant's community control and impose the reserved prison term.
  - The court has discretion to reduce the reserved prison term originally imposed.

#### **F-4s, F-5s, and "Division B" drug offenses [R.C. 2929.13(B)(1)(a)]:**

Community control is mandatory, subject to R.C. 2929.13(B)(1)(b) below, if the most serious charge is an F-4 or F-5 that is not an offense of violence [R.C. 2901.01(A)(9)] or qualifying assault offense [R.C. 2929.13(K)(4)] and the defendant:

- Did not have prior felony at any time or prior misdemeanor offense of violence within two years; and
- The most serious charge against the offender at the time of sentencing is an F-4 or F-5.

Under [R.C. 2929.13(B)(1)(b)] the sentencing court has discretion to impose a prison term if it finds any of the following:

- Physical harm to a person;
- Attempt or actual threat of physical harm to a person with a deadly weapon;

- Attempt or actual threat of physical harm to a person, plus prior conviction for causing such harm;
- Offense related to public office/position held; position obligated offender to prevent it or to bring others to justice; or offender's reputation/position facilitated the crime or likely to influence others;
- Offense was for-hire or part of organized criminal activity;
- Offense was a sex offense;
- Offender served a prior prison term or was in prison at time of offense;
- Offense was committed while offender was under community control or on bail or bond; or
- Offender committed the offense while in possession of a firearm.

**Right of Appeal:** If a prison term is imposed for a defendant qualifying for mandatory community control under R.C. 2929.13(B)(1)(a), the defendant has appeal of right under R.C. 2953.08(A)(2) unless the court specifies one or more factor found in R.C. 2929.13(B)(1)(b).

## B. RESIDENTIAL SANCTIONS

Including, but not limited to R.C. 2929.16, (see R.C. 2929.01 for definitions):

- Community-based correctional facility (CBCF) for up to six months;
- Jail or minimum-security jail for up to six months (or up to one year for certain F-4 OVIs);
- Halfway house, no stated time limit; and
- Alternative residential facility: another place for employment, training, education, treatment, etc.

## C. NONRESIDENTIAL SANCTIONS

Including, but not limited to R.C. 2929.17, (see R.C. 2929.01 for definitions):

- Day reporting: report to an approved location to participate in work, training, treatment, etc;
- House arrest and/or electronic monitoring and/or continuous alcohol monitoring;
- Community service for up to 500 hours for felonies, which may be imposed on indigent and non-indigent persons; the 40-hour/month cap is no longer the law, community service is credited against financial sanctions imposed at judge's discretion;
- Drug treatment: inpatient, outpatient, or both; court determines level of security;
- Drug- and alcohol-use monitoring, including random drug testing;
- Intensive probation supervision; frequent contact with supervising officer, etc.;
- Basic probation supervision, subject to conditions set by the court;
- Monitored time: under court control, subject to no conditions other than leading a law-abiding life;
- Curfew;
- Employment – obtain or retain a job;
- Education or training;



- Victim-defendant mediation, with the victim’s prior consent;
- License violation report: Inform an agency granting a business or professional license of the violation;
- Counseling generally, in particular, if a parent or custodian sentenced for domestic violence or assault involving a family or household member committed in the vicinity of a child other than the victim; and
- Sex defendant treatment program (for an defendant convicted of unlawful sexual conduct with a minor committed while the defendant is <21) [R.C. 2929.17(O)].

#### D. NO PRESUMPTIVE SENTENCE

**F-3s generally or “Division C” drug offenses:** courts are directed to fashion an appropriate sentence based on the purposes and principles of sentencing as detailed in R.C. 2929.11 and R.C. 2929.12 [R.C. 2929.13(C)].

#### E. PRESUMPTIVE PRISON TERMS

**F-1s, F-2s, “in favor” drug offenses, and certain F-3, F-4, and F-5 offenses:** there is a presumption that a prison term is the appropriate sentence for these categories of offenses [R.C. 2929.13(D)(1)]. To rebut presumption, the sentencing court must find that non-prison sanctions would both [R.C. 2929.13(D)(2)]:

- Adequately protect the public and punish the offender because the factors indicating recidivism is less likely outweigh the factors indicating recidivism is more likely; and
- Not demean seriousness of the offense because less-serious factors outweigh more-serious factors.

Other offenses subject to a presumption in favor of a prison term are:

- “In favor” drug offenses where specified in [R.C. Chapter 2925]
- Theft of firearm [R.C. 2913.02(B)(4)];
- Certain GSI offenses [R.C. 2907.05(A)(4) or (B)];
- F-3 importuning [R.C. 2907.07(F)(2)];
- F-4 Possession of a Controlled Substance Analogue [R.C. 2925.11(C)(8)(b)]; and
- F-5 Importuning [R.C. 2907.07(F)(3)].

**Right of Appeal:** If the presumption is overcome and a prison term is not imposed (or if a prison term is imposed but judicial release is later granted) state has appeal of right [R.C. 2953.08(B)(1)].

### TARGETED COMMUNITY ALTERNATIVES TO PRISON (TCAP)

TCAP is a voluntary statewide program following the passage of [133 GA HB 166](#). More information on TCAP is available at DRC’s [website](#). In participating counties, F-5 offenders who are sentenced to a prison term ≤12 months cannot be sent to prison and instead must serve their sentence locally, unless [R.C. 2929.34(B)(3)]:

- The offense was an offense of violence, a sex offense, a trafficking offense, or other mandatory prison term;
- The offender has a prior conviction for a sex offense or felony offense of violence; or
- The sentence is to be served concurrently to a prison-eligible felony offense.

