

# As Introduced

**129th General Assembly  
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**H. B. No. 385**

**Representative Williams**

**Cosponsors: Representatives Boyd, Fedor, Letson, Weddington**

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## **A B I L L**

To amend sections 2909.07 and 2929.13 and to enact	1
section 2923.05 of the Revised Code to expand the	2
"criminal mischief" prohibition that relates to	3
the use of a computer contaminant, to increase the	4
penalty for that offense when the offense involves	5
a computer or a computer system, network,	6
software, or program, and to create the offense of	7
"criminal use of a computer."	8

### **BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

<b>Section 1.</b> That sections 2909.07 and 2929.13 be amended and	9
section 2923.05 of the Revised Code be enacted to read as follows:	10

<b>Sec. 2909.07.</b> (A) No person shall:	11
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(1) Without privilege to do so, knowingly move, deface,	12
damage, destroy, or otherwise improperly tamper with the property	13
of another;	14

(2) With purpose to interfere with the use or enjoyment of	15
property of another, employ a tear gas device, stink bomb, smoke	16
generator, or other device releasing a substance that is harmful	17
or offensive to persons exposed or that tends to cause public	18
alarm;	19

(3) Without privilege to do so, knowingly move, deface, 20  
damage, destroy, or otherwise improperly tamper with a bench mark, 21  
triangulation station, boundary marker, or other survey station, 22  
monument, or marker; 23

(4) Without privilege to do so, knowingly move, deface, 24  
damage, destroy, or otherwise improperly tamper with any safety 25  
device, the property of another, or the property of the offender 26  
when required or placed for the safety of others, so as to destroy 27  
or diminish its effectiveness or availability for its intended 28  
purpose; 29

(5) With purpose to interfere with the use or enjoyment of 30  
the property of another, set a fire on the land of another or 31  
place personal property that has been set on fire on the land of 32  
another, which fire or personal property is outside and apart from 33  
any building, other structure, or personal property that is on 34  
that land; 35

(6) Without privilege to do so, and with intent to impair the 36  
functioning of any computer, computer system, computer network, 37  
computer software, or computer program or with intent to acquire, 38  
alter, damage, delete, disrupt, or destroy property or otherwise 39  
use the services of any computer, computer system, computer 40  
network, computer software, or computer program, knowingly do any 41  
of the following: 42

(a) In any manner or by any means, including, but not limited 43  
to, computer hacking, alter, damage, destroy, or modify a 44  
computer, computer system, computer network, computer software, or 45  
computer program or data contained in a computer, computer system, 46  
computer network, computer software, or computer program; 47

(b) Introduce, insert, or attach a computer contaminant into, 48  
or create the opportunity for an unknowing and unwanted 49  
introduction, insertion, or attachment of a computer contaminant 50

into, a computer, computer system, computer network, computer 51  
software, or computer program. 52

(B) As used in this section, "safety device" means any fire 53  
extinguisher, fire hose, or fire axe, or any fire escape, 54  
emergency exit, or emergency escape equipment, or any life line, 55  
life-saving ring, life preserver, or life boat or raft, or any 56  
alarm, light, flare, signal, sign, or notice intended to warn of 57  
danger or emergency, or intended for other safety purposes, or any 58  
guard railing or safety barricade, or any traffic sign or signal, 59  
or any railroad grade crossing sign, signal, or gate, or any first 60  
aid or survival equipment, or any other device, apparatus, or 61  
equipment intended for protecting or preserving the safety of 62  
persons or property. 63

(C)(1) Whoever violates this section is guilty of criminal 64  
mischief, and shall be punished as provided in division (C)(2) or 65  
(3) of this section. 66

(2) Except as otherwise provided in this division, criminal 67  
mischief committed in violation of division (A)(1), (2), (3), (4), 68  
or (5) of this section is a misdemeanor of the third degree. 69  
Except as otherwise provided in this division, if the violation of 70  
division (A)(1), (2), (3), (4), or (5) of this section creates a 71  
risk of physical harm to any person, criminal mischief committed 72  
in violation of division (A)(1), (2), (3), (4), or (5) of this 73  
section is a misdemeanor of the first degree. If the property 74  
involved in the violation of division (A)(1), (2), (3), (4), or 75  
(5) of this section is an aircraft, an aircraft engine, propeller, 76  
appliance, spare part, fuel, lubricant, hydraulic fluid, any other 77  
equipment, implement, or material used or intended to be used in 78  
the operation of an aircraft, or any cargo carried or intended to 79  
be carried in an aircraft, criminal mischief committed in 80  
violation of division (A)(1), (2), (3), (4), or (5) of this 81  
section is one of the following: 82

