Bail & Major Lines: This You Must Know!

HISTORY OF BAIL - From Old Testament Writings:

The business of Bail Bonding has been in existence for over four thousand years. Writings found in the Old Testament, in both Jewish and Christian Scriptures, refer to concepts of pledging property (collateral) and caution in matters of surety:

"If you take your neighbor's cloak as a pledge, you shall return it to him before sunset." Exodus 22:26

"Take his garment who becomes surety for another, and for strangers yield it up!" Proverbs 21:16

Development in Medieval England:

For the most part, Americans depended upon the existing bail structure that evolved from a long history of English statues and policies developed over hundreds of years. This is what was followed during the early Colonial Period in the United States.

With the Declaration of Independence in 1776, our forefathers no longer wanted to rely upon English Law and their systems. They began to formulate their own set of policies, which closely paralleled the traditions from England. An understanding of the English system and its development is important if we are to understand the meaning of the American constitutional bail provisions and how they were intended to supplement a larger statutory bail structure.
In Medieval England, as soon as a trial began, processes were already underway to guarantee that the accused would appear for trial! It wasn't until the Thirteenth Century that sheriffs, who were the regional representatives of the Crown, given authority to determine when a defendant could be detained for trial or if he could be set free on "bail" which was a promise that he would indeed show up to stand trial and "face the music!"

The "Statute of Westminster" in 1275:

The wide spread authority of the sheriff was not always fairly administered. Some sheriffs exploited the "bail" system for their own personal gain; so, in 1275 the "Statute of Westminster" was promulgated to eliminate the discretion of sheriffs with respect to which crimes would be bailable.

The Statute specifically enumerated which offenses were and were not bailable. Sheriffs kept the authority to weigh all relevant factors and arrive at the amount of bail but the Statute was not a universal right to bail. Some offenses were absolutely excluded and restrictions were confined to the abuses of the sheriffs. Exempt from its provisions were Justices of the Realm.

English Bail Law underwent its next major change early in the Seventeenth Century, when King Charles I had to force noblemen to give him loans because Parliament did not receive any funds.

Anyone who refused to loan money to the King were cast into prison without bail! Five knights who were incarcerated for this offence filed a habeas corpus petition and argued that they could not be held indefinitely without bail or trial.
King Charles would not tell the knights the charges for why they were being held nor would he issue them bail. This is because the charges were illegal! The knights were under no obligation to loan money to the King. So, off course, the King kept the charges against them a secret.

Finally, when the case was brought before the court, attorneys for the knights argued that without a trial or conviction, they were being held only on the basis of an unsubstantiated and unstated accusation. Attorney General Heath stressed that the King could best balance the interests of state security and individual liberty if he was allowed to continue his prerogative as the King to imprison. The court upheld this argument.

Parliament reacted to the King's action and the court's ruling with the "Petition of Right" of 1628. The Petition argued that contrary to the Magna Carta and other laws guaranteeing that no man could be imprisoned without due process of law, the King had recently imprisoned people before trial "without any cause showed." The Petition further stated that "no freeman, in any manner as before mentioned, could be imprisoned or detained."

The "Habeas Corpus Act" of 1677:

The act guaranteed that a man could not be held before trial on the basis of an unspecific accusation. However, this did not provide an absolute right to bail. Furthermore, the King, the courts and the sheriffs were able to create procedural delays in granting writs of habeas corpus thus defeating the intent of the "Petition of Right" act. When these delays became critically excessive, Parliament passed the "Habeas Corpus Act" of 1677.
The Act stated that *"a Magistrate shall discharge the said Prisoner from Imprisonment taking his or their Recognizance, with one or more Surety or Sureties, in any Sum according to their discretion, having regard to the Quality of the Prisoner and Nature of the offense, for his or their Appearance in the Court of the King's bench…unless it shall appear…that the Party (is)…committed…for such Matter or offenses for which by law the Prisoner is not Bailable."*

By requiring up front why a person was being placed under arrest, the "Habeas Corpus Act" provided a suspect with knowledge that the alleged offense was either bailable or not. The "Statute of Westminster" remained the primary definition of what offenses would be eligible for bail.

"English Bill of Rights" of 1689:

Although the "Habeas Corpus Act" improved administration of bail laws, it did not provide protection against excessive bail. Even if a suspect was accused of a bailable offense and therefore entitled to bail, he could still be held if the amount of bail was too high! Parliament reacted to this abuse with the "English Bill of Rights" of 1689.

The Preamble of the Bill accused the King of attempting "to subvert…the laws and liberties of the kingdom: in that excessive bail hath been required of persons committed in criminal cases, to

elude the benefit of the laws made for the liberty of the Subjects." The "Bill of rights" proclaimed "that excessive bail ought not to be required." Thus, the foreshadower of the Eighth Amendment in the U.S. Constitution was drafted to prevent those accused of bailable offenses from unreasonable and exorbitantly high bail requirements.

It must be stressed that categories of bailable and non-bailable offenses as stipulated in the "Statute of Westminster" were not changed and the right to bail was not guaranteed, only the amount of bail was addressed by this Bill.

Colonial Period and Bail Clauses in the U.S. Constitution:

Bail law in colonial America was patterned after the English law. Some colonies initiated their own laws which were similar to English statutes and others simply guaranteed their subjects the same protections guaranteed to British citizens. In 1776 when the colonies became independent they could no longer simply insure the protections of English law; therefore, the colonies enacted specific bail laws.

Typical of early American bail laws were those enacted in the Commonwealth of Virginia that perpetuated the bail system as it had evolved in England. Section 9 of Virginia's Constitution in 1776 declared simply that "*excessive bail ought not to be required*…."

This constitutional provision was supplemented in 1785 with a statute which eliminated a judge's discretion to grant bail by specifying that "*those shall be let to bail who are apprehended for any crime not punishable in life or limb…But if a crime is punishable by life or limb, or if it be manslaughter and there be good cause to believe the party guilty thereof, he shall not be admitted to bail*."
Thus, the Virginia laws closely paralleled the English system. Statutes set forth which offenses were bailable which the Constitution protected against abuses of those definitions. In fact, the clause in the Virginia Constitution was identical to the one in the English "Bill of Rights" which had been included to prevent judges from unreasonable holding those accused of bailable offenses by setting a bail amount so high as to be virtually unobtainable.

Other state constitutions similarly proscribed excessive bail for bailable offenses in order to prevent this method of thwarting the bail laws passed by the legislatures: for example, Section 29 of the Pennsylvania Constitution of 1776 provided that "Excessive bail shall not be exacted for bailable offenses."

THE AMERICAN BAIL SYSTEM

James Madison and his Virginia Constitution:

In 1789, James Madison prepared an initial draft for the Bill of Rights. This became the model for the first ten amendments that passed congress in 1789 and ratified in 1791. The Eighth Amendment of the Bill of Rights was taken essentially word-for-word from Section 9 of the Virginia Constitution, which provided that *"Excessive bail shall not be required…."*

When congress debated the issue, the only comment on the clause was voiced by a Mr. Livermore who exclaimed that "*the clause seems to have no meaning to it, I do not think it necessary. What is meant by the term excessive Bail….?"* Of course, his concern was that this amendment only required that bail not be excessive, but did not provide a definition of what actually constituted an excessive bail requirement.

The drafters thought very little about the actual meaning of the bail clause; the clause was so much a part of American and English history that to the common man, the meaning was obvious. Both clauses in the English Bill of Rights and the Virginia Constitution were identical to the Eighth Amendment. Simply put, the bail provision was intended to prohibit excessive bail as a means of holding suspects accused of offenses that had been designated bailable by Congress.

Sixth and Eighth Amendments:

The so-called "bail clause" in the Eighth Amendment was only one part of the bail structure in America. Same as in England, the American system also includes specific guarantees that prohibit imprisonment without informing the suspect of his crime. And, in the Sixth Amendment to the Constitution, the law insures that when a person is arrested, he *"be informed of the nature and cause of the accusation"* thereby enabling him to demand bail if he as committed a bailable offense

The final part of the American bail structure and the point upon which the United States Constitution provisions are based is the statutory codification of justice officials' power concerning bail and the categorization of crime into bailable and nonbailable offenses. The Constitution merely guarantees that excessive bail may not be used to hold suspects who by law are entitled to bail.
In the same manner, the Sixth Amendment allows prisoners to know if they are in fact entitled to bail under the law but does not give them any right to bail already existing in the law.

Thus, the legislature and not the Constitution is the real framer of the bail law. The Constitution upholds and protects against abuse of the system that the legislature creates. In fact, the same Congress that proposed the Eighth Amendment also formulated the fundamental bail statute that remained in force until 1966. This was accomplished in 1789, the same year that the Bill of Rights was introduced, when Congress passed the Judiciary Act.

Excessive Bail and the "Judiciary Act" of 1789:

This Act specified which kind of crimes were bailable and set bounds on the judges' discretion in setting bail. Following the tradition of State laws developed during the colonial period, which in turn were based on English law, the "Judiciary Act" stated that all noncapital offenses were bailable and that in capital offenses, the decision to detain a suspect before trial was totally left up to the judge.

The Act stated that "*upon all arrests in criminal cases, bail shall be admitted, except where punishment may be by death, in which case it shall not be admitted but by the supreme or superior court, or by a justice of the supreme court, or a judge of a district court, who shall*

exercise their discretion therein, regarding the nature and circumstance of the offense, and of the evidence, the usages of law."

Again, the Eighth Amendment forbid the use of excessive bail and resolved that bail might not be exorbitant or unreasonable in those cases where Congress has deemed it suitable to allow bail. The Congress then enacted the "Judiciary Act" that defined exactly what offenses would be bailable. Habeas corpus protection was provided by Article 1 of the Constitution.

The "Judiciary Act" of 1789 did not differentiate between bail before and after conviction. It was not until the Federal Rules of Criminal Procedure were promulgated in 1946 that this distinction was clearly made. Rule 46 made the 1789 Act's language the standard for release, but left release after conviction pending an appeal to the judge's discretion regardless of the crime that was committed.

"Bail Reform Act" of 1966:

Congress, in 1966, enacted the first major substantive change in federal bail law since 1789. The "Bail Reform Act" of 1966 provides that a non-capital defendant "*shall…be ordered released pending trial on his personal recognizance"* or on personal bond unless the judicial officer determines that these incentives will not adequately assure his appearance at trial. In that case, the judge must select the least restrictive alternative from a list of conditions designed to guarantee appearance.

That list includes restrictions on travel, execution of an appearance bond (that is refundable when the defendant appears), and execution of a bail bond with a sufficient number of solvent sureties. Individuals charged with a capital offense or who have been convicted and are awaiting sentencing or appeal are subject to a different standard. They are to be released unless the judicial officer has "*reason to believe*" that no conditions "*will reasonably assure that the person will not flee or pose danger to any other person or to the community."*

The 1966 Act created a presumption for releasing a suspect with as little burden as necessary in order to insure his appearance at trial. Appearance of the defendant for trial is the sole standard for weighing bail decision. In noncapital cases, the Act does not permit a judge to consider a suspect's dangerousness to the community. Only in capital cases or after conviction is the judge authorized to weigh threats to community safety.

Criticisms of the Act:

The above mentioned specific aspect of the 1966 Act drew a lot of criticism, especially in the District of Columbia where all crimes formally fell under the regulation of Federal bail law. In a considerable number of instances, persons accused of violent crimes committed additional crimes while released on their own personal recognizance. Furthermore, these individuals were often released again on nominal bail.

In 1969, the problems associated with the 1966 Bail Reform Act were considered by the Judicial Council committee and studied. The committee was particularly troubled by the release of

potentially dangerous noncapital suspects permitted by the 1966 law and recommended that even in noncapital cases, a persons dangerousness be considered in determining conditions for release! Congress changed the Act as it applied to persons charged with crimes in the District of Columbia.

Thus, in 1970, judges were allowed to consider dangerousness to the community as well as risk of flight when setting bail in noncapital cases. These decisions formulated the bail system, as we know it today.

Common Law Right to Arrest:

Although evolving over several centuries, modern day bail most closely resembles the system, initially designed to keep the King's peace in medieval England, which placed responsibility of the defendant to a tithing or even a whole township in order to ensure that the accused would appear before the court.

Applicable case law (Taylor v. Taintor) decided by the courts in 1873, that, *"when bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize and deliver him up in their discharge, and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another state: may arrest him on the Sabbath; and if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of the new process. None is needed. It is likened to the re-arrest, by the Sheriff, of an escaping prisoner"*

Various court cases throughout the United States and decisions from the US Supreme Court have upheld the idea that a Bail Bond Agent is an Officer of the Court and is granted certain powers because of this authority.

The Ohio Revised Code allows the apprehension or arrest of a principal on bond by a licensed Surety Bail Bond Agent under certain specified criteria.

Likewise, under the Federal statute, any accused charged with a criminal offense who is released on a bail bond with sureties may be arrested by the surety, delivered to the US Marshall, and brought before any judge or officer empowered to commit for such offense. At the request of the surety, such judicial officers may re-commit the accused to the custody of the US Marshall.

THE BAIL SYSTEM AND FREE SOCIETY

Innocent until Proven Guilty:

The bail bond system is the process whereby, for financial consideration, an accused individual is released from custody pending his or her later appearance in court. The purposes underlying the bail system are, 1) to permit defendants (who are legally considered to be "*innocent until proven guilty*") their freedom so that they may continue their normal pursuits, support their

families, arrange their affairs, and aid their attorneys in the preparation of their defense; and, 2) to protect the community by insuring their subsequent court appearance through imposing damaging financial penalty if they do not appear.

The bail system, similar to what we know today, originated in England at a time when real property was frequently the security for the bail bond…the loss of which property was extremely serious for the accused. In the United States today, the system has lost much of its rationality. Judges frequently set bail for defendants according to the severity of the alleged offense; that is, the bail for armed robbery will normally be higher than the bail for shoplifting.

Because of this rationale, the defendant who is well-to-do will be able to meet any reasonable bail; the defendant who is poor may not be able to raise even the most nominal sum. Thus, in terms of protecting the community, money bail determined by the severity of the crime is entirely irrational. It serves only to keep the poor, no matter what their characters, their roots in the community, or their alleged offenses, in jail, while well-to-do defendants are set free virtually without regard for the consequences in terms of public safety.

Legitimate Use of Bail:

Technically, the only legitimate use of the bail system is to insure the presence of the defendant at a future court proceeding. Bail itself is not a punishment or form of restitution for an offense.

"A recognizance of bail, in a criminal case, is taken to secure the due attendance of the party accused, to answer the indictment, and to submit to a trial, and the judgment of the court thereon. It is not designed as a satisfaction for the offense…but as a means of compelling the party to submit to the trial and punishment which the law ordains for his offense."

Common Occurrences for Judges:

It is, however, a common occurrence for judges to use bail to detain in custody defendants whose release is felt to be either dangerous or unpopular. Those accused of capital offenses, for example, are frequently denied bail, or bail is set so high as to be virtually unattainable. The same can be said for those accused of other particularly heinous, violent crimes, such as forcible rape or felonious assault.

Similarly, political protesters are frequently held in custody prior to trial because they are unable to meet the bail requirements set by unsympathetic judges. Communist defendants such as Eugene Dennis and Elizabeth Flynn, who were tried during the 1950's for their preaching of Communist doctrine, could not realistically have been held to be a physical danger to the community; nor were they likely to fail to appear for trial; yet high bail was set for each.

Similarly, nonviolent civil rights demonstrators, such as Dr. Martin Luther King, Jr., and the thousands of white and black people who joined with him in the many marches he led protesting segregation in the South during the 1960's, could not be considered a physical danger to the communities in which they were arrested; yet, they too were forced to post thousands of dollars of bail money before they could be released. It is obvious in these cases that bail was used by

the courts to harass and make more difficult the work of political organizations sponsoring protests that were unpopular, either with the courts or with the communities in which the trials were to occur.

While communities, under our Constitution, have no right to be protected from opinions they may disagree with, they do have a right to protection from those who would murder, rape or rob.

Furthermore, to set bail so high as to be unattainable is simply to deny bail and therefore operate outside the context of the system. To set it high enough for an affluent suspect to reach, but too high for the poor person, is to give unjustifiable preferential treatment on the basis of financial means. To set bail low enough for any suspect to reach is, if the suspect is truly dangerous, to deny protection to the community.

Nixon Administration and Preventive Detention:

The rising crime rate in the District of Columbia led the Nixon Administration, in 1970, to urge passage of legislation permitting "preventive detention" of dangerous suspects. The "Columbia Reform Act" provided a method of holding dangerous suspects without relying on the possible misuse of the bail system or the hypocrisy of two standards of justice: one for the poor and one for the well-to-do rich.

Practicality of a "Speedy" Trial and Revisions:

Defendants who were not dangerous would be released on minimal bail and the others would be held for a relatively speedy trial. Some people held that the solution to the problem of the dangerous suspect was a speedy trial, others determined that a speedy trail was not always possible and, in at least some cases, may even work to the disadvantage of the defendant by not allowing sufficient time to prepare a defense. In 1984, the Federal Bail Act was revised with renewed emphasis on community safety considerations in making the bail decision.