## TECHNICAL VIOLATIONS OF COMMUNITY CONTROL

A “Technical violation” is a violation of the conditions of a community control sanction imposed for a F-5, or for a F-4 that is not an offense of violence, is not a sexually oriented offense, and to which neither of the following applies [R.C. 2929.15(E)]<sup>1</sup>:

- The violation consists of a new criminal offense that is a felony or that is a misdemeanor other than a minor misdemeanor, and the violation is committed while under the community control sanction; or
- The violation consists of or includes the offender’s articulated or demonstrated refusal to participate in the community control sanction imposed on the offender or any of its conditions, and the refusal demonstrates to the court that the offender has abandoned the objects of the community control sanction or condition.

## COMMUNITY CONTROL VIOLATOR CAPS

F-4 and F-5 offenders found to be in violation of their community-control sanctions solely for “technical violations” are subject to caps on the prison sentence that can be imposed:

- 180 days on an F-4 sentence
- 90 days on an F-5 sentence

If the remaining period of community control or suspended sentence at the time of the violation is less than 90 days for an F5 sentence or 180 days for an F4 sentence, the prison term cannot exceed the length of time remaining [R.C. 2929.15(B)].

Defendants sent to prison for technical violation sentence on an F-4 or F-5 shall be returned to community control in the sentencing court at the completion of the sentence if there is any remaining time to be served on the community control sanction.

## MANDATORY PRISON TERMS

The General Assembly frequently changes this list and doesn’t always include changes in R.C. 2929.13(F). Always check offense statute to determine if a specific penalty is mandated.

*Note: factors other than prior convictions that enhance the penalty for a given offense must be specified in the indictment.*

### A. AGGRAVATED MURDER OR MURDER

The court must impose a prison term specified by R.C. 2929.02 - 03. [R.C. 2929.13(F)(1)].

### B. F-1 OR F-2 WITH SPECIFIED PRIOR CONVICTIONS

A prison sentence is mandatory when offender has a prior conviction for aggravated murder, murder, or any F-1 or F-2 offense [R.C. 2929.13(F)(6)].

1 In *State v. Nelson*, [162 Ohio St.3d 338, 2020-Ohio-3690](#), and *State v. Castner*, [Slip Opinion No. 2020-Ohio-4950](#), the Supreme Court of Ohio held that the determination of what constitutes a “technical violation” requires a totality of the circumstances analysis of relationship between the violations in question and the overall goals of the community control sanction or condition. While these opinions were issued prior to the legislative definition of “technical violation” in [133 GA HB 1](#), the holdings may nonetheless be instructive as to the analysis in R.C. 2929.15(E)(2).

### C. ASSAULT ON POLICE OFFICERS

Felonious, aggravated, or simple assault when victim is a peace officer or BCI investigator who suffered serious physical harm [R.C. 2929.13(F)(4) and (13)].

- Seven-year specification if offender shot at peace or corrections officer while committing or attempting a homicide or assault offense [R.C. 2941.1412]; [R.C. 2929.14(B)(1)(f)(i)]; and
- Five-year specification for aggravated vehicular homicide (AVH) with peace-officer victim [R.C. 2941.1414]; [R.C. 2929.14(B)(5)].

### D. ASSAULT ON PREGNANT WOMEN

Mandatory, within felony range, for felonious, aggravated, or simple assault if offender knew of the pregnancy, with specification in [R.C. 2941.1423]; [R.C. 2929.13(F)(18)]; [R.C. 2929.14(B)(8)].

- Mandatory 30-day jail term for misdemeanor violation with specification [R.C. 2929.24(G)].

### E. REPEAT VIOLENT OFFENDER SPECIFICATION (RVO)

Defined as person who commits aggravated murder, murder, a violent F-1 or F-2, or an F-1 or F-2 attempt of violence, with a prior conviction for one or more of the same [R.C. 2929.01(CC)]; [R.C. 2941.149].

- Discretionary RVO time: if court elects the maximum from range for underlying offense and LWOP is not imposed, it may add one to 10 more years if the court finds under R.C. 2929.14(B)(2)(a)(i-v) that the prison term for the underlying offense is:
  - Inadequate to punish the offender and protect the public (see recidivism factors in [R.C. 2929.12(D) - (E)]); and
  - Demeaning to seriousness of offense (see seriousness factors in [R.C. 2929.12(B-C)]).
  - For F-2 offenses, the court also must find serious physical harm or attempt or threat to do so.
- Under R.C. 2929.14(B)(2)(b), the court must impose the maximum prison term authorized for the offense, plus an additional one to 10 years for RVO with three or more RVO offenses in 20 years, including current, if LWOP not required or imposed.

### F. VIOLENT F-3 OFFENSES WITH PRIOR CONVICTIONS

A prison term is mandatory for F-3 involuntary manslaughter or an attempt to commit a violent F-2 offense involving attempted or actual serious physical harm when offender has a prior conviction for aggravated murder, murder, involuntary manslaughter, rape, or other F-1 or F-2 that involved causing or attempting to cause serious physical harm [R.C. 2929.13(F)(4) and (7)].

### G. CERTAIN SEX OFFENSES

- Any offense with a sexually violent predator (SVP) specification: under R.C. 2929.13(F)(2), (11), and (15) and R.C. 2971.03, at least two years to life for specification, consecutive to underlying offense.
- Any rape: see R.C. 2929.13(F)(2) and our [Rape Penalty Chart](#) for range of sentences.
  - Attempted rape, if victim <13 and, if completed, defendant would be classified as a sexual predator [R.C. 2929.13(F)(2)];