(a) If the violation creates a risk of physical harm to any person, except as otherwise provided in division (C)(2)(b) of this section, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is a felony of the fifth degree.

(b) If the violation creates a substantial risk of physical harm to any person or if the property involved in a violation of this section is an occupied aircraft, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is a felony of the fourth degree.

(3) Except as otherwise provided in this division, criminal mischief committed in violation of division (A)(6) of this section is a ~~misdemeanor of the first degree. Except as otherwise provided in this division, if the value of the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section or the loss to the victim resulting from the violation is one thousand dollars or more and less than ten thousand dollars, or if the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section is used or intended to be used in the operation of an aircraft and the violation creates a risk of physical harm to any person, criminal mischief committed in violation of division (A)(6) of this section is a felony of the fifth degree. If the value of the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section or the loss to the victim resulting from the violation is ten thousand dollars or more, or if the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section is used or intended to be used in the operation of an aircraft and~~

~~the violation creates a substantial risk of physical harm to any~~ 115  
~~person or the aircraft in question is an occupied aircraft,~~ 116  
~~criminal mischief committed in violation of division (A)(6) of~~ 117  
~~this section is a felony of the fourth degree~~ felony of the third 118  
degree or, if the offender previously has been convicted of or 119  
pleaded guilty to a violation of this section or a violation of an 120  
existing or former municipal ordinance or law of this or any other 121  
state or the United States that is substantially equivalent to 122  
this section, a felony of the first degree. 123

**Sec. 2923.05.** (A) As used in this section: 124

(1) "Computer," "computer program," "computer system," and 125  
"computer network" have the same meanings as in section 2913.01 of 126  
the Revised Code. 127

(2) "Underlying offense" means an offense that a person 128  
commits, attempts to commit, conspires to commit, or solicits 129  
another to commit in engaging in conduct in violation of division 130  
(B) of this section. 131

(B) No person shall use a computer, computer program, 132  
computer system, or computer network to commit, attempt to commit, 133  
conspire to commit, or solicit another to commit any offense. 134

(C) Division (B) of this section does not prohibit a person 135  
from being charged with, convicted of, or punished for any other 136  
violation of law committed by that person while violating or 137  
attempting to violate division (B) of this section, including an 138  
underlying offense. 139

Notwithstanding any other provision of law, a person may be 140  
convicted at the same trial or proceeding of a violation of 141  
division (B) of this section and an underlying offense that is the 142  
basis of the violation of division (B) of this section. If a 143  
person is convicted at the same trial or proceeding of a violation 144

of division (B) of this section and an underlying offense that is 145  
the basis of the violation of division (B) of this section, the 146  
offender shall be sentenced for the violation of division (B) of 147  
this section in accordance with division (E) of this section and 148  
also shall be sentenced for the underlying offense in accordance 149  
with the section of the Revised Code that sets forth that offense. 150

(D) Division (B) of this section applies regardless of 151  
whether a person who uses a computer, computer program, computer 152  
system, or computer network as described in that division is 153  
convicted of or pleads guilty to committing, attempting to commit, 154  
conspiring to commit, or soliciting another to commit the 155  
underlying offense. 156

(E)(1) Whoever violates division (B) of this section is 157  
guilty of criminal use of a computer. 158

(2) If the most serious underlying offense involved in the 159  
violation is a misdemeanor, a felony of the fifth degree, or any 160  
other felony with a maximum term of imprisonment not exceeding one 161  
year, criminal use of a computer is a first degree misdemeanor, 162  
and, notwithstanding section 2929.24 of the Revised Code, the jail 163  
term authorized for the offense shall be a definite jail term of 164  
not more than one year. 165