Hardships to Defendants:

Release of a defendant for a bailable offense is the most practical and humane thing a court can do. The social cost of an unreformed bail system is great, aside from the hardship to individual defendants. The male defendant who is in jail, for example, cannot support his family, which then frequently requires public assistance. When he is released, moreover, even if he is acquitted, his job may be gone and his family may have lost its home through eviction. He himself may have become embittered, and he most likely will have had undesirable exposure to experienced criminals in the institution in which he was confined.

There is a good probability that he may have been subjected to unwanted sexual advances, or he may even have been raped by fellow inmates. The cost of maintaining him in jail, moreover, is considerable. A large percentage of the inmates in city and county jails are those awaiting trial. Were they to be removed from these facilities, either the cost to the public would be less or, with the same budget, better services could be provided to those who should not be released or who are serving short-term sentences.

Experiments in Bail Reform:

In the 1960's and 70's experiments in bail reform were well underway. A defendant's community ties, residence, family, job, background, prior criminal record and associations were strongly considered in setting bond. Interesting enough, statistics showed that defendants released on bail were subsequently convicted far less often than those not released, even when the backgrounds and offenses were similar.

To get to where we are today has not been an easy task. Certainly by a lot of "trial" and error has our bail bond system evolved into what it is today.

Social Costs of and "Unreformed" System:

In Ohio, as in many states throughout the nation, reforms had to be made because it had become a business, where, in many cases, it was criminals helping criminals! This is not to say that there was not legitimate Bail Bond Agents doing their job;
however, many unscrupulous individuals made it rich off the blatant abuse of their position.

Where trust was to be understood between the Surety Bail Bond Agent and a defendant, his family, friends and loved ones…it became a source of illegal revenue and profit for many.

With the enactment of the recent "Bail Bond Act" in Ohio, House Bill 730, which included the instrumentation of mandatory criminal background checks, testing, continuing education and financial accountability, the Bail Bond profession has been "*reformed and become a clean house from within"* and again put in a place of honor and respect…a much needed service by those willing to serve.

BAIL REFORM IN AMERICA
PART 1

The Reform Movement:

More than judges, lawyers, policemen, jailors, defendants, more than anybody…we MUST believe that when the Constitution says that a person is innocent until proven guilty, the system owes that person, no less, than to treat him as if he is indeed *"innocent until he is proven guilty!"*

With bail reform in mind…to assure a defendant of this Constitutional guarantee…the dominant concern of the 1960's was with own recognizance release, while in the late 1970's it largely focused upon 10% deposit bail plans and conditional releases. While seeds of each of these forms of release were planted in legislation adopted in the 1960's, it was not until the 1970's that they attracted widespread national attention. Preventive detention also remained an important question.

The American System of Bail:

Whether right or wrong, the following developed: in the United States, the bail system allows a person arrested for a criminal offense the right to purchase his release pending trial. Those who can afford to pay the price are released; those who cannot, simply remain in jail. Unfortunately, innocence, the likelihood that the person will appear at trial, reputation in the community – all, became essentially irrelevant. Sadly put, money was the key to the jail, and the bail bondsman owned the key!

The American system derived from practices that originated in medieval England when magistrates traveled from country to country, staying in a particular area for only a few months each year. In order to prevent prolonged detention in the primitive jails, defendants were released by the sheriff into the custody of a friend or neighbor who was responsible for assuring that the defendant would return at the appropriate time. If the defendant absconded, the third party custodian was required to surrender himself in the defendant's place. In time, the system evolved to permit the custodian to forfeit a promised sum of money if the defendant failed to appear.

The system operating in the United States is vastly different. Most bonds are posted by commercial bondsmen who have never previously met the defendant and who perform their service for the fee, normally 10% of the bond amount. This change from a personal to a commercial system of pretrial release came about early in the annals of American justice. There were several reasons for its adoption:

First, unlike English law, the Judiciary Act of 1789 and the constitutions of most states provided for an absolute right to have bail set except in capital cases. Second, the absence of close friends and neighbors in frontier America would have made it very difficult for the court to find an acceptable personal custodian for many defendants, and third, the vast unsettled American frontier provided a ready sanctuary for any defendant wanting to flee. Commercial bonds, never permitted in England, were thus a useful device in America.

Over time, however…due to bail amounts based solely on the alleged offense, where 20 percent of the defendants were unable to post bail, and, professional bondsmen playing too important a role in the administration of the criminal justice system, with reported number of abuses, including the misuse of collateral and failure to pay off on forfeited bonds…National Bail Studies were underway and serious reform had to come.

The Bail Reform Movement, 1961-1965:

As we have previously demonstrated, reform of the bail system was never meant to replace the money bail system but rather to eliminate the discriminatory and abusive aspects of it.

Manhattan Bail Project:

The plan of reform initially expanded the use of personal recognizance by identifying for the court those indigent defendants, who, based on certain established guidelines, could be safely

released without money bail. The reform effort that was generated by the Manhattan Bail Project was not a direct challenge to the use of money bail but rather an effort to adapt and reform the present bail system to the needs of the poor.

The Project was designed to fit into the existing court structure. Arrestees were interviewed and the use of questionnaires obtained information about the defendant's ties in the area, with whom does he live, are their other relatives with whom he is in contact, where does he live and how long has he lived there, is he employed or a student and about his prior criminal record.

After the information was verified, a decision was made either to recommend the defendant for "pretrial parole"…meaning release on one's promise to appear without any requirement of money bond. By the mid-1960's own recognizance was recognized as a very workable solution. Defendants appeared as well as or better than those on money bail. The Manhattan Bail Project reported a failure to appear rate of less than seven-tenths of one percent!

Even with the adoption of the Federal Bail Reform Act of 1966, being released on one's own recognizance was not the "end all" answer for pretrial release. The use of conditional release was also introduced at this time. If there were problems that made own recognizance recommendations for some defendants not feasible, these were cured by the imposition by the court of special conditions: restrictions could be placed on travel, place of abode or association. Other conditions authorized regular money bail, or *"any other condition deemed reasonably necessary to assure appearance as required!"*

According to observers, judges charged with the immediate and ultimate responsibility for ordering conditions of release felt constrained to release all defendants indiscriminately on personal recognizance. Little thought was given to testing the conditions enumerated in the Act and financial bond continued to be used as a means for detaining high risk accused. Some of the problems of administering the Act which had not been anticipated soon surfaced.

There was no method designed to notify those released of their court dates. There was no one to supervise releases prior to trial. There was no continuity of representation to insure the application of the appeal and review provisions of the statute. In short, there were very few people in the system who carefully read and tried fully to implement the Act.

The Police Role:

Each day thousands of persons are swept into American jails charged with relatively minor criminal offenses. Detention of these persons is usually unwarranted and, in most cases, unwanted. Most arrestees are jailed not because someone has decided that there is a need for their incarceration, but because the traditional method of beginning criminal cases is by arrest, the taking of the person into physical custody.

To be sure, courts have long had the authority to issue summonses directing the defendant to come to court, rather than ordering the physical arrest of the person. This process is rarely used, however, and requires the action of the court. Most criminal cases are begun by police without court involvement.

"Uniform Arrest Act" in 1939:

Since the criminal justice process normally begins with an arrest, the police are often in the best position to provide for the speedy release of criminal defendants. Historically, however, pretrial release has not been viewed as a police function. Yet, there is one notable precedent for involving the police in the release decision.

Sixty years ago, before the traffic infraction became a common occurrence, police made physical arrests of all traffic violators. Once the automobile became the main form of transportation, it was no longer feasible to rely on traditional arrest practices for handling traffic violation cases, and the practice of citing and releasing traffic offenders was developed. It is difficult now to perceive how the system could operate otherwise.

The virtues of this type of police release procedure were also applied to the violation of regulatory statutes by the Uniform Arrest Act of 1939; but, despite the obvious success of the police citation procedure in securing the appearance of millions of traffic violators in every state in the Union, there was very little movement to extend these procedures to more ordinary criminal cases or to rethink the necessity for physical arrest.

In a number of states there has been wider police involvement and brought more fully into the pretrial release area. Some police departments have extensive powers: authority to grant own recognizance release in felony as well as misdemeanor cases and to set bail amounts in those cases in which they do not grant a nonfinancial release. If police can be trusted with the authority to make felony arrests in the first place, there would seem no reason why they could not be trusted with discretionary release authority as well!

BAIL REFORM IN AMERICA
PART 2

Reaching the Defendant Quickly:

Under traditional practice, the setting of bail is a judicial act, accomplished when the arrested person first appears in court. In some jurisdictions, this occurs almost immediately upon arrest, and in others at a somewhat later time. As a practical matter, however, a person arrested late in the day or at night is often forced to wait in custody at least until the following morning, or if he is arrested on a weekend until Monday morning.

Attorneys and bail bondsmen may be able to produce some relief from this situation by contacting a judge at home and having him set bail out of court. This is obviously a cumbersome and expensive procedure, however, and relatively few defendants benefit from it. Much more important are the police release procedures spoken about in the last section and any fast-acting pretrial release programs that may be available.

Bail Schedules, Commissioners and Night Courts:

Another method for dealing with the situation of bail is that of a pre-set schedule of bail amounts. Such a system was first developed in 1945 in California for misdemeanor defendants. Under this system, the court sets the bail required for each offense, these amounts are posted in the jail, and the jailor is authorized to release defendants upon obtaining the bond.

Certain jurisdictions have instrumented the use of bail commissioners. These are specially appointed individuals that do nothing but answer inquiries regarding bail amounts in relation to specific crimes. And, night courts have been established in larger cities to prevent the severe overcrowding conditions that exist. At least these are other alternatives.

Issues of Preventive Detention:

While the failure to make extensive use of preventive detention legislation has quieted, to some extent, the debate about crime committed by defendants on pretrial release, the issues that surfaced continue to be important: 1) How serious is the problem – how much crime is committed by defendants on pretrial release? 2) Is it possible to identify in advance those defendants who are dangerous and most likely to commit crimes? 3) Is some form of preventive detention constitutionally permissible? 4) Are there methods other than preventive detention that might be used to minimize the problem of crime while out on bail?

1) How much crime is committed by defendants on pretrial release?

In April of 1970, the National Bureau of Standards released findings of an extensive study, which are still used today. This study was made to analyze what could be learned from criminal justice records about the rearrests of a small sample of defendants given pretrial release. The study focused on 426 defendants who were released before trial during 4 weeks in the first half of 1968. The report revealed that 17% of 147 felony defendants were rearrested during pretrial release. Altogether, 11% of the 426 defendants, including those charged with misdemeanors, were rearrested for new offenses.

The study also suggested that since many crimes go unreported, and the clearance rate for crimes that are reported is not 100%, the number of crimes represented by the rearrest figures might be three or four times greater than the figures themselves. The study also showed that only 5% of those defendants eligible for preventive detention were rearrested for dangerous or violent crimes during the period of their release.

2) Is it possible to identify in advance those defendants who are likely to commit crimes?

What makes any kind of pretrial release difficult is that neither a judge nor anyone else can predict in advance which defendants will commit a crime while out of jail. The problem of making sure that one detains all defendants who will commit crimes is obviously solved if one is prepared to detain all defendants! However, unless all defendants will commit crimes while on release, this method would detain many persons who will not commit crimes. The problem essentially is that of separating the two groups with accuracy.

The National Bureau of Standards study concluded that developing an accurate predictive instrument requires acquiring a sufficient database and also more adequate testing of the predictability of criminal behavior from specified factors. Other observers, noting the general lack of success in parole and probation prediction efforts, where much more extensive work has been carried out, have been much less hopeful.

3) Is preventive detention constitutional?

As the Supreme Court of the United States has stated, "from the passage of the Judiciary Act of 1789…to the present Federal Rules of Criminal Procedure…federal law has unequivocally provided that a person arrested for a non-capital offense *shall* be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction….Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.

The right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty….Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of money subject to forfeiture serves as an additional assurance of the presence of an accused. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is 'excessive' under the Eighth Amendment."

It is the emphasis of this case, and in the history of the Eighth Amendment, that the purpose of bail is to ensure the presence of the defendant at trial that has led the majority of scholars to conclude that a preventive detention statute going beyond capital cases would be unconstitutional.

4) Are there other methods for dealing with crime on bail?

Even the most rigid opponents of preventive detention do not deny that there is some amount of crime being committed by persons on pretrial release, and some attention has been devoted to developing alternative solutions to the problem. Perhaps the most constructive approach concerns the possibility of speeding up the trial process and thereby reducing the amount of time that defendants spend on pretrial release.

Another approach is to provide more intensive supervision to persons on pretrial release, and to offer family and substance abuse counseling, as well as job placement services, to address personal difficulties that might have led to the initial criminal involvement.

Present and Future Reform:

The subject of bail reform began in 1961 in New York City with the creation of the Manhattan Bail Project and continues to this very day in every place where the Constitutional words of *"innocent until proven guilty"* is adhered to!

Clearly, the bail reform movement has accomplished much. Perhaps its major success has simply been the education and enlightenment of judges as to the importance of the bail decision, the need to consider individual factors in the setting of bail, and the consequences of pretrial detention.

The challenge for the bail reform movement today is to integrate the various pretrial release options that now exist into a cohesive system of pretrial release.

Two main objectives should prevail by all authorities, including bail bond agents: first, to ensure that each defendant receives the quickest and least restrictive form of release compatible with the smooth administration of criminal justice and the public safety, and second, that the system be one that is reasonably cost-effective.

As bail bond agents we are placed in a position to help defendants and their families. By our fair treatment of their financial situation and our willingness to help, it enables them to continue "out in the world" in their employments, to share love and concern with their loved ones, to have means to properly prepare for their defense in court and to demonstrate their Constitutional guarantee that they indeed are *"innocent until proven guilty!"*

THE HOUSE BILLS WERE CREATED TO REGULATE THE BAIL BOND PROFESSION IN THE STATE OF OHIO

In June of 2000, the General Assembly passed House Bill 730 which provided for the regulation of surety bail bond agents by the Department of Insurance: establishing standards for licensing, pre-licensing and continuing education testing for bail agents; limiting the authority for the apprehension or arrest of a principal on bond to persons meeting specified criteria; prohibiting the use of the title "bail enforcement agent" or "bounty hunter" and setting numerous protections for consumers relative to the operation of Surety Bail Bond Agents in Ohio. House Bill 730 also affirmed that Surety Bail Bond Agents are "Officers of the Court."

In 2010 the statute was strengthened and improved with amended House Bill 300 which made changes to insurance agent and surety bail bond agent licensure requirements, including examination requirements, filing a change of address, application requirements, criminal records checks, and continuing education; requiring biennial renewal for insurance agents and making changes to the license renewal requirements for surety bail bond agents; revising and expanding the reasons for which the Superintendent of Insurance may suspend, revoke, or refuse to issue or renew a license of an agent or impose other specified sanctions; adding to the list of certain persons and classes of persons that are prohibited from acting as surety bail bond agents or employees of a surety bail bond agent or business, specifically (1) prisoners incarcerated in any jail, prison, or any other place used for the incarceration of persons, (2) any person employed at an attorney's office, and (3) judges; prohibiting the posting of anything without using a bail instrument representing an insurer to have a defendant released on bail on all types of set court bail with certain exceptions and making changes, with regard to surety bail bond agents, to former law's requirements for appointments by insurers and for registering with a court.

We begin our course study with an analysis of these Bills as promulgated by the Ohio General Assembly. Where the Ohio Revised Code has been amended, revised or repealed, we look at how these *specifically* apply to the business of Surety Bail Bond in the State of Ohio.

BAIL BOND ACT
HB 730

Overview of the House Bill:

The bill enacted several provisions in the Insurance Agents Law (Chapter 3905. of the Revised Code) to provide for the regulation of surety bail bond agents by the Department of Insurance, including the licensing of such agents, the appointment of agents by insurers, agent registration, continuing education requirements, build-up funds and collateral security, prohibited activities, and grounds for disciplinary action. The bill also enacted provisions in the Criminal Code (Title 29) to limit authority for the apprehension or arrest of a principal on bond to those persons meeting the criteria set forth in the bill and to prohibit the use of the title "bail enforcement agent" or "bounty hunter" in Ohio.

Who May Apprehend:

Apprehension of a principal on bond

Limitation on authority; use of certain titles

Under the bill, no person (other than a law enforcement officer) is authorized to apprehend, detain, or arrest a principal on bond, wherever issued, *unless* the person meets certain criteria.

§ 2927.27 Illegal Bail Bond Practices

(A) No person, other than a law enforcement officer, shall apprehend, detain, or arrest a principal on bond, wherever issued, unless that person meets all of the following criteria:

(1) The person is any of the following:

(a) Qualified, licensed, and appointed as a surety bail bond agent under sections 3905.83 to 3905.95 of the Revised Code;

(b) Licensed as a surety bail bond agent by the state where the bond was written;

(c) Licensed as a private investigator under Chapter 4749. of the Revised Code;

(d) Licensed as a private investigator by the state where the bond was written;

(e) An off-duty peace officer, as defined in section 2921.51 of the Revised Code.

