

# AN ACT

To amend sections 2929.01, 2929.12, 2929.17, 2929.22, and 2951.02 of the Revised Code to require the court to consider as an aggravating factor in determining the sentence of an offender convicted of domestic violence, felonious assault, aggravated assault, or assault the fact that the offender committed the offense in the vicinity of the offender's or victim's child and to permit the court to order an offender of that nature to undergo counseling.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 2929.01, 2929.12, 2929.17, 2929.22, and 2951.02 of the Revised Code be amended to read as follows:

Sec. 2929.01. As used in this chapter:

(A)(1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Bad time" means the time by which the parole board administratively extends an offender's stated prison term or terms pursuant to section 2967.11 of the Revised Code because the parole board finds by clear and convincing evidence that the offender, while serving the prison term or terms, committed an act that is a criminal offense under the law of this state or the United States, whether or not the offender is prosecuted for

the commission of that act.

(C) "Basic supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code.

(D) "Cocaine," "crack cocaine," "hashish," "L.S.D.," and "unit dose" have the same meanings as in section 2925.01 of the Revised Code.

(E) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to sections 2301.51 to 2301.56 of the Revised Code.

(F) "Community control sanction" means a sanction that is not a prison term and that is described in section 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code.

(G) "Criminally injurious conduct" means any conduct of the type that is described in division (C)(1) or (2) of section 2743.51 of the Revised Code and that occurs on or after July 1, 1996, or any activity that is described in divisions (C)(3) and (R) of section 2743.51 of the Revised Code and that occurs on or after ~~the effective date of this amendment~~ March 10, 1998.

(H) "Controlled substance," "marihuana," "schedule I," and "schedule II" have the same meanings as in section 3719.01 of the Revised Code.

(I) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.

(J) "Day reporting" means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

(K) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(L) "Drug and alcohol use monitoring" means a program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(M) "Drug treatment program" means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home

or residence while undergoing assessment and treatment.

(N) "Economic loss" means any economic detriment suffered by a victim as a result of criminally injurious conduct and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the criminally injurious conduct.

(O) "Education or training" includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy ~~curriculums~~ curricula or their equivalent.

(P) "Electronically monitored house arrest" has the same meaning as in section 2929.23 of the Revised Code.

(Q) "Eligible offender" has the same meaning as in section 2929.23 of the Revised Code except as otherwise specified in section 2929.20 of the Revised Code.

(R) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(S) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to section 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.

(T) "House arrest" means a period of confinement of an eligible offender that is in the eligible offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code, that may be electronically monitored house arrest, and during which all of the following apply:

(1) The eligible offender is required to remain in the eligible offender's home or other specified premises for the specified period of confinement, except for periods of time during which the eligible offender is at the eligible offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.

(2) The eligible offender is required to report periodically to a person designated by the court or parole board.

(3) The eligible offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

(U) "Intensive supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28 of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary

employment and participating in training, education, and treatment programs as required in the court's or parole board's order.

(V) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.

(W) "Delinquent child" has the same meaning as in section 2151.02 of the Revised Code.

(X) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to section 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

(Y) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of crack cocaine; at least one thousand grams of cocaine that is not crack cocaine; at least two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D.; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, 2925.06, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(Z) "Mandatory prison term" means ~~one~~ any of the following:

(1) Subject to division ~~(D)~~(Z)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to ~~(9)~~(8) or (F)(10) of section 2929.13 and division (D) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty days in prison that a sentencing court is required to impose for a fourth degree felony OMVI offense pursuant to division (G)(2)

of section 2929.13 and division (A)(4) of section 4511.99 of the Revised Code.

(3) The term in prison imposed pursuant to section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(9) of section 2929.13 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(AA) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

(BB) "Offender" means a person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor.

(CC) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(DD) "Prison term" includes any of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073 of the Revised Code;

(3) A term in prison extended by bad time imposed pursuant to section 2967.11 of the Revised Code or imposed for a violation of post-release control pursuant to section 2967.28 of the Revised Code.

(EE) "Repeat violent offender" means a person about whom both of the following apply:

(1) The person has been convicted of or has pleaded guilty to, and is being sentenced for committing, for complicity in committing, or for an attempt to commit, aggravated murder, murder, involuntary manslaughter, a felony of the first degree other than one set forth in Chapter 2925. of the Revised Code, a felony of the first degree set forth in Chapter 2925. of the Revised Code that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person, or a felony of the second degree that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person.