(2) If the most serious underlying offense involved in the 166  
violation is a felony of the fourth degree or any other felony 167  
with a maximum term of imprisonment not exceeding two years, 168  
criminal use of a computer is a felony of the fourth degree. 169

(3) If the most serious underlying offense involved in the 170  
violation is a felony of the third degree or any other felony with 171  
a maximum term of imprisonment not exceeding four years, criminal 172  
use of a computer is a felony of the third degree. 173

(4) If the most serious underlying offense involved in the 174  
violation is a felony of the second degree or any other felony 175

with a maximum term of imprisonment not exceeding ten years, 176  
criminal use of a computer is a felony of the second degree. 177

(5) If the most serious underlying offense involved in the 178  
violation is a felony of the first degree or any other felony with 179  
a maximum term of imprisonment not exceeding twenty years, 180  
criminal use of a computer is a felony of the first degree. 181

(6) If the most serious underlying offense involved in the 182  
violation is aggravated murder, murder, or any other offense that 183  
is punishable by death or life imprisonment, criminal use of a 184  
computer is a felony of the first degree, and the court shall 185  
impose as a mandatory prison term one of the prison terms 186  
prescribed for a felony of the first degree. 187

**Sec. 2929.13.** (A) Except as provided in division (E), (F), or 188  
(G) of this section and unless a specific sanction is required to 189  
be imposed or is precluded from being imposed pursuant to law, a 190  
court that imposes a sentence upon an offender for a felony may 191  
impose any sanction or combination of sanctions on the offender 192  
that are provided in sections 2929.14 to 2929.18 of the Revised 193  
Code. The sentence shall not impose an unnecessary burden on state 194  
or local government resources. 195

If the offender is eligible to be sentenced to community 196  
control sanctions, the court shall consider the appropriateness of 197  
imposing a financial sanction pursuant to section 2929.18 of the 198  
Revised Code or a sanction of community service pursuant to 199  
section 2929.17 of the Revised Code as the sole sanction for the 200  
offense. Except as otherwise provided in this division, if the 201  
court is required to impose a mandatory prison term for the 202  
offense for which sentence is being imposed, the court also shall 203  
impose any financial sanction pursuant to section 2929.18 of the 204  
Revised Code that is required for the offense and may impose any 205  
other financial sanction pursuant to that section but may not 206

impose any additional sanction or combination of sanctions under 207  
section 2929.16 or 2929.17 of the Revised Code. 208

If the offender is being sentenced for a fourth degree felony 209  
OVI offense or for a third degree felony OVI offense, in addition 210  
to the mandatory term of local incarceration or the mandatory 211  
prison term required for the offense by division (G)(1) or (2) of 212  
this section, the court shall impose upon the offender a mandatory 213  
fine in accordance with division (B)(3) of section 2929.18 of the 214  
Revised Code and may impose whichever of the following is 215  
applicable: 216

(1) For a fourth degree felony OVI offense for which sentence 217  
is imposed under division (G)(1) of this section, an additional 218  
community control sanction or combination of community control 219  
sanctions under section 2929.16 or 2929.17 of the Revised Code. If 220  
the court imposes upon the offender a community control sanction 221  
and the offender violates any condition of the community control 222  
sanction, the court may take any action prescribed in division (B) 223  
of section 2929.15 of the Revised Code relative to the offender, 224  
including imposing a prison term on the offender pursuant to that 225  
division. 226

(2) For a third or fourth degree felony OVI offense for which 227  
sentence is imposed under division (G)(2) of this section, an 228  
additional prison term as described in division (D)(4) of section 229  
2929.14 of the Revised Code or a community control sanction as 230  
described in division (G)(2) of this section. 231

(B)(1) Except as provided in division (B)(2), (E), (F), or 232  
(G) of this section, in sentencing an offender for a felony of the 233  
fourth or fifth degree, the sentencing court shall determine 234  
whether any of the following apply: 235

(a) In committing the offense, the offender caused physical 236  
harm to a person. 237



(b) In committing the offense, the offender attempted to 238  
cause or made an actual threat of physical harm to a person with a 239  
deadly weapon. 240

(c) In committing the offense, the offender attempted to 241  
cause or made an actual threat of physical harm to a person, and 242  
the offender previously was convicted of an offense that caused 243  
physical harm to a person. 244