(2921.51) “Peace officer” means a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by a political subdivision of this state; a member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code; a member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code; a state university law enforcement officer appointed under section 3345.04 of the Revised Code; a veterans’ home police officer appointed under section 5907.02 of the Revised Code; a special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code; an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within limits of that statutory duty and authority; or a state highway patrol trooper whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances, or rules of the state or any of its political subdivisions.

(2) The person, prior to apprehending, detaining, or arresting the principal, has entered into a written contract with the surety or with a licensed surety bail bond agent appointed by the surety, which contract sets forth the name of the principal who is to be apprehended, detained, or arrested.

For purposes of division (A)(2) of this section, “surety” has the same meaning as in section 3905.83 of the Revised Code.

3905.83(C) “Surety” means an insurer that agrees to be responsible for the fulfillment of the obligation of a principal if the principal fails to fulfill that obligation.

(3) The person, prior to apprehending, detaining, or arresting the principal, has notified the local law enforcement agency having jurisdiction over the area in which such activities will be performed and has provided any form of identification or other information requested by the law enforcement agency.

(B) No person shall represent the person’s self to be a bail enforcement agent or bounty hunter, or claim any similar title, in this state.

Violations

(C)(1) Whoever violates this section is guilty of illegal bail bond agent practices.

(2) A violation of division (A) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to two or more violations of division (A) of this section, a felony of the third degree.

(3) A violation of division (B) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to two or more violations of division (B) of this section, a felony of the third degree.

Necessity of Licensure:

Regulation of surety bail bond agents

Licensing of agents

§ 3905.85 Surety bail bond agent license

(A) (1) An individual who applies for a license as a surety bail bond agent shall submit an application for the license in a manner prescribed by the superintendent of insurance. The application shall be accompanied by a one hundred fifty dollar fee and a statement that gives the applicant's name, age, residence, present occupation, occupation for the five years next preceding the date of the application, and such other information as the superintendent may require.

(2) An applicant for an individual resident license shall also submit to a criminal records check pursuant to section 3905.051 of the Revised Code.

(B)(1) The superintendent shall issue to an applicant an individual resident license that states in substance that the person is authorized to do the business of a surety bail bond agent, if the superintendent is satisfied that all of the following apply:

(a) The applicant is eighteen years of age or older.

(b) The applicant's home state is Ohio.

(c) The applicant is a person of high character and integrity.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section 3905.14 of the Revised Code.

(e) The applicant is a United States citizen or has provided proof of having legal authorization to work in the United States.

(f) The applicant has successfully completed the educational requirements set forth in section 3905.04 of the Revised Code and passed the examination required by that section.

(2) The superintendent shall issue to an applicant an individual nonresident license that states in substance that the person is authorized to do the business of a surety bail bond agent, if the superintendent is satisfied that all of the following apply:

(a) The applicant is eighteen years of age or older.

(b) The applicant is currently licensed as a resident in another state and is in good standing in the applicant's home state for surety bail bond or is qualified for the same authority.

(c) The applicant is a person of high character and integrity.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section 3905.14 of the Revised Code.
(3) The superintendent shall issue an applicant a resident business entity license that states in substance that the person is authorized to do the business of a surety bail bond agent if the superintendent is satisfied that all of the following apply:

(a) The applicant has submitted an application for the license in a manner prescribed by the superintendent and the one-hundred-fifty-dollar application fee.

(b) The applicant either is domiciled in this state or maintains its principal place of business in this state.

(c) The applicant has designated an individual licensed surety bail bond agent who will be responsible for the applicant's compliance with the insurance laws of this state.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section 3905.14 of the Revised Code.

(e) The applicant is authorized to do business in this state by the secretary of state if so required under the applicable provisions of Title XVII of the Revised Code.

(f) The applicant has submitted any other documents requested by the superintendent.

(4) The superintendent shall issue an applicant a nonresident business entity license that states in substance that the person is authorized to do the business of a surety bail bond agent if the superintendent is satisfied that all of the following apply:

(a) The applicant has submitted an application for the license in a manner prescribed by the superintendent and the one-hundred-fifty-dollar application fee.

(b) The applicant is currently licensed and is in good standing in the applicant's home state with surety bail bond authority.

(c) The applicant has designated an individual licensed surety bail bond agent who will be responsible for the applicant's compliance with the insurance laws of this state.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section 3905.14 of the Revised Code.

(e) The applicant has submitted any other documents requested by the superintendent.

(C) A resident and nonresident surety bail bond agent license issued pursuant to this section authorizes the holder, when appointed by an insurer, to execute or countersign bail bonds in connection with judicial proceedings and to receive money or other things of value for those

services. However, the holder shall not execute or deliver a bond during the first one hundred eighty days after the license is initially issued. This restriction does not apply with respect to license renewals or any license issued under divisions (B)(3) and (4) of this section.
(D) The superintendent may refuse to renew a surety bail bond agent's license as provided in division (B) of section 3905.88 of the Revised Code, and may suspend, revoke, or refuse to issue or renew such a license as provided in section 3905.14 of the Revised Code.
If the superintendent refuses to issue such a license based in whole or in part upon the written response to a criminal records check completed pursuant to division (A) of this section, the superintendent shall send a copy of the response that was transmitted to the superintendent to the applicant at the applicant's home address upon the applicant's submission of a written request to the superintendent.

(E) Any person licensed as a surety bail bond agent may surrender the person's license in accordance with section 3905.16 of the Revised Code.

(F) (1) A person seeking to renew a surety bail bond agent license shall apply annually for a renewal of the license on or before the last day of February. Applications shall be submitted to the superintendent on forms prescribed by the superintendent. Each application shall be accompanied by a one-hundred-fifty-dollar renewal fee.

(2) To be eligible for renewal, an individual applicant shall complete the continuing education requirements pursuant to section 3905.88 of the Revised Code prior to the renewal date.

(3) If an applicant submits a completed renewal application, qualifies for renewal pursuant to divisions (F)(1) and (2) of this section, and has not committed any act that is a ground for the refusal to issue, suspension of, or revocation of a license under section 3905.14 or sections 3905.83 to 3905.99 of the Revised Code, the superintendent shall renew the applicant's surety bail bond insurance agent license.

(4) If an individual or business entity does not apply for the renewal of the individual or business entity's license on or before the license renewal date specified in division (F)(1) of this section, the individual or business entity may submit a late renewal application along with all applicable fees required under this chapter prior to the last day of March following the renewal date. The superintendent shall renew the license of an applicant that submits a late renewal application if the applicant satisfies all of the following conditions:

(a) The applicant submits a completed renewal application.

(b) The applicant pays the one-hundred-fifty-dollar renewal fee.

(c) The applicant pays the late renewal fee established by the superintendent.

(d) The applicant provides proof of compliance with the continuing education requirements pursuant to section 3905.88 of the Revised Code.

(e) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section 3905.14 or sections 3905.83 to 3905.99 of the Revised Code.
(5) A license issued under this section that is not renewed on or before its late renewal date specified in division (F)(4) of this section is automatically suspended for nonrenewal effective the first day of April.

(6) If a license is suspended for nonrenewal pursuant to division (F)(5) of this section, the individual or business entity is eligible to apply for reinstatement of the license within the twelve-month period following the date by which the license should have been renewed by complying with the reinstatement procedure established by the superintendent and paying all applicable fees required under this chapter.

(7) A license that is suspended for nonrenewal that is not reinstated pursuant to division (F)(6) of this section automatically is canceled unless the superintendent is investigating any allegations of wrongdoing by the agent or has initiated proceedings under Chapter 119. of the Revised Code. In that case, the license automatically is canceled after the completion of the investigation or proceedings unless the superintendent revokes the license.

(G) The superintendent may prescribe the forms to be used as evidence of the issuance of a license under this section. The superintendent shall require each licensee to acquire, from a source designated by the superintendent, a wallet identification card that includes the licensee's photograph and any other information required by the superintendent. The licensee shall keep the wallet identification card on the licensee's person while engaging in the bail bond business.

(H)(1) The superintendent of insurance shall not issue or renew the license of a business entity organized under the laws of this or any other state unless the business entity is qualified to do business in this state under the applicable provisions of Title XVII of the Revised Code.

(2) The failure of a business entity to be in good standing with the secretary of state or to maintain a valid appointment of statutory agent is grounds for suspending, revoking, or refusing to renew its license.

(3) By applying for a surety bail bond agent license under this section, an individual or business entity consents to the jurisdiction of the courts of this state.

(I) A surety bail bond agent licensed pursuant to this section is an officer of the court.

(J) Any fee collected under this section shall be paid into the state treasury to the credit of the department of insurance operating fund created by section 3901.021 of the Revised Code.

For purposes of the bill, "**insurer**" means any domestic, foreign, or alien insurance company that has been issued a certificate of authority by the Superintendent of Insurance to transact surety business in Ohio (3905.83(A)).

Surrendering of License:

§ 3905.16 Surrender of license

(A)(1) Except as provided in division (A)(2) of this section, any person licensed as an agent under this chapter may at any time surrender any or all licenses held by the person.

(2) No agent shall surrender the agent's licenses if the superintendent of insurance is investigating any allegation of wrongdoing by the agent or has initiated proceedings under Chapter 119. of the Revised Code and notice of an opportunity for a hearing has been issued to the agent, and any attempt to so surrender is invalid.

(B)(1) If an agent's license is surrendered, revoked, suspended, canceled, or inactivated by request, all appointments held by the agent are void. If a new license is issued to that person or if that person's previous license is reinstated or renewed, any appointment of the person to represent an insurer must be made in accordance with the requirements of this chapter.

(2) If an agent's license is surrendered, revoked, or canceled and the person wishes to apply for a new license, the person shall apply as a new agent and shall satisfy all requirements for a new agent license including, if applicable, submitting to a criminal records check under section 3905.051 of the Revised Code.

(C)(1) Any agent, other than a business entity, who is no longer engaged in the business of insurance in any capacity for which an agent's license is required may apply to the superintendent for inactive status. The superintendent may grant such status only if the superintendent is satisfied that the person is not engaged in and does not intend to engage in any of the activities set forth in section 3905.02 of the Revised Code that requires an agent's license.

(2) A person who has been granted inactive status is exempt from any continuing education requirements imposed under this chapter.

(3) The superintendent may adopt rules in accordance with Chapter 119 of the Revised Code to establish procedures for applying for inactive status, criteria used to determine eligibility for such status, and standards and procedures for transferring from inactive to active status.

(D) The superintendent may suspend or revoke a license, or take any other disciplinary action authorized by this chapter, regardless of whether the person is appointed or otherwise authorized to represent an insurer or agent.

Reasons for Suspensions or Revocation:

§ 3905.14 Disciplinary actions

(A) As used in sections 3905.14 to 3905.16 of the Revised Code:

(1) "Insurance agent" includes a limited lines insurance agent, surety bail bond agent, and surplus line broker.

(2) “Refusal to issue or renew” means the decision of the superintendent of insurance not to process either the initial application for a license as an agent or the renewal of such a license.

(3) “Revocation” means the permanent termination of all authority to hold any license as an agent in this state.

(4) “Surrender for cause” means the voluntary termination of all authority to hold any license as an agent in this state, in lieu of a revocation or suspension order.

(5) “Suspension” means the termination of all authority to hold any license as an agent in this state, for either a specified period of time or an indefinite period of time and under any terms or conditions determined by the superintendent.

(B) The superintendent may suspend, revoke, or refuse to issue or renew any license of an insurance agent, assess a civil penalty, or impose any other sanction or sanctions authorized under this chapter, for one or more of the following reasons:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in a license or appointment application;

(2) Violating or failing to comply with any insurance law, rule, subpoena, consent agreement, or order of the superintendent or of the insurance authority of another state;

(3) Obtaining, maintaining, or attempting to obtain or maintain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms, benefits, value, cost, or effective dates of any actual or proposed insurance contract or application for insurance;

(6) Having been convicted of or pleaded guilty or no contest to a felony regardless of whether a judgment of conviction has been entered by the court;

(7) Having been convicted of or pleaded guilty or no contest to a misdemeanor that involves the misuse or theft of money or property belonging to another, fraud, forgery, dishonest acts, or breach of a fiduciary duty, that is based on any act or omission relating to the business of insurance, securities, or financial services, or that involves moral turpitude regardless of whether a judgment has been entered by the court;

(8) Having admitted to committing, or having been found to have committed, any insurance unfair trade act or practice or insurance fraud;

(9) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of business in this state or elsewhere;

(10) Having an insurance agent license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(11) Forging or causing the forgery of an application for insurance or any document related to or used in an insurance transaction;

(12) Improperly using notes, any other reference material, equipment, or devices of any kind to complete an examination for an insurance agent license;

(13) Knowingly accepting insurance business from an individual who is not licensed;

(14) Failing to comply with any official invoice, notice, assessment, or order directing payment of federal, state, or local income tax, state or local sales tax, or workers' compensation premiums;

(15) Failing to timely submit an application for insurance. For purposes of division (B)(15) of this section, a submission is considered timely if it occurs within the time period expressly provided for by the insurer, or within seven days after the insurance agent accepts a premium or an order to bind coverage from a policyholder or applicant for insurance, whichever is later.

(16) Failing to disclose to an applicant for insurance or policyholder upon accepting a premium or an order to bind coverage from the applicant or policyholder, that the person has not been appointed by the insurer;

(17) Having any professional license or financial industry regulatory authority registration suspended or revoked or having been barred from participation in any industry;

(18) Having been subject to a cease and desist order or permanent injunction related to mishandling of funds or breach of fiduciary responsibilities or for unlicensed or unregistered activities;

(19) Causing or permitting a policyholder or applicant for insurance to designate the insurance agent or the insurance agent's spouse, parent, child, or sibling as the beneficiary of a policy or annuity sold by the insurance agent or of a policy or annuity for which the agent, at any time, was designated as the agent of record, unless the insurance agent or a relative of the insurance agent is the insured or applicant;

(20) Causing or permitting a policyholder or applicant for insurance to designate the insurance agent or the insurance agent's spouse, parent, child, or sibling as the owner or beneficiary of a trust funded, in whole or in part, by a policy or annuity sold by the insurance agent or by a policy or annuity for which the agent, at any time, was designated as the agent of record, unless the insurance agent or a relative of the insurance agent is the insured or applicant;

(21) Failing to provide a written response to the department of insurance within twenty-one calendar days after receipt of any written inquiry from the department, unless a reasonable extension of time has been requested of, and granted by, the superintendent or the superintendent's designee;

(22) Failing to appear to answer questions before the superintendent after being notified in writing by the superintendent of a scheduled interview, unless a reasonable extension of time has been requested of, and granted by, the superintendent or the superintendent's designee;

(23) Transferring or placing insurance with an insurer other than the insurer expressly chosen by the applicant for insurance or policyholder without the consent of the applicant or policyholder or absent extenuating circumstances;

(24) Failing to inform a policyholder or applicant for insurance of the identity of the insurer or insurers, or the identity of any other insurance agent or licensee known to be involved in procuring, placing, or continuing the insurance for the policyholder or applicant, upon the binding of the coverage;

(25) In the case of an agent that is a business entity, failing to report an individual licensee's violation to the department when the violation was known or should have been known by one or more of the partners, officers, managers, or members of the business entity;

(26) Submitting or using a document in the conduct of the business of insurance when the person knew or should have known that the document contained a writing that was forged as defined in section 2913.01 of the Revised Code;

(27) Misrepresenting the person's qualifications, status or relationship to another person, agency, or entity, or using in any way a professional designation that has not been conferred upon the person by the appropriate accrediting organization;

(28) Obtaining a premium loan or policy surrender or causing a premium loan or policy surrender to be made to or in the name of an insured or policyholder without that person's knowledge and written authorization;

(29) Using paper, software, or any other materials of or provided by an insurer after the insurer has terminated the authority of the licensee, if the use of such materials would cause a reasonable person to believe that the licensee was acting on behalf of or otherwise representing the insurer;

(30) Soliciting, procuring an application for, or placing, either directly or indirectly, any insurance policy when the person is not authorized under this chapter to engage in such activity;

(31) Soliciting, selling, or negotiating any product or service that offers benefits similar to insurance but is not regulated by the superintendent, without fully disclosing, orally and in writing, to the prospective purchaser that the product or service is not insurance and is not regulated by the superintendent;

(32) Failing to fulfill a refund obligation to a policyholder or applicant in a timely manner. For purposes of division (B)(32) of this section, a rebuttable presumption exists that a refund obligation is not fulfilled in a timely manner unless it is fulfilled within one of the following time periods:

(a) Thirty days after the date the policyholder, applicant, or insurer takes or requests action resulting in a refund;

(b) Thirty days after the date of the insurer's refund check, if the agent is expected to issue a portion of the total refund;

(c) Forty-five days after the date of the agent's statement of account on which the refund first appears.

The presumption may be rebutted by proof that the policyholder or applicant consented to the delay or agreed to permit the agent to apply the refund to amounts due for other coverages.