- Five to 25 years for attempted statutory rape if offender ≥16 and victim <13 [R.C. 2941.1418], [R.C. 2971.03(A)(3)(e)(ii) or (B)(2)(a)], [R.C. 2929.14(E)];
- Ten years to life for attempted statutory rape if offender ≥16 and victim <10 [R.C. 2941.1419], [R.C. 2971.03(A)(3)(e)(iii) or (B)(2)(b)]; and
- Fifteen years to life for attempted rape, if offender has prior attempted statutory rape [R.C. 2941.1420], [R.C. 2971.03(A)(3)(e)(iv) or (B)(2)(c)].
- Sexual battery after Aug. 3, 2006, if victim <13 [R.C. 2929.13(F)(3)(c)(ii)]; or
  - Before Aug. 3, 2006, if victim <13, with prior rape, FSP, GSI, or sexual battery [R.C. 2929.13(F)(3)(c)(i)];
- Gross Sexual Imposition if victim <13 [R.C. 2929.13(F)(3)(a-b)]:
  - With prior rape, FSP, GSI, or sexual battery; or
  - On or after Aug. 3, 2006, with corroboration of victim’s testimony.<sup>2</sup>
- Importuning, with victim <13, if offender has prior sex offense or child-victim-oriented offense [R.C. 2929.13(F)(4)]; [R.C. 2907.07(A), (C), and (F)];
- Sex Offender Registration and Notification (SORN): repeat failure to register [R.C. 2950.99(A)(2)(b)] – mandatory sentence of at least three years.

#### H. CERTAIN DRUG OFFENSES

- F-1, F-2, and F-3 Drug Offenses: Generally mandatory from range when required by statute R.C. 2929.13(F)(5) and R.C. Chapter 2925. See our [Drug Offense Guide](#) for specific guidance.<sup>3</sup>
- F-2 Marijuana/Hashish Trafficking, Possession, or Cultivation [R.C. 2925.03 - .04 and .11].
  - 20 to <40k. marijuana, 1 to <2 k. solid hashish, or 200 to <400 g. liquid hashish: five, six, seven, or eight years;
  - ≥40 k. marijuana, ≥2 k. solid hashish, or ≥400 g. liquid hashish: eight years; and
  - If in vicinity of school/juvenile: F-1 maximum.
- Major Drug Offenders (MDO): Defined in R.C. 2929.01(W).
  - F-1 maximum for specified, high-quantity amounts [R.C. 2941.1410(A)].
  - Additional three- to eight-year specification when drug involved is a fentanyl-related compound [R.C. 2941.1410(B)].

#### I. CORRUPT ACTIVITY

Engaging in a pattern of corrupt activity in violation of R.C. 2923.32 when the most serious predicate offense is an F-1 [R.C. 2929.13(F)(10)].

#### J. CERTAIN TRAFFIC OFFENSES

- Felony OVI when local incarceration is not imposed and for five priors in 20 years specified [R.C. 4511.19]; [R.C. 2941.1413].
  - At least 60 days or at least 120 days, as specified for felony OVI [R.C. 4511.19(G)], [R.C. 2929.13(G)(1-2)];

<sup>2</sup> In *State v. Bevely*, [142 Ohio St.3d 41, 2015-Ohio-475](#), the Supreme Court of Ohio held that a mandatory prison term based upon corroborating evidence is unconstitutional.

<sup>3</sup> Certain F-3 drug offenses are subject to a 5-year mandatory term. See *State v. Pribble*, 158 Ohio St.3d 490, [2019-Ohio-4808](#)

- Six months or one, two, three, four, or five years on 6th OVI in 20 years [R.C. 2929.13(G)(1-2)], plus [R.C. 2941.1413]; [R.C. 2929.24(E)], plus [R.C. 2941.1416].
- Any OVI-related aggravated vehicular homicide (AVH) and aggravated vehicular assault (AVA) [R.C. 2903.06 and .08].
- Certain other involuntary manslaughters, AVHs, vehicular homicides, AVAs when specified [R.C. 2929.13(F)(14)]; [R.C. 2903.04, .06, and .08].
  - 3 years for AVH with three or more prior OVIs or equivalent offenses [R.C. 2941.1415]; [R.C. 2929.14(B)(6)].

#### K. HUMAN TRAFFICKING

Violations of R.C. 2905.32(E) punishable by 10, 11, 12, 13, 14, or 15 years.

- Specification for offenses committed in furtherance of human trafficking [see R.C. 2941.1422 and penalties in R.C. 2929.14(B)(7)].

#### L. FELONY DOMESTIC VIOLENCE

When offender knew the victim was pregnant and/or caused serious physical harm to unborn child [R.C. 2929.13(F)(17)]; [R.C. 2919.25(D)(3-6)].

#### M. ILLEGAL CONVEYANCE

When prison or detention employee takes weapons, ammunition, or drugs into the facility [R.C. 2929.13(F)(12)]; [R.C. 2921.36].

#### N. OTHER SPECIFICATIONS IN R.C. 2941

See [R.C. 2929.13(F)(8-9)] and [R.C. 2929.14(B)(1)(5-7), (E), (G-H)].

*Note: Time for specification is mandatory; term for the underlying offense may or may not be.*

- Six years for automatic or muffled/silenced firearm [R.C. 2941.144] (nine years with prior, cannot combine with three- or one-year gun specification);
- Three years, if firearm used, displayed, brandished, or otherwise indicated [R.C. 2941.145] (54 months with prior);
- One year, if firearm possessed, but not used, displayed, brandished, or otherwise indicated [R.C. 2941.141] (18 months with prior);
- Five years, if a drive-by shooting, in addition to gun specification above [R.C. 2941.146];
- Two years, if wearing or carrying body armor [R.C. 2941.1411];
- One, two, or three years for participating in a criminal gang [R.C. 2941.142]; [R.C. 2929.14(G)];
- Two years for aggravated murder, murder, or a violent F-1, F-2, or F-3 in a school zone [R.C. 2941.143]; [R.C. 2929.14(H)(1)];
- Six years for causing permanent, serious disfigurement or permanent, substantial incapacity when using an accelerant to commit felonious assault [R.C. 2941.1425], [R.C. 2929.14(B)(9)]; and
- Six years for causing permanent, disabling harm to a victim under 10 years old [R.C. 2941.1426]; [R.C. 2929.14(B)(10)].

## INDEFINITE & DEFINITE SENTENCING

Felony offenses may be subject to a life sentence, a non-life indefinite sentence, or a definite sentence.