(d) The offender held a public office or position of trust 245  
and the offense related to that office or position; the offender's 246  
position obliged the offender to prevent the offense or to bring 247  
those committing it to justice; or the offender's professional 248  
reputation or position facilitated the offense or was likely to 249  
influence the future conduct of others. 250

(e) The offender committed the offense for hire or as part of 251  
an organized criminal activity. 252

(f) The offense is a sex offense that is a fourth or fifth 253  
degree felony violation of section 2907.03, 2907.04, 2907.05, 254  
2907.22, 2907.31, 2907.321, 2907.322, 2907.323, or 2907.34 of the 255  
Revised Code. 256

(g) The offender at the time of the offense was serving, or 257  
the offender previously had served, a prison term. 258

(h) The offender committed the offense while under a 259  
community control sanction, while on probation, or while released 260  
from custody on a bond or personal recognizance. 261

(i) The offender committed the offense while in possession of 262  
a firearm. 263

(2)(a) If the court makes a finding described in division 264  
(B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this 265  
section and if the court, after considering the factors set forth 266  
in section 2929.12 of the Revised Code, finds that a prison term 267

is consistent with the purposes and principles of sentencing set 268  
forth in section 2929.11 of the Revised Code and finds that the 269  
offender is not amenable to an available community control 270  
sanction, the court shall impose a prison term upon the offender. 271

(b) Except as provided in division (E), (F), or (G) of this 272  
section, if the court does not make a finding described in 273  
division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of 274  
this section and if the court, after considering the factors set 275  
forth in section 2929.12 of the Revised Code, finds that a 276  
community control sanction or combination of community control 277  
sanctions is consistent with the purposes and principles of 278  
sentencing set forth in section 2929.11 of the Revised Code, the 279  
court shall impose a community control sanction or combination of 280  
community control sanctions upon the offender. 281

(C) Except as provided in division (D), (E), (F), or (G) of 282  
this section, in determining whether to impose a prison term as a 283  
sanction for a felony of the third degree or a felony drug offense 284  
that is a violation of a provision of Chapter 2925. of the Revised 285  
Code and that is specified as being subject to this division for 286  
purposes of sentencing, the sentencing court shall comply with the 287  
purposes and principles of sentencing under section 2929.11 of the 288  
Revised Code and with section 2929.12 of the Revised Code. 289

(D)(1) Except as provided in division (E) or (F) of this 290  
section, for a felony of the first or second degree, for a felony 291  
drug offense that is a violation of any provision of Chapter 292  
2925., 3719., or 4729. of the Revised Code for which a presumption 293  
in favor of a prison term is specified as being applicable, and 294  
for a violation of division (A)(4) or (B) of section 2907.05 of 295  
the Revised Code for which a presumption in favor of a prison term 296  
is specified as being applicable, it is presumed that a prison 297  
term is necessary in order to comply with the purposes and 298  
principles of sentencing under section 2929.11 of the Revised 299

Code. Division (D)(2) of this section does not apply to a 300  
presumption established under this division for a violation of 301  
division (A)(4) of section 2907.05 of the Revised Code. 302

(2) Notwithstanding the presumption established under 303  
division (D)(1) of this section for the offenses listed in that 304  
division other than a violation of division (A)(4) or (B) of 305  
section 2907.05 of the Revised Code, the sentencing court may 306  
impose a community control sanction or a combination of community 307  
control sanctions instead of a prison term on an offender for a 308  
felony of the first or second degree or for a felony drug offense 309  
that is a violation of any provision of Chapter 2925., 3719., or 310  
4729. of the Revised Code for which a presumption in favor of a 311  
prison term is specified as being applicable if it makes both of 312  
the following findings: 313

(a) A community control sanction or a combination of 314  
community control sanctions would adequately punish the offender 315  
and protect the public from future crime, because the applicable 316  
factors under section 2929.12 of the Revised Code indicating a 317  
lesser likelihood of recidivism outweigh the applicable factors 318  
under that section indicating a greater likelihood of recidivism. 319