(33) With respect to a surety bail bond agent license, rebating or offering to rebate, or unlawfully dividing or offering to divide, any commission, premium, or fee;

(34) Using a license for the principal purpose of procuring, receiving, or forwarding applications for insurance of any kind, other than life, or soliciting, placing, or effecting such insurance directly or indirectly upon or in connection with the property of the licensee or that of relatives, employers, employees, or that for which they or the licensee is an agent, custodian, vendor, bailee, trustee, or payee;

(35) In the case of an insurance agent that is a business entity, using a life license for the principal purpose of soliciting or placing insurance on the lives of the business entity's officers, employees, or shareholders, or on the lives of relatives of such officers, employees, or shareholders, or on the lives of persons for whom they, their relatives, or the business entity is agent, custodian, vendor, bailee, trustee, or payee;

(36) Offering, selling, soliciting, or negotiating policies, contracts, agreements, or applications for insurance, or annuities providing fixed, variable, or fixed and variable benefits, or contractual payments, for or on behalf of any insurer or multiple employer welfare arrangement not authorized to transact business in this state, or for or on behalf of any spurious, fictitious, nonexistent, dissolved, inactive, liquidated or liquidating, or bankrupt insurer or multiple employer welfare arrangement;

(37) In the case of a resident business entity, failing to be qualified to do business in this state under Title XVII of the Revised Code, failing to be in good standing with the secretary of state, or failing to maintain a valid appointment of statutory agent with the secretary of state;

(38) In the case of a nonresident agent, failing to maintain licensure as an insurance agent in the agent's home state for the lines of authority held in this state;

(39) Knowingly aiding and abetting another person or entity in the violation of any insurance law of this state or the rules adopted under it.

(C) Before denying, revoking, suspending, or refusing to issue any license or imposing any penalty under this section, the superintendent shall provide the licensee or applicant with notice and an opportunity for hearing as provided in Chapter 119. of the Revised Code, except as follows:

(1)(a) Any notice of opportunity for hearing, the hearing officer's findings and recommendations, or the superintendent's order shall be served by certified mail at the last known address of the licensee or applicant. Service shall be evidenced by return receipt signed by any person.

For purposes of this section, the "last known address" is the residential address of a licensee or applicant, or the principal-place-of-business address of a business entity, that is contained in the licensing records of the department.

(b) If the certified mail envelope is returned with an endorsement showing that service was refused, or that the envelope was unclaimed, the notice and all subsequent notices required by Chapter 119 of the Revised Code may be served by ordinary mail to the last known address of the licensee or applicant. The mailing shall be evidenced by a certificate of mailing. Service is deemed complete as of the date of such certificate provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery. The time period in which to request a hearing, as provided in Chapter 119 of the Revised Code, begins to run on the date of mailing.

(c) If service by ordinary mail fails, the superintendent may cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the party is located. The notice is considered served on the date of the third publication.

(d) Any notice required to be served under Chapter 119. of the Revised Code shall also be served upon the party's attorney by ordinary mail if the attorney has entered an appearance in the matter.

(e) The superintendent may, at any time, perfect service on a party by personal delivery of the notice by an employee of the department.

(f) Notices regarding the scheduling of hearings and all other matters not described in division (C)(1)(a) of this section shall be sent by ordinary mail to the party and to the party's attorney.

(2) Any subpoena for the appearance of a witness or the production of documents or other evidence at a hearing, or for the purpose of taking testimony for use at a hearing, shall be served by certified mail, return receipt requested, by an attorney or by an employee of the department designated by the superintendent. Such subpoenas shall be enforced in the manner provided in

section 119.09 of the Revised Code. Nothing in this section shall be construed as limiting the superintendent's other statutory powers to issue subpoenas.

(D) If the superintendent determines that a violation described in this section has occurred, the superintendent may take one or more of the following actions:

(1) Assess a civil penalty in an amount not exceeding twenty-five thousand dollars per violation;

(2) Assess administrative costs to cover the expenses incurred by the department in the administrative action, including costs incurred in the investigation and hearing processes. Any costs collected shall be paid into the state treasury to the credit of the department of insurance operating fund created in section 3901.021 of the Revised Code.

(3) Suspend all of the person's licenses for all lines of insurance for either a specified period of time or an indefinite period of time and under such terms and conditions as the superintendent may determine;

(4) Permanently revoke all of the person's licenses for all lines of insurance;

(5) Refuse to issue a license;

(6) Refuse to renew a license;

(7) Prohibit the person from being employed in any capacity in the business of insurance and from having any financial interest in any insurance agency, company, surety bail bond business, or third-party administrator in this state. The superintendent may, in the superintendent's discretion, determine the nature, conditions, and duration of such restrictions.

(8) Order corrective actions in lieu of or in addition to the other penalties listed in division (D) of this section. Such an order may provide for the suspension of civil penalties, license revocation, license suspension, or refusal to issue or renew a license if the licensee complies with the terms and conditions of the corrective action order.

(9) Accept a surrender for cause offered by the licensee, which shall be for at least five years and shall prohibit the licensee from seeking any license authorized under this chapter during that time period. A surrender for cause shall be in lieu of revocation or suspension and may include a corrective action order as provided in division (D)(8) of this section.

(E) The superintendent may consider the following factors in denying a license, imposing suspensions, revocations, fines, or other penalties, and issuing orders under this section:

(1) Whether the person acted in good faith;

(2) Whether the person made restitution for any pecuniary losses suffered by other persons as a result of the person's actions;

(3) The actual harm or potential for harm to others;

(4) The degree of trust placed in the person by, and the vulnerability of, persons who were or could have been adversely affected by the person's actions;

(5) Whether the person was the subject of any previous administrative actions by the superintendent;

(6) The number of individuals adversely affected by the person's acts or omissions;

(7) Whether the person voluntarily reported the violation, and the extent of the person's cooperation and acceptance of responsibility;

(8) Whether the person obstructed or impeded, or attempted to obstruct or impede, the superintendent's investigation;

(9) The person's efforts to conceal the misconduct;

(10) Remedial efforts to prevent future violations;

(11) If the person was convicted of a criminal offense, the nature of the offense, whether the conviction was based on acts or omissions taken under any professional license, whether the offense involved the breach of a fiduciary duty, the amount of time that has passed, and the person's activities subsequent to the conviction;

(12) Such other factors as the superintendent determines to be appropriate under the circumstances.

(F)(1) A violation described in division (B)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (16), (17), (18), (19), (20), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34), (35), and (36) of this section is a class A offense for which the superintendent may impose any penalty set forth in division (D) of this section.

(2) A violation described in division (B)(15) or (21) of this section, or a failure to comply with section 3905.061, 3905.071, or 3905.22 of the Revised Code, is a class B offense for which the superintendent may impose any penalty set forth in division (D)(1), (2), (8), or (9) of this section.

(3) If the superintendent determines that a violation described in division (B)(36) of this section has occurred, the superintendent shall impose a minimum of a two-year suspension on all of the person's licenses for all lines of insurance.

(G) If a violation described in this section has caused, is causing, or is about to cause substantial and material harm, the superintendent may issue an order requiring that person to cease and desist from engaging in the violation. Notice of the order shall be mailed by certified mail, return receipt requested, or served in any other manner provided for in this section, immediately after its issuance to the person subject to the order and to all persons known to be involved in the

violation. The superintendent may thereafter publicize or otherwise make known to all interested parties that the order has been issued.

The notice shall specify the particular act, omission, practice, or transaction that is subject to the cease-and-desist order and shall set a date, not more than fifteen days after the date of the order, for a hearing on the continuation or revocation of the order. The person shall comply with the order immediately upon receipt of notice of the order.

The superintendent may, upon the application of a party and for good cause shown, continue the hearing. Chapter 119 of the Revised Code applies to such hearings to the extent that that chapter does not conflict with the procedures set forth in this section. The superintendent shall, within fifteen days after objections are submitted to the hearing officer's report and recommendation, issue a final order either confirming or revoking the cease-and-desist order. The final order may be appealed as provided under section 119.12 of the Revised Code.

The remedy under this division is cumulative and concurrent with the other remedies available under this section.

(H) If the superintendent has reasonable cause to believe that an order issued under this section has been violated in whole or in part, the superintendent may request the attorney general to commence and prosecute any appropriate action or proceeding in the name of the state against such person.

The court may, in an action brought pursuant to this division, impose any of the following:

(1) For each violation, a civil penalty of not more than twenty-five thousand dollars;

(2) Injunctive relief;

(3) Restitution;

(4) Any other appropriate relief.

(I) With respect to a surety bail bond agent license:

(1) Upon the suspension or revocation of a license, or the eligibility of a surety bail bond agent to hold a license, the superintendent likewise may suspend or revoke the license or eligibility of any surety bail bond agent who is employed by or associated with that agent and who knowingly was a party to the act that resulted in the suspension or revocation.

(2) The superintendent may revoke a license as a surety bail bond agent if the licensee is adjudged bankrupt.

(J) Nothing in this section shall be construed to create or imply a private cause of action against an agent or insurer.

Agents and Consumer Fees:

§ 3905.55 Agent fees

(A) Except as provided in division (B) of this section, an agent may charge a consumer a fee if all of the following conditions are met:

(1) The fee is disclosed to the consumer in a manner that separately identifies the fee and the premium.

(2) The fee is not calculated as a percentage of the premium.

(3) The fee is not refunded, forgiven, waived, offset, or reduced by any commission earned or received for any policy or coverage sold.

(4) The amount of the fee, and the consumer's obligation to pay the fee, are not conditioned upon the occurrence of a future event or condition, such as the purchase, cancellation, lapse, declination, or nonrenewal of insurance.

(5) The agent discloses to the consumer that the fee is being charged by the agent and not by the insurance company, that neither state law nor the insurance company requires the agent to charge the fee, and that the fee is not refundable.

(6) The consumer consents to the fee.

(7) The agent, in charging the fee, does not discriminate on the basis of race, sex, national origin, religion, disability, health status, age, marital status, military status as defined in section 4112.01 of the Revised Code, or geographic location, and does not unfairly discriminate between persons of essentially the same class and of essentially the same hazard or expectation of life.

(B) A fee may not be charged for taking or submitting an initial application for coverage with any one insurer or different programs with the same insurer, or processing a change to an existing policy, a cancellation, a claim, or a renewal, in connection with any of the following personal lines policies:

(1) Private passenger automobile;

(2) Homeowners, including coverage for tenants or condominium owners, owner-occupied fire or dwelling property coverage, personal umbrella liability, or any other personal lines-related coverage whether sold as a separate policy or as an endorsement to another personal lines policy;

(3) Individual life insurance;

(4) Individual sickness or accident insurance;

(5) Disability income policies;

(6) Credit insurance products.

(C) Notwithstanding any other provision of this section, an agent may charge a fee for agent services in connection with a policy issued on a no-commission basis, if the agent provides the consumer with prior disclosure of the fee and of the services to be provided.

(D) In the event of a dispute between an agent and a consumer regarding any disclosure required by this section, the agent has the burden of proving that the disclosure was made.

(E)(1) No person shall fail to comply with this section.

(2) Whoever violates division (E)(1) of this section is deemed to have engaged in an unfair and deceptive act or practice in the business of insurance under sections 3901.19 to 3901.26 of the Revised Code.

(F) This section does not apply with respect to any expense fee charged by a surety bail bond agent to cover the costs incurred by the surety bail bond agent in executing the bail bond.

§ 3905.851 No imposition of local licensing fees

A surety bail bond agent qualified, licensed, and appointed in accordance with sections 3905.83 to 3905.95 of the Revised Code shall not be required to pay any licensing fee imposed by a political subdivision of this state to perform any of the functions, duties, or powers prescribed for surety bail bond agents under those sections

Qualifications of Surety Bond Agent:

License required; persons not qualified to act as agents.

§ 3905.84 Surety bail bond agent to be qualified, licensed, and appointed

No person shall act in the capacity of a surety bail bond agent, or perform any of the functions, duties, or powers prescribed for surety bail bond agents under sections 3905.83 to 3905.95 of the Revised Code, unless that person is qualified, licensed, and appointed as provided in those sections.

§ 3905.841 Persons or classes of persons not to act as agents

The following persons or classes of persons shall not act as surety bail bond agents or employees of a surety bail bond agent or bail bond business and shall not directly or indirectly receive any benefits from the execution of a bail bond, except as a principal:

(A) Jailers or other persons employed in a detention facility, as defined in section 2921.01 of the Revised Code;

(B) Prisoners incarcerated in any jail, prison, or any other place used for the incarceration of persons;

(C) Peace officers as defined in section 2921.51 of the Revised Code, including volunteer or honorary peace officers, or other employees of a law enforcement agency;

(D) Committing magistrates, judges, employees of a court, or employees of the clerk of any court;

(E) Attorneys or any person employed at an attorney's office;

(F) Any other persons having the power to arrest, or persons who have authority over or control of, federal, state, county, or municipal corporation prisoners.

The bill also clarified that the current prohibition against soliciting or effecting insurance policies without being licensed by the Superintendent *includes* soliciting or effecting fidelity, surety, or guaranty bonds.

Definitions of Terms:

(A) "INSURER" MEANS ANY DOMESTIC, FOREIGN, OR ALIEN INSURANCE COMPANY THAT HAS BEEN ISSUED A CERTIFICATE OF AUTHORITY BY THE SUPERINTENDENT OF INSURANCE TO TRANSACT SURETY BUSINESS IN THIS STATE.

(B) "MANAGING GENERAL AGENT" MEANS ANY PERSON THAT IS APPOINTED OR EMPLOYED BY AN INSURER TO SUPERVISE OR OTHERWISE MANAGE THE BAIL BOND BUSINESS WRITTEN IN THIS STATE BY SURETY BAIL BOND AGENTS APPOINTED BY THE INSURER.

(C) "SURETY" MEANS AN INSURER THAT AGREES TO BE RESPONSIBLE FOR THE FULFILLMENT OF THE OBLIGATION OF A PRINCIPAL IF THE PRINCIPAL FAILS TO FULFILL THAT OBLIGATION.

License renewals; surrender

Any person licensed as a surety bail bond agent may surrender the person's license in accordance with section 3905.16 of the Revised Code.

A person seeking to renew a surety bail bond agent license shall apply annually for a renewal of the license on or before the last day of February. Applications shall be submitted to the superintendent on forms prescribed by the superintendent. Each application shall be accompanied by a one-hundred-fifty-dollar renewal fee.

To be eligible for renewal, an individual applicant shall complete the continuing education requirements consisting of seven (7) hours of approved study to include one (1) hour of ethics.

If an applicant submits a completed renewal application, qualifies for renewal and has not committed any act that is a ground for the refusal to issue, suspension of, or revocation of a license under section 3905.14 or sections 3905.83 to 3905.99 of the Revised Code, the superintendent shall renew the applicant's surety bail bond insurance agent license.

Appointment of agents by insurers

§ 3905.86 Appointment of agent by insurer

(A) Any person licensed as a surety bail bond agent may be appointed by an insurer in accordance with this section.

(B) To appoint a surety bail bond agent as its agent, an insurer shall file a notice of appointment with the superintendent of insurance in the manner prescribed by the superintendent. All insurers shall pay to the superintendent a fee pursuant to division (A)(8) of section 3905.40 of the Revised Code for each such appointment when issued and for each continuance thereafter. Such an appointment, unless canceled by the insurer, may be continued in force past the thirtieth day of June next after its issue and after the thirtieth day of June of each succeeding year provided that the appointee is licensed and is eligible for the appointment.

Any fee collected under this division shall be paid into the state treasury to the credit of the department of insurance operating fund created by section 3901.021 of the Revised Code.

(C)(1) By appointing a surety bail bond agent, an insurer certifies to the superintendent that the person is competent, financially responsible, and suitable to represent the insurer.

(2) An insurer shall be bound by the acts of the person named in the appointment within that person's actual or apparent authority as its agent.

(D) A surety bail bond agent shall not represent to the public that the agent has authority to represent a particular insurer until the insurer has acknowledged that authority by appointment of the agent in accordance with this section.

Agent Registration and Filing Requirements:

Agent registration

§ 3905.87 Registration of agent with court clerks; list of court-registered surety bail bond agents

(A) A surety bail bond agent shall not file a bond in any court of this state unless the agent is licensed and appointed under sections 3905.83 to 3905.95 of the Revised Code and has registered with the clerk of that court pursuant to division (B) of this section, if registration is required by the court.

(B) To register with a court, a surety bail bond agent shall file, with the clerk of the court, a copy of the agent's surety bail bond license, a copy of the agent's driver's license or state identification card, and a certified copy of the surety bail bond agent's appointment by power of attorney from each insurer that the surety bail bond agent represents. An agent shall renew the agent's registration biennially by the first day of August of each odd-numbered year.

(C) The clerk of the court shall make available a list of court-registered surety bail bond agents to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction annually not later than the first day of September. If an agent registers with a court after the last day of August, the court shall add that agent to the list and make the updated list available to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction within twenty-four hours of the court's approval of that registration.

Required Study:

§ 3905.88 Continuing education

(A) Each individual who is issued a license as a resident surety bail bond agent shall complete at least seven (7) hours of continuing education in each license renewal period. The continuing education shall be offered in a course or program of study related to the bail bond business that is approved by the superintendent of insurance in consultation with the insurance agent education advisory council and shall include at least one (1) hour of approved ethics training.