### A. LIFE-SENTENCE OFFENSES

Offender is sentenced to a term of years up to life with release determinations by parole board. More information on the Ohio Parole Board is available on the [DRC website](#).

- Aggravated murder (if death sentence not imposed) and murder (LWOP or ten years to life) [R.C. 2903.01 - .02]; [R.C. 2929.02 - .03];
- Rape of a person <13 (LWOP); other rape or sexual battery; or GSI of a person <13, with an SVP spec (two years to life) [R.C. 2907.02]; [R.C. 2971.03(A)]; and [R.C. 2941.147 spec]; and
- Aggravated murder, murder, involuntary manslaughter as a felony, felonious assault, and kidnapping with SVP and sexual motivation (SM) specs (LWOP for murders, two years to life for others) [R.C. 2971.03(A)]; [R.C. 2941.147 (SM spec)]; [R.C. 2941.148 (SVP spec)].

### B. NON-LIFE FELONY INDEFINITE SENTENCE

F-1 and F2 offenses committed on or after March 22, 2019 that are not subject to life imprisonment. Judges impose both a minimum and maximum prison term. Release is presumed at the expiration of the minimum prison term. See the [SB 201 Resources](#) for further guidance.

- Minimum Prison Term: judges select a minimum prison term from the R.C. 2929.14(A) range:
  - For offenses that specify a different prison term, that prison term is considered the minimum prison term; or
  - For offenses that carry a mandatory prison term, the minimum prison term is a mandatory prison term.
- Maximum Prison Term: Generally calculated as the minimum prison term plus 50-percent of itself [R.C. 2929.144(B)(1)].
  - Concurrent sentences: the maximum prison term is equal to the longest minimum prison term imposed, plus 50-percent of the longest minimum prison term for the most serious qualifying felony being sentenced [R.C. 2929.144(B)(3)].
  - Consecutive sentences: the maximum prison term is the sum of all consecutive indefinite minimum prison terms imposed, plus any consecutive definite prison terms imposed, plus an additional 50-percent of the longest minimum prison term, or definite prison term for the most serious felony being sentenced [R.C. 2929.144(B)(2)].

*Note: Non-mandatory qualifying offenses are eligible for community control if presumption is overcome. Judges would then reserve an indefinite sentence.*

### C. DEFINITE SENTENCE

Offender sentenced to a definite prison term under R.C. 2929.14(A), unless offense specifies a different prison term. Release at the expiration of prison term, subject to reductions covered in Release & Sentence Reduction Mechanisms below.

- F-3, F-4, and F-5 offenses, as well as non-life F-1 and F-2 offenses committed before March 22, 2019.

## SENTENCING CONSIDERATIONS & ADVISEMENTS

Courts are required to consider a number of factors at sentencing, and numerous advisements must be made to defendants depending on the nature of the convictions involved. The USE and its instructions guide practitioners through all necessary considerations and advisement, ensuring they are covered both on the record and in the court's journal entry.

### A. PRESENTENCE INVESTIGATION (PSI)

No offender may be placed on a term of community control without a written PSI being considered by the court, unless both the defendant and the state waive the requirement [R.C. 2951.03(A)(1)].

### B. RISK ASSESSMENT

The court, its probation officers and other entities must use the single validated risk assessment tool selected by the DRC if the court orders an assessment of an offender for sentencing or other purposes [R.C. 5120.114(A)].

### C. SENTENCING HEARING

A hearing is necessary before imposing sentence for a felony [R.C. 2929.19(A)].

#### Requirements in every case:

- Financial sanctions: before imposing certain financial sanction(s), court must consider offender's present and future ability to pay [R.C. 2929.19(B)(5)].  
(See "[Financial Sanctions](#)" on p. 16)
- Jail time credit: notify the offender of the number of days they have been confined for the offense and include in sentencing entry [R.C. 2929.19(B)(2)(g)].
- Registration advisements: provide any necessary advisements regarding registration or database enrollment offenses:
  - SORN notice: provide notices required by SORN law [R.C. Chapter 2950], including duty to register [R.C. 2929.19(B)(3)];
  - Arson registry notice: notify of duty to register to arson offender who has not been sentenced to confinement in any institution [R.C. 2909.15]; and
  - Violent offender database (VOD) notice: notify of duty to enroll in VOD [R.C. 2903.41-44].
- Post-release control (PRC): notify that, as part of sentence, PRC is mandatory (for F-1, F-2, violent F-3, or sex offense) or discretionary (for all others) for five years (for F-1 or sex offense) or three years (for all other offenses). Discretionary PRC may be terminated prior to the end of the three-year term. Notify that violator could be sent to prison for up to nine months, with maximum for repeated violations equal to 50-percent of stated prison term.
  - For a new felony, offender may be sent to prison for the remaining PRC period, or 12 months, whichever is greater, plus a prison term for the new crime [R.C. 2929.141].
  - The defendant has a potential post-release control obligation on each felony count, but may be subject to only one post-release control period (the longest) per case [R.C. 2967.28(F)(4)(c)].

**Bureau of Criminal Investigation (BCI) / Ohio Law Enforcement Automated Data System (LEADS)/National Instant Criminal Background Check System (NICS) Reporting:** Courts must report:

See the [Supreme Court of Ohio's guidance](#).

- Final disposition of criminal cases.
- Orders for mental health evaluation or treatment for offenses of violence [R.C. 2929.44 and Sup. R. 95]
- Not Guilty by Reason of Insanity (NGRI) or incompetency findings, and orders for conditional release of such defendants [R.C. 2945.402 and Sup. R. 95].
- Sex/Child Victim Offender registration, Arson Offender registration, and/or Violent Offender Database enrollment.
- Court orders granting relief from a firearm disability.
- Court orders a modifying or vacating a sentence.
- Orders sealing or expunging criminal convictions.
- Charges not being filed as shared by the Prosecuting Attorney.
- Clerks of Court also report protection orders and warrants issued by the court.