(b) A community control sanction or a combination of 320  
community control sanctions would not demean the seriousness of 321  
the offense, because one or more factors under section 2929.12 of 322  
the Revised Code that indicate that the offender's conduct was 323  
less serious than conduct normally constituting the offense are 324  
applicable, and they outweigh the applicable factors under that 325  
section that indicate that the offender's conduct was more serious 326  
than conduct normally constituting the offense. 327

(E)(1) Except as provided in division (F) of this section, 328  
for any drug offense that is a violation of any provision of 329  
Chapter 2925. of the Revised Code and that is a felony of the 330  
third, fourth, or fifth degree, the applicability of a presumption 331

under division (D) of this section in favor of a prison term or of 332  
division (B) or (C) of this section in determining whether to 333  
impose a prison term for the offense shall be determined as 334  
specified in section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 335  
2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the 336  
Revised Code, whichever is applicable regarding the violation. 337

(2) If an offender who was convicted of or pleaded guilty to 338  
a felony violates the conditions of a community control sanction 339  
imposed for the offense solely by reason of producing positive 340  
results on a drug test, the court, as punishment for the violation 341  
of the sanction, shall not order that the offender be imprisoned 342  
unless the court determines on the record either of the following: 343

(a) The offender had been ordered as a sanction for the 344  
felony to participate in a drug treatment program, in a drug 345  
education program, or in narcotics anonymous or a similar program, 346  
and the offender continued to use illegal drugs after a reasonable 347  
period of participation in the program. 348

(b) The imprisonment of the offender for the violation is 349  
consistent with the purposes and principles of sentencing set 350  
forth in section 2929.11 of the Revised Code. 351

(3) A court that sentences an offender for a drug abuse 352  
offense that is a felony of the third, fourth, or fifth degree may 353  
require that the offender be assessed by a properly credentialed 354  
professional within a specified period of time. The court shall 355  
require the professional to file a written assessment of the 356  
offender with the court. If the offender is eligible for a 357  
community control sanction and after considering the written 358  
assessment, the court may impose a community control sanction that 359  
includes treatment and recovery support services authorized by 360  
section 3793.02 of the Revised Code. If the court imposes 361  
treatment and recovery support services as a community control 362  
sanction, the court shall direct the level and type of treatment 363

and recovery support services after considering the assessment and 364  
recommendation of treatment and recovery support services 365  
providers. 366

(F) Notwithstanding divisions (A) to (E) of this section, the 367  
court shall impose a prison term or terms under sections 2929.02 368  
to 2929.06, section 2929.14, section 2929.142, or section 2971.03 369  
of the Revised Code and except as specifically provided in section 370  
2929.20 or 2967.191 of the Revised Code or when parole is 371  
authorized for the offense under section 2967.13 of the Revised 372  
Code shall not reduce the term or terms pursuant to section 373  
2929.20, section 2967.193, or any other provision of Chapter 2967. 374  
or Chapter 5120. of the Revised Code for any of the following 375  
offenses: 376

(1) Aggravated murder when death is not imposed or murder; 377

(2) Any rape, regardless of whether force was involved and 378  
regardless of the age of the victim, or an attempt to commit rape 379  
if, had the offender completed the rape that was attempted, the 380  
offender would have been guilty of a violation of division 381  
(A)(1)(b) of section 2907.02 of the Revised Code and would be 382  
sentenced under section 2971.03 of the Revised Code; 383

(3) Gross sexual imposition or sexual battery, if the victim 384  
is less than thirteen years of age and if any of the following 385  
applies: 386

(a) Regarding gross sexual imposition, the offender 387  
previously was convicted of or pleaded guilty to rape, the former 388  
offense of felonious sexual penetration, gross sexual imposition, 389  
or sexual battery, and the victim of the previous offense was less 390  
than thirteen years of age; 391

(b) Regarding gross sexual imposition, the offense was 392  
committed on or after August 3, 2006, and evidence other than the 393  
testimony of the victim was admitted in the case corroborating the 394

violation. 395

(c) Regarding sexual battery, either of the following 396  
applies: 397

(i) The offense was committed prior to August 3, 2006, the 398  
offender previously was convicted of or pleaded guilty to rape, 399  
the former offense of felonious sexual penetration, or sexual 400  
battery, and the victim of the previous offense was less than 401  
thirteen years of age. 402