(B) The superintendent shall not renew the license of any surety bail bond agent who fails to meet the requirements of division (A) of this section or whose application for renewal does not meet the requirements of section 3905.85 of the Revised Code.

§ 3905.95 Rules

The superintendent of insurance shall adopt, in accordance with Chapter 119. of the Revised Code, any rules necessary to implement sections 3905.83 to 3905.95 of the Revised Code.

License Changes and Maintaining Records:

Records; notification requirements

§ 3905.90 Records of surety bonds to be maintained - furnishing of information

Each surety bail bond agent shall maintain all records of surety bonds executed or countersigned by the surety bail bond agent for at least three years after the liability of the surety has been terminated. Those records shall be open, at all times, to examination, inspection, and photographic reproduction by any employee or agent of the department of insurance, or by any authorized representative of the insurer or Managing General Agent. The superintendent of insurance at any time may require the licensee to furnish to the department, in the manner and

form that the superintendent requires, any information concerning the surety bond business of the licensee.

§ 3905.89 Notice of change of principal business address or telephone number

Each person licensed under sections 3905.83 to 3905.95 of the Revised Code shall notify in writing the appropriate insurer or Managing General Agent, and the clerk of the court of common pleas of the county in which the licensee is registered, within thirty days after a change in the licensee's principal business address or telephone number.

This notification requirement is in addition to the notification requirements set forth in other provisions of this chapter.

As used in the bill, "**surety**" means an insurer that agrees to be responsible for the fulfillment of the obligation of a principal if the principal fails to fulfill that obligation.

As defined in *Black's Law Dictionary* (Fifth Edition), "principal" is the person primarily liable, for whose performance of an obligation the guarantor or surety has become bound

"**Managing General Agent (MGA)**" is defined as any person that is appointed or employed by an insurer to supervise or otherwise manage the bail bond business written in Ohio by surety bail bond agents appointed by the insurer. (3905.83(B) and (C).)

Build-up Fund Accounts:

Build-up funds

§ 3905.91 Build-up funds

(A) All build-up funds posted by a surety bail bond agent or Managing General Agent, either with an insurer or Managing General Agent representing an insurer, shall be maintained in an individual build-up trust account for the surety bail bond agent by the insurer or the Managing General Agent. The insurer or Managing General Agent shall establish the account in a federally insured bank or savings and loan association in this state jointly in the name of the surety bail bond agent and the insurer or Managing General Agent, or in trust for the surety bail bond agent by the insurer or Managing General Agent. The account shall be open to inspection and examination by the department of insurance at all times. The insurer or Managing General Agent shall maintain an accounting of all of those funds, which accounting designates the amounts collected on each bond written.

(B) Build-up funds shall not exceed forty per cent of the premium as established by the surety bail bond agent's contract agreement with the insurer or Managing General Agent. Build-up funds received shall be immediately deposited to the build-up trust account. Interest earned on build-up trust accounts shall accrue to the surety bail bond agent.

(C) Build-up funds are due upon termination of the surety bail bond agent's contract and discharge of liabilities on the bonds for which the build-up funds were posted. The insurer or Managing General Agent shall pay the funds to the surety bail bond agent not later than six months after the funds are due.

Rules for Accepting Collateral:

Collateral security

General requirements

§ 3905.92 Requirements for acceptance of collateral security or other indemnity

(A) A surety bail bond agent that accepts collateral security or other indemnity shall comply with all of the following requirements:

(1) The collateral security or other indemnity shall be reasonable in relation to the amount of the bond.

(2) The collateral security or other indemnity shall not be used by the surety bail bond agent for personal benefit or gain and shall be returned in the same condition as received.

(3) Acceptable forms of collateral security or indemnity include cash or its equivalent, a promissory note, an indemnity agreement, a real property mortgage in the name of the surety, and any filing under Chapter 1309. of the Revised Code. If the surety bail bond agent accepts on a bond collateral security in excess of fifty thousand dollars in cash, the cash amount shall be made payable to the surety in the form of a cashier's check, United States postal money order, certificate of deposit, or wire transfer.

(4) The surety bail bond agent shall provide to the person giving the collateral security or other indemnity, a written, numbered receipt that describes in a detailed manner the collateral security or other indemnity received, along with copies of any documents rendered.

(5) The collateral security or other indemnity shall be received and held in the surety's name by the surety bail bond agent in a fiduciary capacity and, prior to any forfeiture of bail, shall be kept separate and apart from any other funds or assets of the surety bail bond agent. However, when collateral security in excess of fifty thousand dollars in cash or its equivalent is received on a bond, the surety bail bond agent promptly shall forward the entire amount to the surety or Managing General Agent.

(B) Collateral security may be placed in an interest-bearing account in a federally insured bank or savings and loan association in this state, to accrue to the benefit of the person giving the collateral security. The surety bail bond agent, surety, or Managing General Agent shall not make any pecuniary gain on the collateral security deposited.

Rules Governing Return of Collateral:

Liability of the surety.

(C)(1) The surety is liable for all collateral security or other indemnity accepted by a surety bail bond agent. If, upon final termination of liability on a bond, the surety bail bond agent or Managing General Agent fails to return the collateral security to the person that gave it, the surety shall return the actual collateral to that person or, in the event that the surety cannot locate the collateral, shall pay the person in accordance with this section.

(2) A surety's liability as described in division (C)(1) of this section survives the termination of the surety bail bond agent's appointment, with respect to those bonds that were executed by the surety bail bond agent prior to the termination of the appointment.

Forfeiture of a Bond:

Forfeiture.

(D) If a forfeiture occurs, the surety bail bond agent or surety shall give the principal and the person that gave the collateral security ten days' written notice of intent to convert the collateral deposit into cash to satisfy the forfeiture. The notice shall be sent by certified mail, return receipt requested, to the last known address of the principal and the person that gave the collateral. The surety bail bond agent or surety shall convert the collateral deposit into cash within a reasonable period of time and return that which is in excess of the face value of the bond minus the actual and reasonable expenses of converting the collateral into cash. In no event shall these expenses exceed ten per cent of the face value of the bond. However, upon motion and proof that the actual and reasonable expenses exceed ten per cent, the court may allow recovery of the full amount of the actual and reasonable expenses. If there is a remission of forfeiture that required the surety to pay the bond to the court, the surety shall pay to the person that gave the collateral the value of any collateral received for the bond minus the actual and reasonable expenses permitted to be recovered under this division.

Waiver of provisions; penalty for failure to comply.

(E) A surety bail bond agent or surety shall not solicit or accept a waiver of any of the provisions of this section, or enter into any agreement as to the value of the collateral.(F) No person shall fail to comply with this section.

Requirements to Execute a Bond:

Sec. 3905.93. A SURETY BAIL BOND AGENT SHALL NOT EXECUTE A BAIL BOND WITHOUT DOING BOTH OF THE FOLLOWING:

(A) CHARGING THE PREMIUM RATE (10%) FILED WITH AND APPROVED BY THE SUPERINTENDENT OF INSURANCE;

(B) DISCLOSING THE EXPENSE FEE THAT WILL BE CHARGED TO COVER THE COSTS INCURRED BY THE AGENT IN EXECUTING THE BOND.

Discharge of the Bond:

Discharge of the bond; failure to return collateral.

§ 3905.921 Discharge of bond where collateral security or other indemnity accepted

(A) If collateral security or other indemnity is accepted on a bond, the surety bail bond agent, Managing General Agent, or surety shall make, upon demand, a written request to the court for a discharge of the bond to be delivered to the surety or the surety's agent.
If the obligation of the surety on the bond is released in writing by the court and a discharge is provided to the surety or the surety's agent, the collateral security or other indemnity, except a promissory note or an indemnity agreement, shall be returned, within twenty-one days after the discharge is provided, to the person that gave the collateral security or other indemnity, unless another disposition is provided for by legal assignment of the right to receive the collateral to another person. If, despite diligent inquiry by the surety or the surety's agent to determine that the bond has been discharged, the court fails to provide a written discharge within thirty days after the written request was made to the court, the bond shall be considered canceled by operation of law, and the collateral security or other indemnity, except a promissory note or an indemnity agreement, shall be returned, within twenty-one days after the written request for discharge was made to the court, to the person that gave the collateral security or other indemnity.

(B) No fee or other charge, other than those authorized by sections 3905.83 to 3905.95 of the Revised Code or by rule of the superintendent of insurance, shall be deducted from the collateral due. However, allowable expenses incurred in the apprehension of a defendant because of a forfeiture of bond or judgment may be deducted if those expenses are accounted for.

(C)(1) No person shall fail to return collateral security in accordance with this section.

(2) A violation of division (C)(1) of this section shall be punishable as follows:

Value of the Collateral	Penalty
Less than $500	First degree misdemeanor
At least $500 but less than $5,000	Fifth degree felony
At least $5,000 but less than $10,000	Fourth degree felony
At least $10,000	Third degree felony

What Cannot Be Done:

Prohibited activities

Surety bail bond agents

§ 3905.93 Bail bond - charges and fees

A surety bail bond agent shall not execute a bail bond without doing both of the following:

(A) Charging the premium rate (10%) filed with and approved by the superintendent of insurance;

(B) Disclosing the expense fee that will be charged to cover the costs incurred by the agent in executing the bond.

§ 3905.933 Signing or countersigning agent's name to a bond

(A) A surety bail bond agent shall not sign or countersign in blank any bond, or give a power of attorney to, or otherwise authorize, anyone to countersign the surety bail bond agent's name to a bond unless the person so authorized is a licensed and appointed surety bail bond agent directly employed by the surety bail bond agent giving that authority.

(B) A surety bail bond agent shall not divide with any other person, or share in, any commissions payable on account of a bail bond, except as between other surety bail bond agents that are licensed or otherwise qualified to engage in the bail bond business in their state of domicile.

Surety bail bond agents and insurers.

§ 3905.932 Prohibited acts

A surety bail bond agent or insurer shall not do any of the following:

(A) Suggest or advise the employment of, or name for employment, any particular attorney to represent its principal;

(B) Solicit business in, or on the property or grounds of, a detention facility, as defined in section 2921.01 of the Revised Code, or in, or on the property or grounds of, any court. For purposes of this division, "solicit" includes, but is not limited to, the distribution of business cards, print advertising, or any other written information directed to prisoners or potential indemnitors, unless a request is initiated by the prisoner or potential indemnitor. Permissible print advertising in a detention facility is strictly limited to a listing in a telephone directory and the posting of the surety bail bond agent's name, address, and telephone number in a designated location within the detention facility.

(C) Wear or otherwise display any identification, other than the wallet identification card required under division (G) of section 3905.85 of the Revised Code, in or on the property or grounds of a detention facility, as defined in section 2921.01 of the Revised Code, or in or on the property or grounds of any court;

(D) Pay a fee or rebate or give or promise anything of value to a jailer, law enforcement officer, committing magistrate, or other person who has power to arrest or to hold in custody, or to any public official or public employee, in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or estreatment of bail;

(E) Pay a fee or rebate or give or promise anything of value to an attorney in a bail bond matter, except in defense of any action on a bond;

(F) Pay a fee or rebate or give or promise anything of value to the principal or to anyone in the principal's behalf;

(G) Post anything without using a bail instrument representing an insurer, to have a defendant released on bail on all types of set court bail, except for the following:

(1) Cash court fees or cash reparation fees;

(2) Ten per cent assignments;

(3) Other nonsurety court bonds, if the agent provides full written disclosure and receipts and retains copies of all documents and receipts for not less than three years.

(H) Participate in the capacity of an attorney at a trial or hearing of a principal;

(I) Accept anything of value from a principal for providing a bail bond, other than the premium filed with and approved by the superintendent of insurance and an expense fee, except that the surety bail bond agent may, in accordance with section 3905.92 of the Revised Code, accept collateral security or other indemnity from a principal or other person together with documentary stamp taxes if applicable. No fees, expenses, or charges of any kind shall be deducted from the collateral held or any return premium due, except as authorized by sections 3905.83 to 3905.95 of the Revised Code or by rule of the superintendent. A surety bail bond agent, upon written agreement with another party, may receive a fee or other compensation for returning to custody an individual who has fled the jurisdiction of the court or caused the forfeiture of a bond.

(J) Execute a bond in this state on the person's own behalf;

(K) Execute a bond in this state if a judgment has been entered on a bond executed by the surety bail bond agent, which judgment has remained unpaid for at least sixty days after all appeals have been exhausted, unless the full amount of the judgment is deposited with the clerk of the court.

As used in this section, "instrument" means a fiduciary form showing a dollar amount for a surety bail bond.

Misleading or False Advertising:

§ 3905.934 Advertising requirements

(A) A surety bail bond agent shall not make, publish, or otherwise disseminate, directly or indirectly, any misleading or false advertisement, or engage in any other deceptive trade practice.

(B) All advertising by a surety bail bond agent shall include the address of record of the agent on file with the department of insurance.

Surety bail bond agents, insurers, and MGAs

§ 3905.931 Furnishing of forms and other supplies

(A) No insurer, Managing General Agent, or surety bail bond agent shall furnish to any person any blank form, application, stationery, business card, or other supplies to be used in soliciting, negotiating, or effecting bail bonds unless the person is licensed to act as a surety bail bond agent and is appointed by an insurer. This division does not prohibit an unlicensed employee, under the direct supervision and control of a licensed and appointed surety bail bond agent, from possessing or executing in the surety bond office, any form, other than a power of attorney, bond form, or collateral receipt, while acting within the scope of the employee's employment.

(B) An insurer that furnishes any of the supplies mentioned in division (A) of this section to any surety bail bond agent or other person not appointed by an insurer and that accepts any bail bond business from or writes any bail bond business for that surety bail bond agent or other person is liable on the bond to the same extent and in the same manner as if the surety bail bond agent or other person had been appointed or authorized by an insurer to act in its behalf.

Revocation of License and Restrictions:

Grounds for disciplinary action; procedures

Under the bill, the grounds for disciplinary action and procedures currently applicable to insurance agents is extended to apply to surety bail bond agents. Consequently, the Superintendent of Insurance may suspend, revoke, or refuse to issue or renew a surety bail bond agent license, or impose any other sanction authorized under the Insurance Agents Law, for the reasons specified in, and in accordance with the procedures provided by, current law. The bill makes conforming changes where necessary, and adds "engaging in any dishonest practice in connection with the business of insurance" as an additional reason for disciplinary action. It also adds, with respect to a surety bail bond agent license, "rebating or offering to rebate, or unlawfully dividing or offering to divide, any commission." The Superintendent is also permitted to revoke a license as a surety bail bond agent if the licensee is adjudged bankrupt.

Upon the suspension or revocation of a surety bail bond agent license, or the eligibility of a surety bail bond agent to hold a license, the Superintendent likewise may suspend or revoke the license or eligibility of any surety bail bond agent who is employed by or associated with that agent *and* who knowingly was a party to the act that resulted in the suspension or revocation.

§ 3905.94 License suspension or revocation

If the superintendent of insurance, in accordance with section 3905.14 of the Revised Code, suspends or revokes a person's license as a surety bail bond agent, the person, during the period

of suspension or revocation, shall not be employed by any surety bail bond agent, have any ownership interest in any business involving bail bonds, or have any financial interest of any type in any bail bond business.

Regarding Previously Written Bonds:

§ 3905.941 Designation of successor agent

Upon the surrender, suspension, or revocation of a surety bail bond agent's license, the appointing insurer or Managing General Agent immediately shall designate a licensed and appointed surety bail bond agent to administer all bail bonds previously written by the licensee.

Adoption of Rules by Superintendent:

Rule-making authority of the Superintendent

§ 3905.95 Rules.

The superintendent of insurance shall adopt, in accordance with Chapter 119. of the Revised Code, any rules necessary to implement sections 3905.83 to 3905.95 of the Revised Code.

Violations and Fines:

§ 3905.99 Penalty

(A) Whoever violates section 3905.182 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars or imprisoned not more than six months, or both.

(B) Whoever violates section 3905.31 or 3905.33 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars or imprisoned not more than one year, or both.

(C) Whoever violates section 3905.37 or 3905.43 of the Revised Code shall be fined not less than one hundred nor more than five hundred dollars.

(D) Whoever violates section 3905.02, division (F) of section 3905.92, or division (A) of section 3905.931 of the Revised Code is guilty of a misdemeanor of the first degree.

(E) Whoever violates section 3905.84 of the Revised Code is guilty of a misdemeanor of the first degree on a first or second offense and of a felony of the third degree on each subsequent offense.

# # #

Other Provisions of the House Bill:

Disposition of fees

All license application and renewal fees and agent appointment fees collected under the bill are to be paid into the state treasury to the credit of the Department of Insurance Operating Fund

HB 300 – SPECIFIC TO SURETY BAIL
REITERATION & STRENGTHENING HB 730

Resident Agent License Examination:

Under continuing law, a resident of Ohio who applies for an insurance agent license with any of the following lines of authority must take a written examination prior to licensure: life, accident and health, property, casualty, personal lines, title, surety bail bonds, and any other line of authority designated by the Superintendent of Insurance. Additionally, the act requires that an individual pass the written examination before applying for licensure and requires the individual to pay only an examination fee, rather than an application fee, before admission to the examination (3905.04(A)).