(2) Either of the following applies:

(a) The person previously was convicted of or pleaded guilty to, and served a prison term for, any of the following:

(i) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the

Revised Code as it existed prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;

(ii) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense listed under division (EE)(2)(a)(i) of this section.

(b) The person previously was adjudicated a delinquent child for committing an act that if committed by an adult would have been an offense listed in division (EE)(2)(a)(i) or (ii) of this section, the person was committed to the department of youth services for that delinquent act, and the juvenile court in which the person was adjudicated a delinquent child made a specific finding that the adjudication should be considered a conviction for purposes of a determination in the future pursuant to this chapter as to whether the person is a repeat violent offender.

(FF) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of sections 2929.14 to 2929.18 of the Revised Code.

(GG) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to a felony.

(HH) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14 or 2971.03 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or electronically monitored house arrest imposed after earning credits pursuant to section 2967.193 of the Revised Code.

(II) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(JJ) "Fourth degree felony OMVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under section 4511.99 of the Revised Code, is a felony of the fourth degree.

(KK) "Mandatory term of local incarceration" means the term of sixty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court is required to

impose upon a person who is convicted of or pleads guilty to a fourth degree felony OMVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (A)(4) of section 4511.99 of the Revised Code.

(LL) "Designated homicide, assault, or kidnapping offense," "sexual motivation specification," "sexually violent offense," "sexually violent predator," and "sexually violent predator specification" have the same meanings as in section 2971.01 of the Revised Code.

(MM) "Habitual sex offender," "sexually oriented offense," and "sexual predator" have the same meanings as in section 2950.01 of the Revised Code.

(NN) An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

(OO) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

Sec. 2929.12. (A) Unless a mandatory prison term is required by division (F) of section 2929.13 or section 2929.14 of the Revised Code, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct and the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

(B) The sentencing court shall 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:

(1) 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.

(2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.

(3) The offender held a public office or position of trust in the

community, and the offense related to that office or position.

(4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

(5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

(6) The offender's relationship with the victim facilitated the offense.

(7) The offender committed the offense for hire or as a part of an organized criminal activity.

(8) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

(9) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code 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.

(C) The sentencing court shall 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:

(1) The victim induced or facilitated the offense.

(2) In committing the offense, the offender acted under strong provocation.

(3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.

(4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

(D) The sentencing court shall 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:

(1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense.

(2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code, or the offender has a history of criminal convictions.

(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

(4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

(5) The offender shows no genuine remorse for the offense.

(E) The sentencing court shall 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:

(1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.

(2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.

(3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.

(4) The offense was committed under circumstances not likely to recur.

(5) The offender shows genuine remorse for the offense.

Sec. 2929.17. The court imposing a sentence for a felony upon an offender who is not required to serve a mandatory prison term may impose any nonresidential sanction or combination of nonresidential sanctions authorized under this section. If the court imposes one or more nonresidential sanctions authorized under this section, the court shall comply with division (C)(1)(b) of section 2951.02 of the Revised Code and impose the mandatory condition described in that division. The court imposing a sentence for a fourth degree felony OMVI offense upon an offender who is required to serve a mandatory term of local incarceration under division (G)(1) of section 2929.13 of the Revised Code may impose upon the offender, in addition to the mandatory term of local incarceration, a nonresidential sanction or combination of nonresidential sanctions under this section, and the offender shall serve or satisfy the sanction or combination of sanctions after the offender has served the mandatory term of local incarceration required for the offense. Nonresidential sanctions include, but are not limited to, the following:

(A) A term of day reporting;

(B) A term of electronically monitored house arrest, a term of electronic monitoring without house arrest, or a term of house arrest without electronic monitoring;

(C) A term of community service of up to five hundred hours pursuant to division (F) of section 2951.02 of the Revised Code or, if the court determines that the offender is financially incapable of fulfilling a financial sanction described in section 2929.18 of the Revised Code, a term of community service as an alternative to a financial sanction;

(D) A term in a drug treatment program with a level of security for the offender as determined necessary by the court;

(E) A term of intensive supervision;

(F) A term of basic supervision;

(G) A term of monitored time;

(H) A term of drug and alcohol use monitoring;

(I) A curfew term;

(J) A requirement that the offender obtain employment;

(K) A requirement that the offender obtain education or training;

(L) Provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation;

(M) A license violation report;

(N) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, if the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and if the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children, a requirement that the offender obtain counseling. This division does not limit the court in requiring the offender to obtain counseling for any offense or in any circumstance not specified in this division.