(ii) The offense was committed on or after August 3, 2006. 403

(4) A felony violation of section 2903.04, 2903.06, 2903.08, 404  
2903.11, 2903.12, 2903.13, ~~or~~ 2907.07, or 2923.04 of the Revised 405  
Code if the section requires the imposition of a prison term; 406

(5) A first, second, or third degree felony drug offense for 407  
which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 408  
2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, or 409  
4729.99 of the Revised Code, whichever is applicable regarding the 410  
violation, requires the imposition of a mandatory prison term; 411

(6) Any offense that is a first or second degree felony and 412  
that is not set forth in division (F)(1), (2), (3), or (4) of this 413  
section, if the offender previously was convicted of or pleaded 414  
guilty to aggravated murder, murder, any first or second degree 415  
felony, or an offense under an existing or former law of this 416  
state, another state, or the United States that is or was 417  
substantially equivalent to one of those offenses; 418

(7) Any offense that is a third degree felony and either is a 419  
violation of section 2903.04 of the Revised Code or an attempt to 420  
commit a felony of the second degree that is an offense of 421  
violence and involved an attempt to cause serious physical harm to 422  
a person or that resulted in serious physical harm to a person if 423  
the offender previously was convicted of or pleaded guilty to any 424  
of the following offenses: 425

(a) Aggravated murder, murder, involuntary manslaughter, 426  
rape, felonious sexual penetration as it existed under section 427  
2907.12 of the Revised Code prior to September 3, 1996, a felony 428  
of the first or second degree that resulted in the death of a 429  
person or in physical harm to a person, or complicity in or an 430  
attempt to commit any of those offenses; 431

(b) An offense under an existing or former law of this state, 432  
another state, or the United States that is or was substantially 433  
equivalent to an offense listed in division (F)(7)(a) of this 434  
section that resulted in the death of a person or in physical harm 435  
to a person. 436

(8) Any offense, other than a violation of section 2923.12 of 437  
the Revised Code, that is a felony, if the offender had a firearm 438  
on or about the offender's person or under the offender's control 439  
while committing the felony, with respect to a portion of the 440  
sentence imposed pursuant to division (D)(1)(a) of section 2929.14 441  
of the Revised Code for having the firearm; 442

(9) Any offense of violence that is a felony, if the offender 443  
wore or carried body armor while committing the felony offense of 444  
violence, with respect to the portion of the sentence imposed 445  
pursuant to division (D)(1)(d) of section 2929.14 of the Revised 446  
Code for wearing or carrying the body armor; 447

(10) Corrupt activity in violation of section 2923.32 of the 448  
Revised Code when the most serious offense in the pattern of 449  
corrupt activity that is the basis of the offense is a felony of 450  
the first degree; 451

(11) Any violent sex offense or designated homicide, assault, 452  
or kidnapping offense if, in relation to that offense, the 453  
offender is adjudicated a sexually violent predator; 454

(12) A violation of division (A)(1) or (2) of section 2921.36 455  
of the Revised Code, or a violation of division (C) of that 456

section involving an item listed in division (A)(1) or (2) of that 457  
section, if the offender is an officer or employee of the 458  
department of rehabilitation and correction; 459

(13) A violation of division (A)(1) or (2) of section 2903.06 460  
of the Revised Code if the victim of the offense is a peace 461  
officer, as defined in section 2935.01 of the Revised Code, or an 462  
investigator of the bureau of criminal identification and 463  
investigation, as defined in section 2903.11 of the Revised Code, 464  
with respect to the portion of the sentence imposed pursuant to 465  
division (D)(5) of section 2929.14 of the Revised Code; 466

(14) A violation of division (A)(1) or (2) of section 2903.06 467  
of the Revised Code if the offender has been convicted of or 468  
pleaded guilty to three or more violations of division (A) or (B) 469  
of section 4511.19 of the Revised Code or an equivalent offense, 470  
as defined in section 2941.1415 of the Revised Code, or three or 471  
more violations of any combination of those divisions and 472  
offenses, with respect to the portion of the sentence imposed 473  
pursuant to division (D)(6) of section 2929.14 of the Revised 474  
Code; 475