Unless an individual is applying for a title insurance line of authority or any other line of authority exempted by the Superintendent, under continuing law, an individual is not permitted to take the examination until the individual has either earned a bachelor's or associate's degree in insurance from an accredited institution or completed, as in the case of Surety Bail Bond Agents, 20 hours of "pre-licensing" study in a program of insurance education approved by the Superintendent for which the individual has applied.

Surety Bail Bond Agents:

Under continuing law, the Superintendent must issue to an applicant a license that states in substance that the person is authorized to do the business of a surety bail bond agent, if the Superintendent is satisfied that all of the following apply:

(1) The applicant is 18 years of age or older.

(2) The applicant is a person of high character and integrity.

(3) The applicant has successfully completed the educational requirements and passed the required examination.

The act differentiates four types of surety bail bond licenses: individual resident and nonresident surety bail bond licenses and business entity resident and nonresident surety bail bond licenses. In order to receive the individual resident surety bail bond license, the person must satisfy the above requirements and must not have committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license. Additionally, the applicant's home state must be Ohio and the applicant must be a United States citizen or have provided proof of having legal authorization to work in the United States.

In order to receive the individual nonresident surety bail bond license, the person must be 18 years of age or older, currently licensed as a resident in another state and in good standing in the applicant's home state for surety bail bond or qualified for the same authority. Additionally, the person must be a person of high character and integrity and must not have committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license. (3905.85(B).)
To receive the business entity resident or nonresident surety bail bond license, all of the following must be true of the applicant:

(1) the applicant has submitted an application for the license in a manner prescribed by the Superintendent and the $150 application fee

(2) the applicant has designated an individual licensed surety bail bond agent who will be responsible for the applicant's compliance with the insurance laws of Ohio

(3) the applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license, and (4) the applicant has submitted any other documents requested by the Superintendent. In order to receive the resident business entity license, the applicant additionally must either be domiciled in Ohio or maintain its principal place of business in Ohio, and the applicant must be authorized to do business in Ohio by the Secretary of State if required under current law. In order to receive the nonresident business entity license, the applicant additionally must be currently licensed and be in good standing in the applicant's home state with surety bail bond authority. (3905.85(B).)

Under law retained in part by the act, a person that holds a surety bail bond license cannot execute or deliver a bond during the first 180 days after the initial issuance of the person's license. Under the act, however, this prohibition does not apply to resident or nonresident business entity licenses. (3905.85(C).)

License Renewal for Surety Bail Bond Agents:

Under former law, a surety bail bond agent license could be renewed, at the discretion of the Superintendent and the payment of a $150 fee, effective the first day of March next after its issue and after the first day of March in each succeeding year unless the license was revoked or suspended by the Superintendent or surrendered by the surety bail bond agent.

Under the act, a person seeking to renew a surety bail bond agent license must apply annually for a renewal of the license on or before the last day of February. Applications must be submitted to the Superintendent on forms prescribed by the Superintendent. Each application must be accompanied by a $150 renewal fee.

To be eligible for renewal, an individual applicant must complete the applicable continuing education requirements (7 hours of CE to include 1 hour of approved ethics) prior to the renewal date. If an applicant submits a completed renewal application, qualifies for renewal pursuant to the above requirements, and has not committed any act that is a ground for the refusal to issue, suspension of, or revocation of a license, the Superintendent must renew the applicant's surety bail bond insurance agent license. (3905.85(F)(1) to (3).)

If an individual or business entity does not apply for the renewal of the individual or business entity's license on or before the last day of February, the act allows the individual or business entity to submit a late renewal application along with all applicable fees prior to the last day of March following the renewal date.

The Superintendent must renew the license of an applicant that submits a late renewal application if the applicant satisfies all of the following conditions:

(1) the applicant submits a completed renewal application

(2) the applicant pays the $150 renewal fee

(3) the applicant pays the late renewal fee established by the Superintendent

(4) the applicant provides proof of compliance with the continuing education requirements

(5) the applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license. (3905.85(F)(4).)

A surety bail bond agent license that is not renewed on or before the last day of March is automatically suspended for nonrenewal effective the first day of April. If a license is suspended for nonrenewal, the individual or business entity is eligible to apply for reinstatement of the license within the 12-month period following the date by which the license should have been renewed by complying with the reinstatement procedure established by the Superintendent and paying all applicable fees. (3905.85(F)(5) and (6).)

A license that is suspended for nonrenewal that is not reinstated as discussed above automatically is canceled unless the Superintendent is investigating any allegations of wrongdoing by the agent or has initiated proceedings under the Administrative Procedure Act (Chapter 119). In that case, the license automatically is canceled after the completion of the investigation or proceedings unless the Superintendent revokes the license. (3905.85(F)(7).)

Change of Address:

Under former law, if a person licensed as a resident insurance agent changed the person's address within Ohio, or if a nonresident agent changed the person's address within that other state, the person was required to, within 30 days after making that change, file a change of address with the Superintendent. Under the act, the person must file that change of address with either the Superintendent or the Superintendent's designee. (3905.061(A) and 3905.071(A)(1).)

Under law retained in part by the act, if a resident insurance agent changes the person's state of residence, or if a nonresident agent changes the person's state of residence or the state in which the person's principal place of business is located, the person must, within 30 days after making that change, file a change of address with the Superintendent and provide the Superintendent with certification from the new state of residence or, in the case of a nonresident insurance agent,

the new state in which the principal place of business is located. As a result, the resident agent's license becomes a nonresident license. No fee or license application can be required in either situation.

The act requires a resident or nonresident insurance agent to file a change of address when the person's home state changes, not necessarily when the state of residence or the state in which the person's principal place of business is located changes (3905.061(B) and 3905.071(A)(2)). "Home state" is defined to mean the state or territory of the United States, including the District of Columbia, in which an insurance agent maintains the insurance agent's principal place of residence or principal place of business and is licensed to act as an insurance agent (3905.01(B), not in the act). Additionally, the agent submitting a change of address must be in good standing with the Superintendent.

Under law retained in part by the act, each person licensed as a Surety Bail Bond Agent must notify in writing the appropriate insurer or Managing General Agent, and the clerk of the court of common pleas of the county in which the licensee resides, within 30 days after a change in the licensee's principal business address or telephone number.

Rather than the clerk of the court of common pleas of the county in which the licensee resides, the act requires the agent to notify the clerk of the court of common pleas of the county in which the licensee is registered. (3905.89.)

Criminal Records Checks:

Under former law, an applicant for licensure was required to request a criminal records check conducted by the Superintendent of the Bureau of Criminal Identification and Investigation (BCII), other governmental agencies, or other sources, as required and designated by the Superintendent of Insurance. The applicant was required to direct that the responses to the request be transmitted to the Superintendent of Insurance, or to the Superintendent's designee. If the Superintendent of Insurance or the Superintendent's designee failed to receive a response to a requested criminal records check, or if the applicant failed to request the criminal records check, the Superintendent could refuse to issue a license. (3905.05(A) and 3905.85(A).)

Under the act, each applicant must consent to a criminal records check and submit a full set of fingerprints to the Superintendent for that purpose. The Superintendent, then, rather than the applicant, must request the Superintendent of BCII to conduct a criminal records check based on the applicant's fingerprints. The Superintendent also must request that criminal record information from the Federal Bureau of Investigation (FBI) be obtained as part of the criminal records check. The act allows the Superintendent to receive criminal record information directly in lieu of the BCII that submitted the fingerprints to the FBI. (3905.051(C), (D), and (F) and 3905.85(A)(2).)

Under the act, the Superintendent may contract for the collection and transmission of fingerprints, may agree to a reasonable fingerprinting fee to be charged by the contractor, and may order the fee for collecting and transmitting fingerprints to be payable directly to the

contractor by the applicant. Under continuing law, any fee required in relation to the criminal records check must be paid by the applicant. (3905.051(E).)

The act requires the Superintendent to treat and maintain an applicant's fingerprints and any criminal record information obtained by the required criminal records checks as confidential. The Superintendent must apply security measures consistent with the criminal justice information services division of the FBI standards for the electronic storage of fingerprints and necessary identifying information and limit the use of records solely to the purpose of criminal records checks. The fingerprints and any criminal record information are not subject to subpoena other than one issued pursuant to a criminal investigation, are confidential by law and privileged, are not subject to discovery, and are not admissible in any private civil action. (3905.051(G).)

Under the act, only individuals applying for a resident license as an insurance agent or Surety Bail Bond Agent or applying for an additional line of authority under an existing resident insurance agent license if a criminal records check has not been obtained within the last 12 months for insurance license purposes must consent to a criminal records check. Agents applying for renewal of an existing resident or nonresident license in Ohio are not required by the act to consent to a criminal records check. (3905.08, 3905.051(H), and 3905.85.)

For purposes of criminal records checks, the act defines "fingerprint" as an impression of the lines on the finger taken for the purpose of identification. The impression may be electronic or converted to an electronic format. (3905.051(B).)

Continuing Education for Surety Bail Bond Agents:

Under former law, each individual who was issued a license as a surety bail bond agent was required to complete at least 14 hours of continuing education offered in a course or program of study related to the bail bond business that was approved by the Superintendent in consultation with the Insurance Agent Education Advisory Council.

The act requires only resident surety bail bond agent licensees to comply with the continuing education requirements and instead of tying those requirements to the general agent CE requirements of every two years, **the act requires that the resident surety bail bond agents complete the continuing education requirements every year in each license renewal period.**

The act also decreases the number of required hours to seven (7) and requires that the course or program of study include at least one (1) hour of approved ethics training.

Former law generally required the Superintendent to suspend or revoke the license of any surety bail bond agent who failed to complete the required continuing education. The act, instead, requires the Superintendent to not renew the license of such a licensee and removes an allowance for an extension of time in which to complete those requirements. (3905.482(B), 3905.85(D), and 3905.88.)

Prohibitions - Generally Prohibited Acts:

Law retained in part by the act lists reasons for which the Superintendent may suspend, revoke, or refuse to issue or renew the license of an insurance agent, assess a civil penalty, or impose any other sanction or sanctions authorized under the Insurance Agent Licensing Law. The act revises several of those reasons and adds five more. Below is given an overview of those revisions and additions. The list is not exhaustive and does not list the reasons unchanged by the act. (3905.14(B).)

Former law Under the act: Obtaining or attempting to obtain a license through misrepresentation or fraud
Adds…maintaining or attempting to maintain a license through misrepresentation or fraud*

Former law Under the act: Having been convicted of a felony
Adds…having pleaded guilty or no contest to a felony and adds that this expanded reason exists regardless of whether a judgment of conviction has been entered by the court*

Former law Under the act: Having been convicted of a misdemeanor that involves the misuse or theft of money or property belonging to another, fraud, forgery, dishonest acts, or breach of a fiduciary duty, that is based on any act or omission relating to the business of insurance, securities, or financial services, or that involves moral turpitude
Adds…having pleaded guilty or no contest to such a misdemeanor and adds that this expanded reason exists regardless of whether a judgment of conviction has been entered by the court*

Former law Under the act: Improperly using notes or any other reference material to complete an examination for an
insurance agent license
Adds…improperly using equipment or devices of any kind*

Former law Under the act: Failing to comply with any administrative or court order directing payment of state income tax
Revision…Failing to comply with any official invoice, notice, assessment, or order directing payment of federal, state, or local income tax, state or local sales tax, or workers' compensation premiums*

Former law Under the act: Having any professional license suspended or revoked as a result of a mishandling of funds or breach of fiduciary responsibilities or having been subject to a cease and desist order or permanent injunction for unlicensed activities
Breaks into the following two reasons…Having any professional license or financial industry regulatory authority registration suspended or revoked or having been barred
from participation in any industry* Having been subject to a cease and desist order or permanent injunction related to mishandling of funds or breach of fiduciary responsibilities or for unlicensed or unregistered activities*

Former law Under the act: Causing or permitting a policyholder or applicant for insurance to designate the insurance agent or the insurance agent's spouse, parent, child, or sibling as the beneficiary of a policy or annuity sold by the insurance agent, unless the insurance agent or a relative of the insurance agent is the insured or applicant

Expands this reason to include…policies and annuities for which the agent, at any time, was designated as the agent of record*

Adds New law Under the act:
Causing or permitting a policyholder or applicant for insurance to designate the insurance agent or the insurance agent's spouse, parent, child, or sibling as the owner or beneficiary of a trust funded, in whole or in part, by a policy or annuity sold by the insurance agent or by a policy or annuity for which the agent, at any time, was designated as the agent of record, unless the insurance agent or a relative of the insurance agent is the insured or applicant*

Former law Under the act: Failing to provide a written response to the Department of Insurance within 21 calendar days after receipt of any written inquiry from the Department, unless a reasonable extension of time has been requested of, and granted by, the Superintendent
Adds…that the extension may be requested of and granted by the Superintendent's designee*

Adds New law Under the act:
Failing to appear to answer questions before the Superintendent after being notified in writing by the Superintendent of a scheduled interview, unless a reasonable extension of time has been requested of, and granted by, the Superintendent or the Superintendent's designee*

Former law Under the act:
Submitting or using a document in the conduct of the business of insurance when the person knew or should have known that the document contained the forged signature of another person
Rather …than referring to a forged signature, refers to a "writing that was forged" as defined under Ohio's Theft and Fraud Statute (R.C. 2913.01), which includes any computer software, document, letter, memorandum, note, paper, plate, data, film, or other thing having in or upon it any written, typewritten, or printed matter, and any token, stamp, seal, credit card, badge, trademark, label, or other symbol of value, right, privilege, license, or identification*

Former law Under the act: Misrepresenting the person's qualifications or using in any way a professional designation that has not been conferred upon the person by the appropriate accrediting organization
Adds...misrepresenting the person's status or relationship to another person, agency, or entity*

Former law Under the act: Obtaining a premium loan or causing a premium loan to be made to or in the name of an insured without that person's knowledge and written authorization
Adds:...obtaining a policy surrender or causing a policy surrender to be made to or in the name of an insured or policy holder without the person's knowledge and written authorization*
Former law Under the act: Soliciting, marketing, or selling any product or service that offers benefits similar to insurance but is not regulated by the Superintendent, without fully disclosing to the prospective purchaser that the product or service is not insurance and is not regulated by the Superintendent
Removes..."marketing" and adds "negotiating" any such product or service and specifies that the disclosure must be orally and in writing*

Former law Under the act: With respect to a surety bail bond agent license, rebating or offering to rebate, or unlawfully dividing or offering to divide, any commission
Expands:...this reason to also include rebating or offering to rebate, or unlawfully dividing or offering to divide, any premium or fee*

Adds New law Under the act:
In the case of a resident business entity, failing to be qualified to do business in Ohio, failing to be in good standing with the Secretary of State, or failing to maintain a valid appointment of statutory agent with the Secretary of State

Additional New laws Under the act:

In the case of a nonresident agent, failing to maintain licensure as an insurance agent in the agent's home state for the lines of authority held in Ohio

Knowingly aiding and abetting another person or entity in the violation of any insurance law of Ohio or the rules adopted under it

* This violation is a class A offense. Continuing law details the actions that the Superintendent may take based upon which of the reasons was violated. The actions include a civil penalty, assessment of administrative costs, suspension of the license, permanent revocation of the license, refusal to issue or renew the license, a prohibition against being employed in any capacity in the business of insurance and from having any financial interest in any insurance agency, ordering corrective action, and accepting a surrender of license. Under continuing law, certain violations are class A offenses, and the Superintendent may impose any of the penalties listed. (3905.14(D) and (F).)

Under continuing law, if an agent's license is surrendered, revoked, or suspended, all appointments held by the agent are void. Under the act, all appointments held by the agent also are void if the license is canceled or inactivated by request. If a new license is issued to that person or if that person's previous license is reinstated (the act adds renewed), any appointment of the person to represent an insurer must be made in accordance with the requirements of the law regulating insurance agents. Additionally, under the act, if an agent's license is surrendered, revoked, or canceled and the person wishes to apply for a new license, the person must apply as a new agent and must satisfy all requirements for a new agent license including, if applicable, submitting to a criminal records check. (3905.16.)

Prohibitions for Surety Bail Bond Agents:

Under continuing law, certain persons and classes of persons are prohibited from acting as surety bail bond agents or employees of a surety bail bond agent or business including jailers, peace officers, court employees, and attorneys. Those persons or classes of persons are also prohibited from receiving any benefits from the execution of a bail bond, except as a principal. The act adds to that list: prisoners incarcerated in any jail, prison, or any other place used for the incarceration of persons; any person employed at an attorney's office; and judges. The act also clarifies that "peace officers" includes volunteer and honorary peace officers. (3905.841.)

Additionally, the act prohibits surety bail bond agents and insurers from posting anything without using a bail instrument representing an insurer, to have a defendant released on bail on all types of set court bail, except for the following:

(1) Cash court fees or cash reparation fees;

(2) Ten per cent assignments;

(3) Other nonsurety court bonds, if the agent provides full written disclosure and receipts and retains copies of all documents and receipts for not less than three years.

The act defines "instrument" as a fiduciary form showing a dollar amount for a surety bail bond. (3905.932.)