Sec. 2929.22. (A) In determining whether to impose imprisonment or a fine, or both, for a misdemeanor, and in determining the term of imprisonment and the amount and method of payment of a fine for a misdemeanor, the court shall consider the risk that the offender will commit another offense and the need for protecting the public from the risk; the nature and circumstances of the offense; the history, character, and condition of the offender and the offender's need for correctional or rehabilitative treatment; any statement made by the victim under sections 2930.12 to 2930.17 of the Revised Code, if the offense is a misdemeanor specified in division (A) of section 2930.01 of the Revised Code; and the ability and resources of the offender and the nature of the burden that payment of a fine will impose on the offender.

(B)(1) The following do not control the court's discretion; but shall be

considered in favor of imposing imprisonment for a misdemeanor:

~~(1)(a)~~ The offender is a repeat or dangerous offender;

~~(2)(b)~~ Regardless of whether or not the offender knew the age of the victim, the victim of the offense was sixty-five years of age or older, permanently and totally disabled, or less than eighteen years of age at the time of the commission of the offense.

(c) The offense is a violation of section 2919.25 or a violation of section 2903.13 of the Revised Code 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) If the offense is a violation of section 2919.25 or a violation of section 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation and the court decides to impose a term of imprisonment upon the offender, the factor listed in division (B)(1)(c) of this section shall be considered in favor of imposing a longer term of imprisonment on the offender.

(C) The criteria listed in divisions (C) and (E) of section 2929.12 of the Revised Code that mitigate the seriousness of the offense and that indicate that the offender is unlikely to commit future crimes do not control the court's discretion but shall be considered against imposing imprisonment for a misdemeanor.

(D) The criteria listed in division (B) and referred to in division (C) of this section shall not be construed to limit the matters that may be considered in determining whether to impose imprisonment for a misdemeanor.

(E) The court shall not impose a fine in addition to imprisonment for a misdemeanor unless a fine is specially adapted to deterrence of the offense or the correction of the offender, the offense has proximately resulted in physical harm to the person or property of another, or the offense was committed for hire or for purpose of gain.

(F) The court shall not impose a fine or fines that, in the aggregate and to the extent not suspended by the court, exceed the amount that the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or the offender's dependents, or will prevent the offender from making restitution or reparation to the victim of the offender's offense.

(G) At the time of sentencing or as soon as possible after sentencing, the court shall notify the victim of the offense of the victim's right to file an

ication for an award of reparations pursuant to sections 2743.51 to 2743.72 of the Revised Code.

(H) As used in this section, "repeat offender" and "dangerous offender" have the same meanings as in section 2935.36 of the Revised Code.

Sec. 2951.02. (A)(1) In determining whether to suspend a sentence of imprisonment imposed upon an offender for a misdemeanor and place the offender on probation or whether to otherwise suspend a sentence of imprisonment imposed upon an offender for a misdemeanor pursuant to division (A) of section 2929.51 of the Revised Code, the court shall consider the risk that the offender will commit another offense and the need for protecting the public from the risk, the nature and circumstances of the offense, and the history, character, and condition of the offender.

(2) An offender who has been convicted of or pleaded guilty to a misdemeanor shall not be placed on probation and shall not otherwise have the sentence of imprisonment imposed upon the offender suspended pursuant to division (A) of section 2929.51 of the Revised Code if any of the following applies:

(a) The offender is a repeat or dangerous offender, as defined in section 2935.36 of the Revised Code.

(b) The misdemeanor offense involved was not a violation of section 2923.12 of the Revised Code and was committed while the offender was armed with a firearm or dangerous ordnance, as defined in section 2923.11 of the Revised Code.

(c) Under division (C) of section 2903.07 of the Revised Code, the offender is not eligible for probation.