**Fingerprinting of the defendant**, if not done at arrest, arraignment, or first appearance [R.C. 2301.10]. See the [Supreme Court of Ohio's guidance](#).

**Requirements when Imposing Community Control** [R.C. 2929.19(B)(4)]:

- Directly sentence the defendant to a term of community-control and impose sanction(s) and:
  - Notify that, if violated, court may impose longer time, more restrictive sanction, or a specified, reserved prison term; and
  - If local incarceration imposed, specify, if appropriate, that offender must reimburse costs of confinement [R.C. 2929.19(B)(6)].

**Requirements When Imposing a Prison Term** [R.C. 2929.19(B)(2)]:

- Prison term(s): state a prison term for each convicted offense (subject to merger), plus any gun specification, RVO, MDO, consecutives, etc.
- For offenses subject to non-life indefinite sentencing, impose minimum terms on each qualifying count and the maximum term on the record.
  - Indefinite sentencing advisements: see specific required advisements in R.C. 2929.19(B)(2)(c).

## D. MERGER DOCTRINE

In cases with multiple counts, courts must consider whether sentences for allied offenses of similar import must be merged (a separate decision from consecutive/concurrent sentencing) [R.C. 2941.25].

## E. CONSECUTIVE PRISON TERMS

General rule: there is a presumption that sentences will run concurrently unless the court makes findings that consecutive sentences are necessary to protect the public or to punish the offender, and that they are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public [R.C. 2929.14(C)(4)].



The court must also find any of the following:

- Crimes committed while awaiting trial/sentencing, under sanction, or under post-release control;
- Two or more of the multiple offenses committed as a single course of conduct; and harm so great or unusual that a single term does not adequately reflect seriousness of the conduct; or
- Offender's criminal history shows that consecutive terms are needed to protect the public.

Defendant may appeal consecutive sentences exceeding the maximum penalty for the worst offense involved [R.C. 2953.08(C)].

Consecutive prison terms required: [R.C. 2929.14(C)(1-3)]:

- Specifications: sentence for gun and other specifications served before underlying offense [R.C. 2929.14(C)(1)(a-c)];
- Certain crimes committed by an inmate or escapee from a detention facility (e.g., riot, many escapes, etc.) [R.C. 2929.14(C)(2)];
- Aggravated robbery of a deadly weapon from a law enforcement officer [R.C. 2911.01(B)]; [R.C. 2929.14(C)(3)];
- Theft of a firearm (grand theft) where a prison term is imposed [R.C. 2913.02(B)(4)]; [R.C. 2929.14(C)(3)];
- Sexually violent predators [R.C. 2971.03(E)]; and
- Felony failure to comply: fleeing in a vehicle from an officer, causing substantial injury or risk of it [R.C. 2921.331(C-D)]; [R.C. 2929.14(C)(3)].

## F. SENTENCING JUVENILES

Recent U.S. Supreme Court decisions prohibit mandatory life-without-parole sentences for juvenile offenders. The Supreme Court of Ohio has extended this decision to include sentences that exceed a juvenile's life expectancy for nonhomicide offenses, and has held that courts must consider the youth of the offender in sentencing juveniles as adults.<sup>4</sup>

As of April 12, 2021 Ohio bars life-without-parole sentences for all juvenile offenders, including those who commit homicide offenses.<sup>5</sup> Courts are mandated to sentence juvenile offenders with consideration of factors relative to the hallmarks of youth [R.C. 2929.19(B)(1)(a)]:

- The offender's age at the time of the offense and that age's hallmark features, including intellectual capacity, immaturity, impetuosity, and a failure to appreciate risks/consequences;
- The offender's family and home environment at the time of the offense, their inability to control their surroundings, their history of trauma, and their school/special education history;

4 See also *State v. Patrick*, Slip Opinion No. [2020-Ohio-6803](#) (Dec. 22, 2020) (finding that a trial court must articulate its consideration of the youth of a juvenile offender as a mitigating factor before imposing a life sentence, even if that sentence included eligibility for parole).

5 See [133 GA SB 256](#).

- The circumstances of the offense, including the extent of the offender’s participation and the way familial/peer pressures may have impacted their conduct;
- Whether the offender might have been charged/convicted of a lesser offense if not for the incompetencies of youth, such as the offender’s inability to deal with police officers and prosecutors during interrogation, plea agreement, or their inability to assist their attorney; and
- Examples of the offender’s rehabilitation, including any subsequent growth or increase in maturity during confinement.

Special parole eligibility is established for current and future youth serving extended sentences as adults. Courts may still issue any permissible sentence they see fit, but the youth will be eligible for parole after 18, 25, or 30 years depending on the nature of their convictions. [R.C. 2907.02(B), 2909.24, 2929.02(A-B), 2929.03(A), (C-E)(H), 2929.06, 2929.07(A), and 2971.03(A) (1-2)(4-5)].

### G. REVERSE BINDOVERS

Under certain circumstances, the court sentencing an offender who was transferred from a juvenile court where the ultimate conviction is for an offense that would not be subject to mandatory bindover, the court must transfer the case back to juvenile court for disposition [R.C. 2152.121].

### H. CONCURRENT SUPERVISION

For the rules governing supervision of offenders subject to supervision by more than one court, see R.C. 2951.022.

## REGISTRATION REQUIREMENTS

Several categories of offenses subject defendants to additional responsibilities – Sex or Child Victim Offender registration, Arson Offender registration, or enrollment in the Violent Offender Database. Courts must impose these duties as part of the sentence, and forms are provided for by the Ohio Attorney General’s Office to inform defendants of those duties. Additional information on these offenses is available as part of the USE instructions.