Appointments by Insurers:

Former law allowed insurers to appoint a person that was licensed as a surety bail bond agent by certifying to the Superintendent before the 30th day of June each year the names and addresses of the agents.

Under the act, the insurer must file a notice of appointment with the Superintendent in the manner prescribed by the Superintendent. The act does not specify a date for that filing. (3905.86.) In addition to continuing law's $20 fee for each agent and surety bail bond agent appointment by an insurer and each annual renewal of an agent or surety bail bond agent appointment by insurer, the act requires a fee of $5 for each termination or expiration of an agent or surety bail bond agent appointment (3905.20(B)(1), 3905.40(A)(8) and (9), 3905.86(B), and 3905.862).

Registering with a Court:

Law retained in part by the act prohibits a surety bail bond agent from filing a bond in a court of Ohio unless the agent has registered with the clerk of that court, if registration is required by the court, and the agent has registered with the clerk of the court of common pleas of the county in which the agent resides.

The act removes the requirement that the agent be registered with the clerk of the court of common pleas of the county in which the agent resides. In addition to the copy of the agent's appointment required for registration with a court under continuing law, the act requires the agent to submit a copy of the agent's surety bail bond license and driver's license or state identification card. Rather than registering and filing a certified copy of a renewed power of attorney, the act requires each agent to renew the agent's registration with the court biennially by the first day of August of each odd‑numbered year. (3905.87.)

Additionally, the act requires the clerk of the court to make available a list of court‑registered surety bail bond agents to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction annually not later than the first day of September. If

an agent registers with a court after the last day of August, the court must add that agent to the list and make the updated list available to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction within 24 hours of the court's approval of that registration. (3905.87.)

Rules Adopted by the Superintendent:

Continuing law allows the Superintendent to adopt rules in accordance with the Administrative Procedure Act (Chapter 119.) to establish procedures for the issuance and renewal of insurance agent licenses.

The act also allows the Superintendent to adopt rules to establish procedures for late renewal, extension, reactivation, and reinstatement. Continuing law also allows the Superintendent to adopt rules in accordance with the Administrative Procedure Act to provide for the issuance of limited authority licenses, and establish any prelicensing education, examination, or continuing education requirements the Superintendent considers appropriate for such licenses. The act expands these rules to apply to the renewal of those licenses. (3905.12.)

DIRECTOR OF THE OHIO DEPARTMENT OF INSURANCE

Position and powers by Law:

As Chief Executive Officer of the Ohio Department of Insurance, the Director shall have all the powers and perform all of the duties vested in and imposed upon the Dept. of Insurance.

The Director, including every member of his/her staff, cannot have any official or financial interest in an insurance company, except as a policyholder.

The Director and Insurance Rates:

The Director of the Ohio Department of Insurance has widespread power and authority; however, he does not set insurance rates!

Authority and Duties of Director & Staff:

1) The Director of the Ohio Dept. of Insurance issues Certificates of Authority to transact the business of insurance to companies that have complied with all laws of the State of Ohio.

2) The Director of the Ohio Dept. of Insurance files and keeps all papers and books as required by law.

3) The Director of the Ohio Dept. of Insurance regulates the internal affairs of the Dept. of Insurance.

4) The Director of the Ohio Dept. of Insurance may issue, refuse to issue, revoke or suspend any insurance license or Certificate of Authority in accordance with the laws of the State of Ohio.

5) The Director of the Ohio Dept. of Insurance makes certain that insurance rates being charged by companies are adequate and not excessive to the consumer or unfairly discriminatory.

6) When requested, the Director of the Ohio Dept. of Insurance helps to interpret State of Ohio Insurance Law.

7) The Director of the Ohio Dept. of Insurance structures and controls insolvency procedures.

8) The Director of the Ohio Dept. of Insurance investigates all violations of insurance law in the State of Ohio, including complaints that have been filed by consumers.

9) The Director of the Ohio Dept. of Insurance levies specific fees and administrative fines to help cover costs and expenses,

10) The Director of the Ohio Dept. of Insurance may subpoena documents and witnesses for testimony before him, or his/her duly appointed staff, on any insurance related matter or hearing.

Examinations -- books, records & types of insurers:

At least once every three years or whenever the Director deems it necessary, he/she may make, or direct to be made, a thorough examination of the business affairs and financial condition of any insurance company.

The examination may be with 1) a company already transacting business in the State of Ohio, 2) with a new company that is organizing, or 3) with an existing company applying for admission to transact business in the State of Ohio.

An insurer (i.e. an insurance company) who is being examined, must provide the Director, or the Director's appointed examiner, unrestricted and free access to all books and papers that relate to the business…this includes all books and papers under the custody and/or control of the insurance company's agents.

An insurer's officers, directors, general and/or marketing agents, agents and any other employee may be examined under oath.

The insurer shall cover all expenses and fees of an examination.

If an insurer refuses to submit to an examination, it is grounds for suspension, refusal or no renewal of any insurance license or Certificate of Authority held by the insurer.

The examiner will issue a report of his/her examination. The insurer has thirty (30) days from the postmark on the envelope, to file with the Director of the Ohio Dept. of Insurance any written objections to the findings as found in the report.

Appointment and Certification of Insurers:

Insurers incorporated in the State of Ohio, whether admitted or not admitted, are Domestic Insurers.

1) The Director of the Ohio Dept. of Insurance must examine every Domestic Insurer before he/she issues a Certificate of Authority to transact business in the State of Ohio. This does not apply to license renewals.
2) The Director of the Ohio Dept. of Insurance, no less than once every three years, must examine a Domestic Insurer. He may also order an examination whenever deemed necessary.

Insurers incorporated in another state, are Foreign Insurers.

1) The Director of the Ohio Dept. of Insurance may examine the business and affairs of a Foreign Insurer who is applying for admission to transact insurance in the State of Ohio.

Insurers organized outside the United States whether or not admitted, are Alien Insurers.

1) The Director of the Ohio Dept. of Insurance may examine Alien Insurers at his/her discretion.

General Provisions and Statutory Definitions:

Admitted Insurer:

An insurance company authorized to transact insurance in the State of Ohio by the Ohio Dept. of Insurance, which has been issued a Certificate of Authority to transact surety business.

Admitted Insurers may be Domestic, Foreign or Alien.

Non-admitted Insurer:

An insurance company not authorized to transact insurance in the State of Ohio. They either have not requested admission or have failed to comply with State of Ohio requirements.

Insurance Agent:

One who has been appointed and authorized by an insurer to act as the company's representative in the transaction of certain lines or insurance including, but not limited to, the business of surety bail.

Resident Surety Bail Agent:

One who is licensed to represent an insurance company, which is authorized to transact the business of surety bail in the State of Ohio…the agent must live in the State of Ohio.

Non-resident Surety Bail Agent:

One who is licensed to represent an insurance company, which is authorized to transact the business of surety bail in the State of Ohio…the agent lives in a state other than Ohio.

If a non-resident agent becomes a resident of Ohio, he/she must cancel the nonresident license and obtain a resident license by passing the Ohio Dept. of Insurance's license examination.

Insurers, Certificate of Authority, Authorized:

Insurers must submit to the Ohio Dept. of Insurance a notice of appointment of the surety bail agent or agency certifying that a thorough investigation has been accomplished:

1) That the appointee is of high character and integrity.

2) That the appointee is competent, financially responsible and suitable to represent the insurer.

3) That the insurer will be bound by the acts of the appointee within that person's actual or apparent authority as its agent.

4) That the appointee will not represent to the public that the agent has the authority to represent the insurer until the appointment is approved by the Ohio Dept. of Insurance.

5) That the appointee knows insurance and insurance laws.

A fee must be submitted by the insurer with the notice of appointment. The Ohio Dept. of Insurance will keep a permanent record for ten (10) years of all agent licenses issued and the insurance companies that they certified to represent under their licenses. The insurer and/or its managing general agent may require the surety bail bond agent or agency to initially post a build-up fund. The account shall be open at all times to inspection and examination by the Ohio Dept. of Insurance. Upon cancellation or expiration of a bail agent's appointment, the agent shall not engage or attempt to engage in any activity requiring such an appointment. An agent's license is considered inactive when the fees for the license are paid but no appointment is in effect for that license.

LICENSING REQUIREMENT FOR BAIL BOND AGENTS

3905.85 Surety bail bond agent license.

(A) (1) An individual who applies for a license as a surety bail bond agent shall submit an application for the license in a manner prescribed by the superintendent of insurance. The application shall be accompanied by a one hundred fifty dollar fee and a statement that gives the applicant's name, age, residence, present occupation, occupation for the five years next preceding the date of the application, and such other information as the superintendent may require.

(2) An applicant for an individual resident license shall also submit to a criminal records check pursuant to section 3905.051 of the Revised Code.

(B)(1) The superintendent shall issue to an applicant an individual resident license that states in substance that the person is authorized to do the business of a surety bail bond agent, if the superintendent is satisfied that all of the following apply:

(a) The applicant is eighteen years of age or older.

(b) The applicant's home state is Ohio.

(c) The applicant is a person of high character and integrity.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section3905.14 of the Revised Code.

(e) The applicant is a United States citizen or has provided proof of having legal authorization to work in the United States.

(f) The applicant has successfully completed the educational requirements set forth in section 3905.04 of the Revised Code and passed the examination required by that section.

(2) The superintendent shall issue to an applicant an individual nonresident license that states in substance that the person is authorized to do the business of a surety bail bond agent, if the superintendent is satisfied that all of the following apply:

(a) The applicant is eighteen years of age or older.

(b) The applicant is currently licensed as a resident in another state and is in good standing in the applicant's home state for surety bail bond or is qualified for the same authority.

(c) The applicant is a person of high character and integrity.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section3905.14 of the Revised Code.

(3) The superintendent shall issue an applicant a resident business entity license that states in substance that the person is authorized to do the business of a surety bail bond agent if the superintendent is satisfied that all of the following apply:

(a) The applicant has submitted an application for the license in a manner prescribed by the superintendent and the one-hundred-fifty-dollar application fee.

(b) The applicant either is domiciled in this state or maintains its principal place of business in this state.

(c) The applicant has designated an individual licensed surety bail bond agent who will be responsible for the applicant's compliance with the insurance laws of this state.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section3905.14 of the Revised Code.

(e) The applicant is authorized to do business in this state by the secretary of state if so required under the applicable provisions of Title XVII of the Revised Code.

(f) The applicant has submitted any other documents requested by the superintendent.

(4) The superintendent shall issue an applicant a nonresident business entity license that states in substance that the person is authorized to do the business of a surety bail bond agent if the superintendent is satisfied that all of the following apply:

(a) The applicant has submitted an application for the license in a manner prescribed by the superintendent and the one-hundred-fifty-dollar application fee.

(b) The applicant is currently licensed and is in good standing in the applicant's home state with surety bail bond authority.

(c) The applicant has designated an individual licensed surety bail bond agent who will be responsible for the applicant's compliance with the insurance laws of this state.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section3905.14 of the Revised Code.

(e) The applicant has submitted any other documents requested by the superintendent.

(C) A resident and nonresident surety bail bond agent license issued pursuant to this section authorizes the holder, when appointed by an insurer, to execute or countersign bail bonds in connection with judicial proceedings and to receive money or other things of value for those services. However, the holder shall not execute or deliver a bond during the first one hundred eighty days after the license is initially issued. This restriction does not apply with respect to license renewals or any license issued under divisions (B)(3) and (4) of this section.

(D) The superintendent may refuse to renew a surety bail bond agent's license as provided in division (B) of section 3905.88 of the Revised Code, and may suspend, revoke, or refuse to issue or renew such a license as provided in section 3905.14 of the Revised Code.

If the superintendent refuses to issue such a license based in whole or in part upon the written response to a criminal records check completed pursuant to division (A) of this section, the superintendent shall send a copy of the response that was transmitted to the superintendent to the applicant at the applicant's home address upon the applicant's submission of a written request to the superintendent.

(E) Any person licensed as a surety bail bond agent may surrender the person's license in accordance with section 3905.16 of the Revised Code.

(F) (1) A person seeking to renew a surety bail bond agent license shall apply annually for a renewal of the license on or before the last day of February. Applications shall be submitted to the superintendent on forms prescribed by the superintendent. Each application shall be accompanied by a one-hundred-fifty-dollar renewal fee.

(2) To be eligible for renewal, an individual applicant shall complete the continuing education requirements pursuant to section 3905.88 of the Revised Code prior to the renewal date.

(3) If an applicant submits a completed renewal application, qualifies for renewal pursuant to divisions (F)(1) and (2) of this section, and has not committed any act that is a ground for the refusal to issue, suspension of, or revocation of a license under section 3905.14 or sections 3905.83 to3905.99 of the Revised Code, the superintendent shall renew the applicant's surety bail bond insurance agent license.

(4) If an individual or business entity does not apply for the renewal of the individual or business entity's license on or before the license renewal date specified in division (F)(1) of this section, the individual or business entity may submit a late renewal application along with all applicable fees required under this chapter prior to the last day of March following the renewal date. The superintendent shall renew the license of an applicant that submits a late renewal application if the applicant satisfies all of the following conditions:

(a) The applicant submits a completed renewal application.

(b) The applicant pays the one-hundred-fifty-dollar renewal fee.

(c) The applicant pays the late renewal fee established by the superintendent.

(d) The applicant provides proof of compliance with the continuing education requirements pursuant to section 3905.88 of the Revised Code.

(e) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section3905.14 or sections 3905.83 to 3905.99 of the Revised Code.

(5) A license issued under this section that is not renewed on or before its late renewal date specified in division (F)(4) of this section is automatically suspended for nonrenewal effective the first day of April.

(6) If a license is suspended for nonrenewal pursuant to division (F)(5) of this section, the individual or business entity is eligible to apply for reinstatement of the license within the twelve-month period following the date by which the license should have been renewed by complying with the reinstatement procedure established by the superintendent and paying all applicable fees required under this chapter.

(7) A license that is suspended for nonrenewal that is not reinstated pursuant to division (F)(6) of this section automatically is canceled unless the superintendent is investigating any allegations of

wrongdoing by the agent or has initiated proceedings under Chapter 119. of the Revised Code. In that case, the license automatically is canceled after the completion of the investigation or proceedings unless the superintendent revokes the license.

(G) The superintendent may prescribe the forms to be used as evidence of the issuance of a license under this section. The superintendent shall require each licensee to acquire, from a source designated by the superintendent, a wallet identification card that includes the licensee's photograph and any other information required by the superintendent. The licensee shall keep the wallet identification card on the licensee's person while engaging in the bail bond business.

(H)(1) The superintendent of insurance shall not issue or renew the license of a business entity organized under the laws of this or any other state unless the business entity is qualified to do business in this state under the applicable provisions of Title XVII of the Revised Code.

(2) The failure of a business entity to be in good standing with the secretary of state or to maintain a valid appointment of statutory agent is grounds for suspending, revoking, or refusing to renew its license.

(3) By applying for a surety bail bond agent license under this section, an individual or business entity consents to the jurisdiction of the courts of this state.

(I) A surety bail bond agent licensed pursuant to this section is an officer of the court.

(J) Any fee collected under this section shall be paid into the state treasury to the credit of the department of insurance operating fund created by section 3901.021 of the Revised Code.

3905.851 No imposition of local licensing fees.

A surety bail bond agent qualified, licensed, and appointed in accordance with sections 3905.83 to 3905.95 of the Revised Code shall not be required to pay any licensing fee imposed by a political subdivision of this state to perform any of the functions, duties, or powers prescribed for surety bail bond agents under those sections.

3905.86 Appointment of agent by insurer.

(A) Any person licensed as a surety bail bond agent may be appointed by an insurer in accordance with this section.

(B) To appoint a surety bail bond agent as its agent, an insurer shall file a notice of appointment with the superintendent of insurance in the manner prescribed by the superintendent. All insurers shall pay to the superintendent a fee pursuant to division (A)(8) of section 3905.40 of the Revised Code for each such appointment when issued and for each continuance thereafter. Such an appointment, unless canceled by the insurer, may be continued in force past the thirtieth day of June next after its issue and after the thirtieth day of June of each succeeding year provided that the appointee is licensed and is eligible for the appointment.

Any fee collected under this division shall be paid into the state treasury to the credit of the department of insurance operating fund created by section 3901.021 of the Revised Code.

(C)(1) By appointing a surety bail bond agent, an insurer certifies to the superintendent that the person is competent, financially responsible, and suitable to represent the insurer.

(2) An insurer shall be bound by the acts of the person named in the appointment within that person's actual or apparent authority as its agent.

(D) A surety bail bond agent shall not represent to the public that the agent has authority to represent a particular insurer until the insurer has acknowledged that authority by appointment of the agent in accordance with this section.

3905.861 Extending appointments to affiliated agents.

An insurer that appoints a surety bail bond agent who is a member of a business entity shall require that all other surety bail bond agents who are members of the same business entity be appointed to represent that insurer.

3905.862 Expiration or cancellation of appointment; fee.

Upon the expiration or cancellation of a surety bail bond agent's appointment, the agent shall not engage or attempt to engage in any activity requiring such an appointment. However, an insurer that cancels the appointment of a surety bail bond agent may authorize the agent to continue to attempt the arrest and surrender of a defendant for whom a bail bond had been written prior to the cancellation and to seek discharge of forfeitures and judgments.