(B) The following do not control the court's discretion but the court shall consider them in favor of placing an offender who has been convicted of or pleaded guilty to a misdemeanor on probation or in favor of otherwise suspending the offender's sentence of imprisonment pursuant to division (A) of section 2929.51 of the Revised Code:

(1) The offense neither caused nor threatened serious harm to persons or property, or the offender did not contemplate that it would do so.

(2) The offense was the result of circumstances unlikely to recur.

(3) The victim of the offense induced or facilitated it.

(4) There are substantial grounds tending to excuse or justify the offense, though failing to establish a defense.

(5) The offender acted under strong provocation.

(6) The offender has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period before commission of the present offense.

(7) The offender is likely to respond affirmatively to probationary or other court-imposed treatment.

(8) The character and attitudes of the offender indicate that the offender is unlikely to commit another offense.

(9) The offender has made or will make restitution or reparation to the victim of the offender's offense for the injury, damage, or loss sustained.

(10) Imprisonment of the offender will entail undue hardship to the offender or the offender's dependents.

(C)(1)(a) When an offender who has been convicted of or pleaded guilty to a misdemeanor is placed on probation or the sentence of that type of offender otherwise is suspended pursuant to division (A) of section 2929.51 of the Revised Code, the probation or other suspension shall be at least on condition that, during the period of probation or other suspension, the offender shall abide by the law, including, but not limited to, complying with the provisions of Chapter 2923. of the Revised Code relating to the possession, sale, furnishing, transfer, disposition, purchase, acquisition, carrying, conveying, or use of, or other conduct involving, a firearm or dangerous ordnance, as defined in section 2923.11 of the Revised Code, and shall not leave the state without the permission of the court or the offender's probation officer. In the interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior, the court may impose additional requirements on the offender, ~~including, but not limited to, requiring.~~ Compliance with the additional requirements imposed under this division also shall be a condition of the offender's probation or other suspension. The additional requirements so imposed may include, but shall not be limited to, any of the following:

(i) A requirement that the offender to make restitution pursuant to section 2929.21 of the Revised Code for all or part of the property damage that is caused by the offender's offense and for all or part of the value of the property that is the subject of any theft offense, as defined in division (K) of section 2913.01 of the Revised Code, that the offender committed. ~~Compliance with the additional requirements also shall be a condition of the offender's probation or other suspension.~~

(ii) If the offense is a violation of section 2919.25 or a violation of section 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, if the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and if the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children, a requirement that the offender obtain counseling. This division does not limit

the court in imposing a requirement that the offender obtain counseling for any offense or in any circumstance not specified in this division.

(b) When an offender who has been convicted of or pleaded guilty to a felony is sentenced to a nonresidential sanction pursuant to section 2929.17 of the Revised Code, the court shall impose as a condition of the sanction that, during the period of the nonresidential sanction, the offender shall abide by the law, including, but not limited to, complying with the provisions of Chapter 2923. of the Revised Code identified in division (C)(1)(a) of this section.

(2) During the period of a misdemeanor offender's probation or other suspension or during the period of a felon's nonresidential sanction, authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the person of the offender, the place of residence of the offender, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the offender has a right, title, or interest or for which the offender has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess if the probation officers have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of the offender's probation or other suspension or the conditions of the offender's nonresidential sanction. If a felon who is sentenced to a nonresidential sanction is under the general control and supervision of the adult parole authority, as described in division (A)(2)(a) of section 2929.15 of the Revised Code, adult parole authority field officers with supervisory responsibilities over the felon shall have the same search authority relative to the felon during the period of the sanction as is described under this division for probation officers. The court that places the offender on probation or suspends the misdemeanor offender's sentence of imprisonment pursuant to division (D)(2) or (4) of section 2929.51 of the Revised Code or that sentences the felon to a nonresidential sanction pursuant to section 2929.17 of the Revised Code shall provide the offender with a written notice that informs the offender that authorized probation officers or adult parole authority field officers with supervisory responsibilities over the offender who are engaged within the scope of their supervisory duties or responsibilities may conduct those types of searches during the period of probation or other suspension or during the period of the nonresidential sanction if they have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of the offender's probation or other suspension or the conditions of the offender's

nonresidential sanction.