(15) Kidnapping, in the circumstances specified in section 476  
2971.03 of the Revised Code and when no other provision of 477  
division (F) of this section applies; 478

(16) Kidnapping, abduction, compelling prostitution, 479  
promoting prostitution, engaging in a pattern of corrupt activity, 480  
illegal use of a minor in a nudity-oriented material or 481  
performance in violation of division (A)(1) or (2) of section 482  
2907.323 of the Revised Code, or endangering children in violation 483  
of division (B)(1), (2), (3), (4), or (5) of section 2919.22 of 484  
the Revised Code, if the offender is convicted of or pleads guilty 485  
to a specification as described in section 2941.1422 of the 486  
Revised Code that was included in the indictment, count in the 487  
indictment, or information charging the offense; 488



(17) A felony violation of division (A) or (B) of section 489  
2919.25 of the Revised Code if division (D)(3), (4), or (5) of 490  
that section, and division (D)(6) of that section, require the 491  
imposition of a prison term; 492

(18) A felony violation of section 2903.11, 2903.12, or 493  
2903.13 of the Revised Code, if the victim of the offense was a 494  
woman that the offender knew was pregnant at the time of the 495  
violation, with respect to a portion of the sentence imposed 496  
pursuant to division (D)(8) of section 2929.14 of the Revised 497  
Code. 498

(G) Notwithstanding divisions (A) to (E) of this section, if 499  
an offender is being sentenced for a fourth degree felony OVI 500  
offense or for a third degree felony OVI offense, the court shall 501  
impose upon the offender a mandatory term of local incarceration 502  
or a mandatory prison term in accordance with the following: 503

(1) If the offender is being sentenced for a fourth degree 504  
felony OVI offense and if the offender has not been convicted of 505  
and has not pleaded guilty to a specification of the type 506  
described in section 2941.1413 of the Revised Code, the court may 507  
impose upon the offender a mandatory term of local incarceration 508  
of sixty days or one hundred twenty days as specified in division 509  
(G)(1)(d) of section 4511.19 of the Revised Code. The court shall 510  
not reduce the term pursuant to section 2929.20, 2967.193, or any 511  
other provision of the Revised Code. The court that imposes a 512  
mandatory term of local incarceration under this division shall 513  
specify whether the term is to be served in a jail, a 514  
community-based correctional facility, a halfway house, or an 515  
alternative residential facility, and the offender shall serve the 516  
term in the type of facility specified by the court. A mandatory 517  
term of local incarceration imposed under division (G)(1) of this 518  
section is not subject to any other Revised Code provision that 519  
pertains to a prison term except as provided in division (A)(1) of 520

this section. 521

(2) If the offender is being sentenced for a third degree 522  
felony OVI offense, or if the offender is being sentenced for a 523  
fourth degree felony OVI offense and the court does not impose a 524  
mandatory term of local incarceration under division (G)(1) of 525  
this section, the court shall impose upon the offender a mandatory 526  
prison term of one, two, three, four, or five years if the 527  
offender also is convicted of or also pleads guilty to a 528  
specification of the type described in section 2941.1413 of the 529  
Revised Code or shall impose upon the offender a mandatory prison 530  
term of sixty days or one hundred twenty days as specified in 531  
division (G)(1)(d) or (e) of section 4511.19 of the Revised Code 532  
if the offender has not been convicted of and has not pleaded 533  
guilty to a specification of that type. The court shall not reduce 534  
the term pursuant to section 2929.20, 2967.193, or any other 535  
provision of the Revised Code. The offender shall serve the one-, 536  
two-, three-, four-, or five-year mandatory prison term 537  
consecutively to and prior to the prison term imposed for the 538  
underlying offense and consecutively to any other mandatory prison 539  
term imposed in relation to the offense. In no case shall an 540  
offender who once has been sentenced to a mandatory term of local 541  
incarceration pursuant to division (G)(1) of this section for a 542  
fourth degree felony OVI offense be sentenced to another mandatory 543  
term of local incarceration under that division for any violation 544  
of division (A) of section 4511.19 of the Revised Code. In 545  
addition to the mandatory prison term described in division (G)(2) 546  
of this section, the court may sentence the offender to a 547  
community control sanction under section 2929.16 or 2929.17 of the 548  
Revised Code, but the offender shall serve the prison term prior 549  
to serving the community control sanction. The department of 550  
rehabilitation and correction may place an offender sentenced to a 551  
mandatory prison term under this division in an intensive program 552  
prison established pursuant to section 5120.033 of the Revised 553