### A. SEX OFFENDER/CHILD VICTIM OFFENDER REGISTRATION

Offenders convicted of sex offenses or child victim-oriented offense are subject to Ohio Sex Offender Registration and Notification (SORN) duties and required to register with the sheriff in the county where they reside or are employed with specific duties and time periods classified by the nature of the offense committed [R.C. Chapter 2950].

- Tier 3 Offender: Must report every 90 days for life.
  - Tier 3 offenders are subject to additional community notification requirements [R.C. 2950.11].
- Tier 2 Offender: Must report every 180 days for 25 years (Juvéniles report for 20 years, unless modified).
- Tier 1 Offender: Must report every 12 months for 15 years (Juvéniles report for 10 years, unless modified).

The Ohio Attorney General provides a necessary form explaining registration duties that must be signed by the offender and the sentencing court.

Failure to comply with SORN duties can result in additional criminal charges filed against the offender.

## B. ARSON OFFENDER REGISTRY

- Offenders convicted of “Arson Related Offenses” as defined in [R.C. 2909.13(A)] are subject to a requirement to register with the sheriff in the county where they reside [R.C. 2909.14, R.C. 2909.15].
  - Offenders must re-register annually, and upon a change in residence or employment, for life, unless a judge limits the requirements to no less than 10 years at the request of law enforcement [R.C. 2909.15(D)].
- The Ohio Attorney General provides a necessary form explaining registration duties that must be signed by the offender and the sentencing court.
- Failure to comply with arson registry duties can result in additional criminal charges filed against the offender.

## C. VIOLENT OFFENDER DATABASE (VOD) ENROLLMENT

- Offenders convicted of one of the following offenses after March 20, 2019, or who were serving a prison term for one of those offenses, are presumed to be required to enroll in a violent offender database upon their release from prison with the sheriff in the county where they reside [R.C. 2903.41-44].
  - Aggravated Murder, Murder, Voluntary Manslaughter, Kidnapping, F-2 Abduction, or an attempt, complicity, or conspiracy to commit one of those offenses.
  - Offenders must re-register annually, or upon change of residence or employment, for 10 years after their release from prison, subject to extension upon motion of the prosecuting attorney.
- Offenders must be notified of these duties prior to sentencing and a process is provided for the defendant to move to rebut the presumption they will be required to enroll in the VOD [R.C. 2903.43(A)(2)].
- The Ohio Attorney General provides a necessary form explaining VOD duties that must be signed by the offender and the sentencing court.
- Failure to comply with VOD duties can result in additional criminal charges filed against the offender.
- See [SB 231 VOD Database Guide](#) for additional details.

## FINANCIAL SANCTIONS

Criminal convictions may also subject the defendant to various financial sanctions.

For more detailed information on the various types of financial sanctions, refer to the Uniform Sentencing Entry and instructions.

### A. FINANCIAL SANCTIONS GENERALLY

- Present and future ability to pay must be considered when imposing fines, restitution, and many types of costs, the costs of supervision, confinement costs, the costs of an immobilizing or disabling device, and reimbursement for controlled substance tests or arson investigation costs.

- Courts may hold a hearing on present and future ability to pay, if necessary [R.C. 2929.18(E)];
- Ability to pay considerations are not required to impose the costs of prosecution and any jury fees under R.C. 2947.23<sup>6</sup>; and
- Courts must impose the costs of prosecution and jury fees under R.C. 2947.23, but may waive, modify, or suspend those costs at their discretion [R.C. 2947.23(C)].
- Appointed counsel fees: the court may find that the defendant is able to pay some or all of the costs their legal representation. Pursuant to the decision in *State v. Taylor*, [Slip Opinion No. 2020-OHIO-6786](#) this fee is civil in nature and not part of the criminal sentence imposed for the offense(s) in the case [R.C. 2941.51(D)].
- Best practice would be to impose appointed counsel fees by separate entry, but the Court also opined that if they are assessed in the sentencing entry it should be noted that they are a civil assessment.
- Sample language is provided in the uniform sentencing entry (USE) and a separate assessment form is included as part of the “Good Civics” entries package.

## B. CRIME-SPECIFIC FINANCIAL SANCTIONS

- Drug offense fines [R.C. Chapter 2925 and R.C. 2929.18(B)]:
  - F-1, F-2, F-3 drug offenses: mandatory fine at least 50-percent of the maximum conventional fine [R.C. 2929.18(B)(1)]. F-1, F-2, F-3 drug trafficking: “additional” fine equals value of offender’s property involved in or realized from the offense, or, if no property or undetermined value, additional fine under the R.C. 2929.18(A)(3) ranges; capped at conventional fine maximum [R.C. 2929.18(B)(4-7)], (also see million-dollar fine below).
- Up to \$1 million for aggravated murder, murder, or F-1, or for F-1, F-2, or F-3 drug offense, if three or more victims in instant or all such past crimes [R.C. 2929.32].
- Felony OVI, mandatory fine specified by offense level [R.C. 2929.18(B)(3)]; [R.C. 4511.19(G)(1)(d) or (e)].
- Arson: mandatory investigation and prosecution costs reimbursement [R.C. 2929.71].
- Forfeitures [R.C. Chapter 2981] and Title 45:
  - Asset forfeiture, particularly in corrupt activity, drug, gang, and Medicaid fraud cases [R.C. Chapter 2981]; and
  - Motor vehicle forfeiture for certain OVIs, DUSs, and wrongful entrustments [R.C. 4510.11, R.C. 4511.19, and 4511.203], etc.

## RELEASE & SENTENCE-REDUCTION MECHANISMS

### A. JUDICIAL RELEASE

Eligibility: any non-mandatory term, except certain offenses by public office holders [R.C. 2929.20(A)(1)(b)].

- If serving an eligible term consecutive to a mandatory term, eligible after serving the mandatory term.
- A PSI is not necessary to grant judicial release.

<sup>6</sup> See *State v. Taylor*, 161 Ohio St.3d 319, [2020-Ohio-3514](#) (Decided July 2, 2020).