(D) The following do not control the court's discretion but the court shall consider them against placing an offender who has been convicted of or pleaded guilty to a misdemeanor on probation and against otherwise suspending the offender's sentence of imprisonment pursuant to division (A) of section 2929.51 of the Revised Code:

(1) The offender recently violated the conditions of pardon, post-release control pursuant to section 2967.28 of the Revised Code, or a probation or suspension pursuant to division (A) of section 2929.51 of the Revised Code, previously granted the offender.

(2) There is a substantial risk that, while at liberty during the period of probation or other suspension, the offender will commit another offense.

(3) The offender is in need of correctional or rehabilitative treatment that can be provided best by the offender's commitment to a locally governed and operated residential facility.

(4) Regardless of whether the offender knew the age of the victim, the victim of the offense was sixty-five years of age or older or permanently and totally disabled at the time of the commission of the offense.

(E) The criteria listed in divisions (B) and (D) of this section shall not be construed to limit the matters that may be considered in determining whether to suspend sentence of imprisonment and place an offender who has been convicted of or pleaded guilty to a misdemeanor on probation or whether to otherwise suspend the offender's sentence of imprisonment pursuant to division (A) of section 2929.51 of the Revised Code.

(F)(1) When an offender is convicted of or pleads guilty to a misdemeanor, the court may require the offender, as a condition of probation or as a condition of otherwise suspending the offender's sentence pursuant to division (A) of section 2929.51 of the Revised Code, in addition to the conditions of probation or other suspension imposed pursuant to division (C) of this section, to perform supervised community service work under the authority of health districts, park districts, counties, municipal corporations, townships, other political subdivisions of the state, or agencies of the state or any of its political subdivisions, or under the authority of charitable organizations that render services to the community or its citizens, in accordance with this division. Supervised community service work shall not be required as a condition of probation or other suspension under this division unless the offender agrees to perform the work offered as a condition of probation or other suspension by the court. The court may require an offender who agrees to perform the work to pay to it a reasonable fee to cover the costs of the offender's participation in the work, including,

but not limited to, the costs of procuring a policy or policies of liability insurance to cover the period during which the offender will perform the work.

A court may permit any offender convicted of a misdemeanor to satisfy the payment of a fine imposed for the offense by performing supervised community service work as described in this division if the offender requests an opportunity to satisfy the payment by this means and if the court determines the offender is financially unable to pay the fine.

The supervised community service work that may be imposed under this division shall be subject to the following limitations:

(a) The court shall fix the period of the work and, if necessary, shall distribute it over weekends or over other appropriate times that will allow the offender to continue at the offender's occupation or to care for the offender's family. The period of the work as fixed by the court shall not exceed an aggregate of two hundred hours.

(b) An agency, political subdivision, or charitable organization must agree to accept the offender for the work before the court requires the offender to perform the work for the entity. A court shall not require an offender to perform supervised community service work for an agency, political subdivision, or charitable organization at a location that is an unreasonable distance from the offender's residence or domicile, unless the offender is provided with transportation to the location where the work is to be performed.

(c) A court may enter into an agreement with a county department of human services for the management, placement, and supervision of offenders eligible for community service work in work activities, developmental activities, and alternative work activities under sections 5107.40 to 5107.69 of the Revised Code. If a court and a county department of human services have entered into an agreement of that nature, the clerk of that court is authorized to pay directly to the department of human services all or a portion of the fees collected by the court pursuant to this division in accordance with the terms of its agreement.

(d) Community service work that a court requires under this division shall be supervised by an official of the agency, political subdivision, or charitable organization for which the work is performed or by a person designated by the agency, political subdivision, or charitable organization. The official or designated person shall be qualified for the supervision by education, training, or experience, and periodically shall report, in writing, to the court and to the offender's probation officer concerning the conduct of the offender in performing the work.

(2) When an offender is convicted of a felony, the court may impose pursuant to sections 2929.15 and 2929.17 of the Revised Code a sanction that requires the offender to perform supervised community service work in accordance with this division and under the authority of any agency, political subdivision, or charitable organization as described in division (F)(1) of this section. The court may require an offender who is ordered to perform the work to pay to it a reasonable fee to cover the costs of the offender's participation in the work, including, but not limited to, the costs of procuring a policy or policies of liability insurance to cover the period during which the offender will perform the work.