Code if the department gave the sentencing judge prior notice of 554  
its intent to place the offender in an intensive program prison 555  
established under that section and if the judge did not notify the 556  
department that the judge disapproved the placement. Upon the 557  
establishment of the initial intensive program prison pursuant to 558  
section 5120.033 of the Revised Code that is privately operated 559  
and managed by a contractor pursuant to a contract entered into 560  
under section 9.06 of the Revised Code, both of the following 561  
apply: 562

(a) The department of rehabilitation and correction shall 563  
make a reasonable effort to ensure that a sufficient number of 564  
offenders sentenced to a mandatory prison term under this division 565  
are placed in the privately operated and managed prison so that 566  
the privately operated and managed prison has full occupancy. 567

(b) Unless the privately operated and managed prison has full 568  
occupancy, the department of rehabilitation and correction shall 569  
not place any offender sentenced to a mandatory prison term under 570  
this division in any intensive program prison established pursuant 571  
to section 5120.033 of the Revised Code other than the privately 572  
operated and managed prison. 573

(H) If an offender is being sentenced for a sexually oriented 574  
offense or child-victim oriented offense that is a felony 575  
committed on or after January 1, 1997, the judge shall require the 576  
offender to submit to a DNA specimen collection procedure pursuant 577  
to section 2901.07 of the Revised Code. 578

(I) If an offender is being sentenced for a sexually oriented 579  
offense or a child-victim oriented offense committed on or after 580  
January 1, 1997, the judge shall include in the sentence a summary 581  
of the offender's duties imposed under sections 2950.04, 2950.041, 582  
2950.05, and 2950.06 of the Revised Code and the duration of the 583  
duties. The judge shall inform the offender, at the time of 584  
sentencing, of those duties and of their duration. If required 585

under division (A)(2) of section 2950.03 of the Revised Code, the 586  
judge shall perform the duties specified in that section, or, if 587  
required under division (A)(6) of section 2950.03 of the Revised 588  
Code, the judge shall perform the duties specified in that 589  
division. 590

(J)(1) Except as provided in division (J)(2) of this section, 591  
when considering sentencing factors under this section in relation 592  
to an offender who is convicted of or pleads guilty to an attempt 593  
to commit an offense in violation of section 2923.02 of the 594  
Revised Code, the sentencing court shall consider the factors 595  
applicable to the felony category of the violation of section 596  
2923.02 of the Revised Code instead of the factors applicable to 597  
the felony category of the offense attempted. 598

(2) When considering sentencing factors under this section in 599  
relation to an offender who is convicted of or pleads guilty to an 600  
attempt to commit a drug abuse offense for which the penalty is 601  
determined by the amount or number of unit doses of the controlled 602  
substance involved in the drug abuse offense, the sentencing court 603  
shall consider the factors applicable to the felony category that 604  
the drug abuse offense attempted would be if that drug abuse 605  
offense had been committed and had involved an amount or number of 606  
unit doses of the controlled substance that is within the next 607  
lower range of controlled substance amounts than was involved in 608  
the attempt. 609

(K) As used in this section, "drug abuse offense" has the 610  
same meaning as in section 2925.01 of the Revised Code. 611

(L) At the time of sentencing an offender for any sexually 612  
oriented offense, if the offender is a tier III sex 613  
offender/child-victim offender relative to that offense and the 614  
offender does not serve a prison term or jail term, the court may 615  
require that the offender be monitored by means of a global 616  
positioning device. If the court requires such monitoring, the 617

cost of monitoring shall be borne by the offender. If the offender 618  
is indigent, the cost of compliance shall be paid by the crime 619  
victims reparations fund. 620

**Section 2.** That existing sections 2909.07 and 2929.13 of the 621  
Revised Code are hereby repealed. 622