Filing deadlines [R.C. 2929.20(C)]:

- If less than two years, can file any time after entering prison or after mandatory term(s) expires;
- If two to less than five years, can file 180 days after entering prison or 180 days after mandatory term(s) expires;
- If five years, can file after serving four years of stated prison term or four years after mandatory term expires;
- If greater than five but less than 10 years, can file after serving five years of their stated prison term or five years after mandatory term expires; and
- If greater than 10 years, can file after serving 50-percent of stated prison term or five years after expiration of mandatory term, whichever is later.

Hearings: the court may deny judicial release without a hearing, but must schedule a hearing to grant the petition.

- If denied at a hearing, offender cannot re-file.
- Court must make findings under R.C. 2929.20(J) to grant judicial release on an eligible F-1 or F-2. The state may appeal under R.C. 2953.08(B)(3).

## B. RISK-REDUCTION SENTENCE

When imposing the sentence, the court may recommend a “risk-reduction sentence” under which the inmate may be released by DRC after serving 80-percent of their term [R.C. 2929.143]; [R.C. 5120.036].

- Murder offenses, violent F-1 or F-2 offenses, or sexually-oriented offenses are not eligible;
- Sentence cannot include a mandatory term; and
- Offender must agree to assessment and to participate in any recommended programming.

## C. 80-PERCENT RELEASE

- The director of the department of rehabilitation and correction may recommend in writing to the sentencing court that the court consider releasing from prison any offender who, on or after September 30, 2011, is confined in a state correctional institution, who is serving a stated prison term of one year or more, and who is eligible [R.C. 2967.19].
  - Must be serving a term of one year or more.
  - Disqualifying prisons found in R.C. 2967.19(A)(2).
  - Mandatory prison terms may be eligible if not a “restricting prison term” under R.C. 2967.19(A)(4).
  - The director shall include with any notice submitted to the sentencing court an institutional summary report that covers the offender’s participation while confined in a state correctional institution in school, training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the offender while so confined. The director shall include with the notice any other documentation requested by the court, if available.
  - The department also shall promptly give written notice of the submission to any victim of the offender or victim’s representative of any victim of the offender who is registered with the office of victim’s services.

- The department also shall promptly give written notice of the submission to any victim of the offender or victim’s representative of any victim of the offender who is registered with the office of victim’s services.
- Sentencing court then must either schedule a hearing or notify DRC that it will not hold a hearing. The offender cannot be released early without a hearing. See [R.C. 2967.19\(H\)](#) for hearing requirements.
- If 80-percent release is granted, the court must place the offender on community control for up to five years and reserve the right to reimpose the original sentence.

#### D. EARNED CREDIT

An inmate may earn credit for productive participation in education, vocational training, employment in prison industries, substance abuse treatment, or other constructive DRC programs [[R.C. 2967.193](#)].

- Determination on the number of days that may be earned is based upon the most serious offense for which the offender is being confined.
- Earned credit may not exceed 8-percent of the total prison term.
- An award of the lesser of 90 days’ credit or a 10-percent reduction of the stated prison term is possible for completion of programming listed in [R.C. 2967.193\(A\)\(2\)](#).
- Administrative rules of the earned credit program are laid out in [Ohio Adm.Code 5120-2-06](#). For additional information, see [DRC Earned Credit policy](#).

#### E. TRANSITIONAL CONTROL

Eligible inmates may be transitioned into the community during the final 180 days of their sentence [[R.C. 2967.26](#)].

- Sentencing court may disapprove of transition for offenders serving a prison term of two years or less.
- Offenders on transitional-control status must stay in a facility or housing approved by DRC, and may be subject to electronic monitoring.

#### F. EARNED REDUCTION OF MINIMUM TERM

Offenders serving an indefinite non-life felony sentence may receive a 5- to 15-percent reduction of their minimum term for “exceptional conduct or adjustment to incarceration” at the request of DRC and with approval of the sentencing court [[R.C. 2967.271\(F\)\(7\)](#)]. See the [SB 201 Resources](#) for further guidance.

#### G. SUBSTANCE ABUSE DISORDER TREATMENT

DRC may place certain prisoners into community-based substance abuse treatment for those individuals who suffer from a substance abuse disorder [[R.C. 5120.035](#)].

- Qualified offenders must be serving a prison term for an F-4 or F-5 and must not have a prior conviction for a felony offense of violence, or for a misdemeanor offense within the past five years. For other qualifications, see [R.C. 5120.035\(A\)\(4\)](#).
- Time must be served at a facility properly licensed as a halfway house or community residential center, [[R.C. 2967.14](#)].

## H. MEDICAL RELEASE

The DRC director may recommend that an inmate who is terminally ill, medically incapacitated, or in imminent danger of death be released as if on parole [R.C. 2967.05].

- DRC recommendation must include certification by attending physician.
- Inmates serving a sentence of death, life without parole, for aggravated murder or murder, for a F-1 or F-2 under R.C. Chapter 2971, or for a mandatory prison term for an offense of violence or a R.C. Chapter 2941 specification are ineligible.

## I. OVERCROWDING EMERGENCY

When the total prison population exceeds capacity, the DRC director may notify the Correctional Institution Inspection Committee (CIIC) of an overcrowding emergency. The CIIC must review the situation and make a recommendation to the governor to reduce prison terms for eligible offenders by 30, 60, or 90 days. The governor then may declare an emergency on a recommendation from the CIIC [R.C. 2967.18].

- See R.C. 2967.18(E) for sentences ineligible for the reduction.
- Released offenders still may be subject to post-release control.

## J. EXECUTIVE CLEMENCY

The governor may, upon recommendation of the parole board, grant relief from a criminal conviction through pardons, commutations, or reprieves. Recommendations may come from the parole board [R.C. 2967.03].