A court may permit an offender convicted of a felony to satisfy the payment of a fine imposed for the offense pursuant to section 2929.18 of the Revised Code by performing supervised community service work as described in this division if the court determines that the offender is financially unable to pay the fine.

The supervised community service work that may be imposed under this division shall be subject to the limitations specified in divisions (F)(1)(a) to (d) of this section, except that the court is not required to obtain the agreement of the offender to impose supervised community work as a sanction. Additionally, the total of any period of supervised community service work imposed on an offender under this division plus the period of all other sanctions imposed pursuant to sections 2929.15, 2929.16, 2929.17, and 2929.18 of the Revised Code shall not exceed five years.

(G)(1) When an offender is convicted of a violation of section 4511.19 of the Revised Code, a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine or of a misdemeanor violation of section 2903.07 of the Revised Code or an equivalent violation of a municipal ordinance that is substantially similar to section 2903.07 of the Revised Code and that provides for that type of finding by a jury or judge in a case in which the jury or judge found that the offender was under the influence of alcohol at the time of the commission of the offense, the court may require, as a condition of probation in addition to the required conditions of probation and the discretionary conditions of probation that may be imposed pursuant to division (C) of this section, any suspension or revocation of a driver's or commercial driver's license or permit or nonresident operating privilege, and all other penalties provided by law or by ordinance, that the offender operate only a motor vehicle equipped with an ignition interlock device that is certified pursuant to

section 4511.83 of the Revised Code.

(2) When a court requires an offender, as a condition of probation pursuant to division (G)(1) of this section, to operate only a motor vehicle equipped with an ignition interlock device that is certified pursuant to section 4511.83 of the Revised Code, the offender immediately shall surrender the offender's driver's or commercial driver's license or permit to the court. Upon the receipt of the offender's license or permit, the court shall issue an order authorizing the offender to operate a motor vehicle equipped with a certified ignition interlock device, deliver the offender's license or permit to the bureau of motor vehicles, and include in the abstract of the case forwarded to the bureau pursuant to section 4507.021 of the Revised Code the conditions of probation imposed pursuant to division (G)(1) of this section. The court shall give the offender a copy of its order, and that copy shall be used by the offender in lieu of a driver's or commercial driver's license or permit until the bureau issues a restricted license to the offender.

(3) Upon receipt of an offender's driver's or commercial driver's license or permit pursuant to division (G)(2) of this section, the bureau of motor vehicles shall issue a restricted license to the offender. The restricted license shall be identical to the surrendered license, except that it shall have printed on its face a statement that the offender is prohibited from operating a motor vehicle that is not equipped with an ignition interlock device that is certified pursuant to section 4511.83 of the Revised Code. The bureau shall deliver the offender's surrendered license or permit to the court upon receipt of a court order requiring it to do so, or reissue the offender's license or permit under section 4507.54 of the Revised Code if the registrar destroyed the offender's license or permit under that section. The offender shall surrender the restricted license to the court upon receipt of the offender's surrendered license or permit.

(4) If an offender violates a requirement of the court imposed under division (G)(1) of this section, the offender's driver's or commercial driver's license or permit or nonresident operating privilege may be suspended as provided in section 4507.16 of the Revised Code.

(5) As used in this division, "ignition interlock device" has the same meaning as in section 4511.83 of the Revised Code.

SECTION 2. That existing sections 2929.01, 2929.12, 2929.17, 2929.22, and 2951.02 of the Revised Code are hereby repealed.

SECTION 3. Section 2929.01 of the Revised Code was amended by both

H. B. 378 and Am. Sub. S.B. 111 of the 122nd General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that while certain of the amendments of these acts are reconcilable, certain other of the amendments are substantively irreconcilable. H.B. 378 was passed on November 13, 1997; Am. Sub. S.B. 111 was passed on November 18, 1997. Section 2929.01 of the Revised Code is therefore presented in this act as it results from Am. Sub. S.B. 111 and such of the amendments of H.B. 378 as are not in conflict with the amendments of Am. Sub. S.B. 111. This is in recognition of the principles stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized where not substantively irreconcilable, and that where amendments are substantively irreconcilable, the latest amendment is to prevail. This section constitutes a legislative finding that such harmonized and reconciled section was the resulting version in effect prior to the effective date of this act.

SECTION 4. Section 2929.17 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 166 and Am. Sub. S.B. 269 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_