- Pardons may be conditional or unconditional, alleviating some or all of the consequences of criminal convictions.
- Commutations also may be conditional or unconditional, reducing the penalty of a criminal conviction.
- Reprieves temporarily postpone the imposition or execution of a sentence. A temporary, definite reprieve of a sentence of death may be granted without notice or application [R.C. 2967.08].
- Applications for pardons must be filed in accordance with R.C. 2967.07.

## K. SHOCK PROBATION/PAROLE

Offenders with an offense date prior to July 1, 1996 may be eligible for shock probation [Former R.C. 2947.061] or shock parole [Former R.C. 2967.31].

- Shock probation currently is referenced in R.C. 2929.201. Shock probation was available for non-repeat, non-dangerous offenders within 30-60 days of incarceration for certain non-aggravated F-1, F-2, or F-3 offenses, or after six months for certain aggravated F-1, F-2, or F-3 offenses.
- Shock parole is a power granted to the parole board to grant parole to eligible offenders who had not previously served a prison term of greater than 30 days. See Ohio Adm.Code 5120:1-1-06 for additional information.

## L. INTENSIVE PROGRAM PRISON

**Intensive Program Prison (IPP) Recommendation:** at sentencing, the court may recommend for or against boot camp or intensive program prison. [R.C. 2929.19(D)]; [R.C. 2929.14(l)]. DRC has rescinded the administrative rules regarding this program. It is no longer in use.

## FELONY SENTENCING TABLE

Felony Level	Sentencing Guidance [R.C. 2929.13(B) - (E)] <sup>1</sup>	Prison Terms [R.C. 2929.14(A)]	Maximum Fines <sup>4</sup> [R.C. 2929.18(A) (2) - (3)]	Repeat Violent Offender Enhancement [R.C. 2929.14(B)(2)]; [R.C. 2941.149]	Is Post-Release Control (PRC) Required? [R.C. 2967.28(B) - (C)]	PRC Period <sup>3</sup> [R.C. 2967.28(B)]
<b>F-1</b>	Presumption for prison (Also applies to “in favor” drug offenses)	3, 4, 5, 6, 7, 8, 9, 10, or 11 years	\$20,000	1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years	Yes	5 years
<b>F-2</b>		2, 3, 4, 5, 6, 7, or 8 years	\$15,000	For F-2 involving att. serious harm or for involuntary manslaughter: 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years; otherwise none		3 years; 5 years, if sex offense
<b>F-3</b>	Generally no guidance, other than PURPOSES AND PRINCIPLES (Also applies to “Div.(C)” drug offenses).  Presumption for prison for specified offenses. <sup>2</sup>	9, 12, 18, 24, 30, or 36 months or <sup>5</sup> 12, 18, 24, 30, 36, 42, 48, 54, or 60 months	\$10,000	None	Yes, if sex or violent offense; otherwise optional	3 years; 5 years, if sex offense
<b>F-4</b>	Community control mandatory if R.C. 2929.13(B)(1)(a) applies, but discretion to impose prison term if any of the R.C. 2929.13(B)(1)(b) factors apply. <sup>6</sup>	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months	\$5,000	None	Yes, if sex offense; otherwise optional	Up to 3 years; 5 years, if sex offense
<b>F-5</b>	If neither apply, no guidance other than R.C. 2929.11 and R.C. 2929.12 Purposes and Principles of Felony Sentencing.	6, 7, 8, 9, 10, 11, or 12 months	\$2,500			

<sup>1</sup> **Exceptions (always check the offense statute for specific penalties):**

- **Indeterminate (Life) sentences** for aggravated murder, murder, human trafficking, and certain sex offenses and crimes with sexual motivation.
- **Indefinite Sentences** – Non-life F-1 and F-2 offenses committed after March 22, 2019 receive both a minimum term generally selected from the ranges above, unless the offense specifies a different punishment, as well as a maximum term calculated pursuant to R.C. 2929.144.
- **Drug Offenses** – Penalties track degree of offense, but the sentencing guidance may be different than for other offenses at that felony level. See [Drug Offense Quick Reference](#).

<sup>2</sup> **F-3 Offenses with Presumption of Prison Term:** Theft of firearm [R.C. 2913.02(B)(4)], certain GSI offenses [R.C. 2907.05(A)(4) or (B)] and F-3 importuning [R.C. 2907.07(F)].

<sup>3</sup> **Post-Release Control** [R.C. 2967.28(D)(3)]: The board or court shall review the releasee’s behavior and may reduce or extend the duration. The reduction shall not be a period less than the length of the original stated prison term, and in no case shall the board or court permit the releasee to leave the state without permission of the court or the parole or probation officer.

<sup>4</sup> **Maximum Fines:** Covers conventional and day fines. There are exceptions in drug trafficking cases [R.C. 2929.18(B)(4-7)]. Some offenses call for a superfine of up to \$1 million [R.C. 2929.32]. For organizational offenders, see [R.C. 2929.31]. In addition to any other fine that is or may be imposed under this section, the court imposing sentence for a felony that is a sexually oriented offense or a child-victim-oriented offense as defined in R.C. 2950.01 may impose a fine of \$50-\$500 [R.C. 2929.18(B)(9)].

<sup>5</sup> **Higher F-3s:** The longer-sentence range applies to aggravated vehicular homicides and assaults, sexual battery, GSI, sex - with a minor, and robbery or burglary with two or more separate aggravated or non- aggravated robberies or burglaries [See R.C. 2929.14(A)(3)(a)], and certain F-3 drug offenses [See, e.g., R.C. 2925.041(C)(1)].

<sup>6</sup> **F-4s & F-5s:** [R.C. 2929.13(B)(1)(a) and (b)] apply to F-4 and F-5 offenses that are not “offenses of violence” [R.C. 2901.01(A)(9)] or “qualifying assault offenses” [R.C. 2929.13(K)(4)] and to “Division B” drug offenses [statute indicates that sentencing is guided by R.C. 2929.13(B)]