An insurer that cancels the appointment of a surety bail bond agent or allows that appointment to expire shall pay to the superintendent of insurance a fee pursuant to division (A)(9) of section 3905.40 of the Revised Code.

3905.87 Registration of agent with court clerks; list of court-registered surety bail bond agents.

(A) A surety bail bond agent shall not file a bond in any court of this state unless the agent is licensed and appointed under sections 3905.83 to 3905.95 of the Revised Code and has registered with the clerk of that court pursuant to division (B) of this section, if registration is required by the court.

(B) To register with a court, a surety bail bond agent shall file, with the clerk of the court, a copy of the agent's surety bail bond license, a copy of the agent's driver's license or state identification card, and a certified copy of the surety bail bond agent's appointment by power of attorney from each insurer that the surety bail bond agent represents. An agent shall renew the agent's registration biennially by the first day of August of each odd-numbered year.

(C) The clerk of the court shall make available a list of court-registered surety bail bond agents to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction annually not later than the first day of September. If an agent registers with a court after the last day of August, the court shall add that agent to the list and make the updated list available to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction within twenty-four hours of the court's approval of that registration.

3905.88 Continuing education.

(A) Each individual who is issued a license as a resident surety bail bond agent shall complete at least seven hours of continuing education in each license renewal period. The continuing education shall be offered in a course or program of study related to the bail bond business that is approved by the superintendent of insurance in consultation with the insurance agent education advisory council and shall include at least one hour of approved ethics training.

(B) The superintendent shall not renew the license of any surety bail bond agent who fails to meet the requirements of division (A) of this section or whose application for renewal does not meet the requirements of section 3905.85 of the Revised Code.

3905.89 Notice of change of principal business address or telephone number.

Each person licensed under sections 3905.83 to 3905.95 of the Revised Code shall notify in writing the appropriate insurer or managing general agent, and the clerk of the court of common pleas of the county in which the licensee is registered, within thirty days after a change in the licensee's principal business address or telephone number.

This notification requirement is in addition to the notification requirements set forth in other provisions of this chapter.

3905.90 Records of surety bonds to be maintained - furnishing of information.

Each surety bail bond agent shall maintain all records of surety bonds executed or countersigned by the surety bail bond agent for at least three years after the liability of the surety has been terminated. Those records shall be open, at all times, to examination, inspection, and photographic reproduction by any employee or agent of the department of insurance, or by any authorized representative of the insurer or managing general agent. The superintendent of insurance at any time may require the licensee to furnish to the department, in the manner and form that the superintendent requires, any information concerning the surety bond business of the licensee.

3905.91 Build-up funds.

(A) All build-up funds posted by a surety bail bond agent or managing general agent, either with an insurer or managing general agent representing an insurer, shall be maintained in an individual build-up trust account for the surety bail bond agent by the insurer or the managing

general agent. The insurer or managing general agent shall establish the account in a federally insured bank or savings and loan association in this state jointly in the name of the surety bail bond agent and the insurer or managing general agent, or in trust for the surety bail bond agent by the insurer or managing general agent. The account shall be open to inspection and examination by the department of insurance at all times. The insurer or managing general agent shall maintain an accounting of all of those funds, which accounting designates the amounts collected on each bond written.

(B) Build-up funds shall not exceed forty per cent of the premium as established by the surety bail bond agent's contract agreement with the insurer or managing general agent. Build-up funds received shall be immediately deposited to the build-up trust account. Interest earned on build-up trust accounts shall accrue to the surety bail bond agent.

(C) Build-up funds are due upon termination of the surety bail bond agent's contract and discharge of liabilities on the bonds for which the build-up funds were posted. The insurer or managing general agent shall pay the funds to the surety bail bond agent not later than six months after the funds are due.

3905.93 Bail bond - charges and fees.

A surety bail bond agent shall not execute a bail bond without doing both of the following:

(A) Charging the premium rate filed with and approved by the superintendent of insurance;

(B) Disclosing the expense fee that will be charged to cover the costs incurred by the agent in executing the bond.

ACTIONS OF THE OHIO DEPT. OF INSURANCE

Disciplinary Actions of the Dept. of Insurance:

If the Director determines that a Surety Bail Bond Agent has violated any provisions of the Ohio Revised Code, the following actions may take place at the Director's discretion:

1) If an unlawful activity is causing or about to cause substantial or material harm, the Director may issue an order to "cease and desist"…to immediately stop all activity.

2) If there is found a violation of a "Class A Offense" the Director may impose any of the following penalties:

a) assess a civil forfeiture not exceeding $25,000 per violation,
b) assess administrative costs to cover the expenses incurred by the Department, including such costs for investigation and the hearing process; costs shall be paid to the State Treasury to credit the Department of Insurance Operating Fund,

c) suspend all of the agent's licenses for all lines of insurance for either a specified or indefinite period of time and under such terms and conditions as the Superintendent may determine,
d) permanently revoke all of the agent's licenses for all lines,
e) refuse to issue a license,
f) refuse to renew a license,
g) prohibit the agent from being employed in any capacity in the business of insurance and from having any financial interest in any insurance agency, company, Surety Bail Bond Business, or third-party administrator; the Superintendent may determine the nature, conditions and duration of such restrictions,
h) order corrective actions in lieu of or in addition to the other penalties; e.g. the suspension of civil forfeitures, license revocation, suspension, refusal to issue or renew a license…if the licensee complies with the terms/conditions of the order,
i) accept a surrender for cause offered by the licensee, which shall be for at least five (5) years and shall prohibit the licensee from seeking any insurance license during that period; it may also include a corrective action order as well.

" Class A Offenses" include the following:

a) violation of or failure to comply with any insurance law, rule, subpoena, consent agreement or order of the Superintendent,
b) obtaining or attempting to obtain any license or appointment through misrepresentation or fraud, including making any materially untrue statements in an application for an insurance license or for an appointment within the State of Ohio,
c) misappropriating or converting to the agent's own use, any moneys belonging to policyholders, prospective policyholders, beneficiaries, insurance companies, Sureties, principals or others received in the course of the agent's insurance business,
d) knowingly misrepresenting the terms, benefits, value, cost or effective dates or any actual or proposed insurance policy, contract or surety bail bond,
e) conviction of a felony,
f) conviction of a misdemeanor that involves the misuse or theft of money or property belonging to another, fraud, forgery, dishonest acts, breach of a fiduciary duty or that is based on any act of omission relating to the business of insurance, securities or financial services,
g) commission of any unfair trade practice,
h) having an insurance license suspended or revoked in any other state, province or territory,
i) forging or causing the forgery of another's name to any document related to or used in an insurance transaction,
j) possession of or using any unauthorized materials during a licensing or continuing education examination or cheating on a licensing or continuing education examination,
k) failure to disclose to an applicant for insurance or policyholder upon accepting a premium or an Order to Bind coverage from the applicant or policyholder, that the person has not been appointed as an agent by the insurer and is not an appointed solicitor of an appointed agent,
l) having any professional license suspended or revoked as a result of a mishandling of funds or breach of fiduciary responsibilities,
m) causing or permitting a policyholder or applicant for insurance to designate the person or the person's spouse, parent, child or sibling as the beneficiary of a policy or annuity sold by the person, unless the person or a relative of the person is in fact the insured or applicant,

n) transferring or placing insurance with an insurer other than the insurer expressly chosen by the applicant for insurance or policyholder without the consent of the applicant or policyholder or important extenuating circumstances,
o) engaging in any fraudulent, dishonest or coercive practice in connection with the business of insurance,
p) failure to inform a policyholder or applicant for insurance of the identity of the insurer or insurers or the identity of any other insurance agent, general agent, surplus lines broker, or licensee known to be involved in procuring, placing or continuing the insurance, upon the binding of the coverage,
q) in the case of an agent that is a corporation, limited liability company or partnership, failure to report an individual licensee's violation to the Dept. of Insurance when the violation was known or should have been known by one or more of the partners, officers, managers or members of the corporation, limited liability company or partnership,
r) submission or using a document in the conduct of the business of insurance when the person knew or should have known that the document contained the forged signature of another person,
s) misrepresenting the person's qualifications or using in any way a professional designation that has not been conferred upon the person by the appropriate accrediting organization,
t) obtaining a premium loan or causing a premium loan to be made to or in the name of an insured without that person's knowledge and written authorization,
u) failure to file any of the reports or notices that are required,
v) submission an application for insurance or causing the issuance of an insurance policy or contract, on behalf of an applicant who did not request or authorize the insurance,
w) using paper, software or any other materials of or provided by an insurer after the insurer has terminated the authority of the licensee, if the use of such materials would cause a reasonable person to believe that the licensee was acting on behalf of or otherwise representing the insurer,
x) providing misleading, deceptive or untrue information to an applicant for insurance or a policy holder regarding a particular insurance agent, company or product,
y) soliciting or procuring an application for or placing, either directly or indirectly, any insurance policy when a person is not authorized to engage in such activity,
z) soliciting, marketing or selling any product or services that offers benefits similar to insurance but is not regulated by the Superintendent, without fully disclosing to the prospective purchaser that the product or service is not insurance and is not regulated by the Superintendent,
aa) failure to fulfill a refund obligation in a timely manner; a refund obligation is not fulfilled in a timely manner unless it is fulfilled within one of the following time periods, 1) 30 days after the date of the policyholder, applicant or insurer takes action resulting in a refund, 2) 30 days after the date of the insurer's refund check, if the agent is expected to issue a portion of the total refund, or, 3) 45 days after the date of the agent's statement of account on which the refund first appears,
bb) Rebating, offering to rebate, unlawfully dividing or offering to divide any commission by a Surety Bail Bond Agent.

2) If there is found a violation of a "Class B Offense" the Director may impose any of the following penalties:

a) assess a civil forfeiture not exceeding $25,000 per violation,

b) assess administrative costs to cover the expenses incurred by the Department, including such costs for investigation and the hearing process; costs shall be paid to the State Treasury to credit the Department of Insurance Operating Fund,
c) order corrective actions in lieu of or in addition to the other penalties; e.g. the suspension of civil forfeitures, license revocation, suspension, refusal to issue or renew a license…if the licensee complies with the terms/conditions of the order,
d) accept a surrender for cause offered by the licensee, which shall be for at least five (5) years and shall prohibit the licensee from seeking any insurance license during that period; it may also include a corrective action order as well.

" Class B Offenses" include the following:

a) failure to submit an application for insurance; a submission is considered timely if it occurs within the time period expressly provided for by the insurer or within 7 days after the agent accepts a premium or an Order to Bind from the policyholder or applicant, whichever is later.
b) failure to provide a written response within 30 days after a receipt of any written inquiry form the Dept. of Insurance,
c) failure to notify the Superintendent of any change in the agent's address within 30 days after the change occurs,
d) failure to notify the Superintendent of any disciplinary action taken by the insurance authority of another state within 60 days after the action was taken.

"Unfair Trade Practices Act" and Violations:

The Act specifically regulates trade practices in the business of insurance by defining unfair and deceptive acts, providing a method of investigating violations and determining penalties.

Specific to the business of Surety Bail Bond includes: a) coercion – making the purchase of insurance from a particular source a condition to another business transaction, b) defamation – making false oral or written statements to injure someone, including the reputation of an agent, c) misrepresentation and false advertising – presenting any information to the public that is false or untrue, deceptive or misleading, d) misrepresentation in an insurance representation – making false or fraudulent statements for the purpose of obtaining a fee, commission or other benefit, e) unfair discrimination – permitting individuals of the same class and hazard to be charged different rates for the same insurance coverage, f) rebating – the rebating, offering to rebate, unlawfully divide or offering to divide any commission.

Violations of Unfair Trade Practices:

If the Director of the Dept. of Insurance believes that an agent or an agency has engaged in any unfair method of competition or any unfair or deceptive act or practice, the Director shall serve a statement of charges and a notice of hearing.

If, after the hearing, it is determined that the agent or agency has engaged in an unfair practice, any costs incurred for conducting the hearing will be assessed against the agent or company.

If, at the hearing, it is determined that the agent or agency has engaged in an unfair practice, the Director may: a) issue a "cease and desist" order, b) command the insurer or agency not to employ the person until the problem is resolved, c) order the agent to return any payments received from the violation and to pay interest on those payment, d) order the insurer, agent or agency to reimburse the Dept. of Insurance Operating Fund for half of the expenses incurred by the department to employ outside attorneys, accountants and actuaries; a maximum of $100,000 can be charged), e) request the Attorney General to prosecute and have the court issue a penalty of not more that $3,500 for each act, not to exceed $35,000 in any 6 month period, and/or f) revoke or suspend the license of an agent, agency or insurer.

Any agent or company subject to an order from the Director may obtain a review of the order by filing in court for a judicial review.

Charges, Refunds and Rebates:

In order to execute a bail bond, a Surety Bail Bond Agent must do both of the following things:

1) Charge the premium rate filed with and approved by the Superintendent of Insurance.

2) Disclose the expense fee that will be charged to cover the costs incurred by the agent executing the bond; this can be called an "expense fee" for itemization of charges.

Federal Regulation:

It is a crime in the State of Ohio to engage in any fraudulent, dishonest or coercive practice in connection with the business of insurance.

Interstate violations are prosecuted in Federal Court under the Interstate Insurance Fraud Act.

SURETY BONDS AND LEGALITIES

Types of Contracts – Agreement, Consideration and Competent Parties:

A contract includes the following elements:

1) Agreement:

a) Offer – the applicant applies for a surety bail bond by completing the application

b) Acceptance – the surety bail bond agent accepts the application and agrees to execute the bail bond.

2) Consideration:

a) Consideration usually means money; however, it also means the giving of anything of value, e.g. the promise to indemnify against the losses is a consideration.

b) The client's fee, application and statements within the application are all part of the "consideration."

3) Competent Parties:

a) Parties must have the legal capacity to enter into a contract

b) There are "restricted persons" such as:

1) Minors – the surety may be required to uphold the terms of the contract; but, minors, as a matter of law, may void contracts and contracts cannot be enforced against them.

2) Insane People or mentally deficient individuals.

3) People under the influence of alcohol or drugs.

4) People who are illiterate or handicapped and who do not positively demonstrate their ability to understand the conditions of the contract, e.g. an illiterate person must be read to; a person who does not read or write English must have the contract interpreted for them. If these positive measures are not taken, the contract cannot be enforced against them while the surety may be required to uphold the contract.

4) Legal Purpose:

a) Surety Bail Bond Contracts must not be issued for illegal activity or immoral purposes.

Types of Authority:

There are 3 types of "authority" in a contract:

1) Express – The power that is expressed or written in the agent's contract.

2) Implied – Unwritten authority to perform incidental acts…this is the power that the public assumes the agent to have.
3) Apparent – The authority created when the agent exceeds the authority expressed in the agent's contract, and the insurer does nothing to counter the public impression that such authority exists.

Classification of Contracts:

Contracts can be classified as follows:

1) Formal – a written agreement setting forth the duties and responsibilities of each party.

2) Informal – a verbal or written agreement that generally sets for the conditions of the agreement without being specific.

3) Unilateral – Any one party is legally bound to contractual obligations after the premium or fee is paid.

4) Bilateral – Both parties are legally bound to the contractual obligations. This is what a surety bail bond is!

5) Multi-lateral – All or multiple parties are legally bound to the contractual obligations.

6) Executory – Written agreement requiring signatures, but not yet executed.

7) Executed Contract – Written agreement signed by all parties.

8) Conditional Contract – Parties to a contract must perform certain duties and follow rules of conduct to make the contract enforceable.

9) Contract of Indemnity – The surety is restored to the same financial condition as prior to the loss with no intent, loss or gain.

10) Contract of Utmost Good Faith – All parties bargain in good faith in forming the contract.

11) Contract of Adhesion – One party prepares a contract and submits it to the other party on a "take it or leave it" basis without any negotiation. Any doubt or ambiguity found in the document is construed against the party who drew up the contract, that is, the surety. Surety Bail Bonds are these!

Fraud and Concealment:

Fraud is the intentional misrepresentation, deceit or concealment of a material fact known to a person with the intention of causing injury to the other party.

Concealment is the withholding of known facts, which are so important that the disclosure of them would change the decision of the surety or its surety bail bond agent to post a bail bond.

Useful Legal Terminology:

Acquit – to release from an obligation or accusation. To legally certify the innocence of one charged with a crime.

Adjudicate – to settle in the exercise of judicial authority; to finally determine; to try a criminal matter.

Capitol Offense – an offense of such severity that should the accused be convicted, the death penalty may be imposed.

Conviction – the result of a criminal trial which ends in a judgment or sentence that the accused is guilty as charged. It DOES NOT include judgments which have been expunged by pardon, reversed, set aside or otherwise rendered negatory.

Custody – the care or control of a thing or person, the detaining of a man's person by virtue of lawful process or authority.

Defendant – the party against whom relief or recovery is sought in an action or suit, the accused in a criminal case.
Disposition – the sentencing or settlement of a criminal case.

Extradition – the surrender by one state or country to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, wanting to try and punish him, demands the surrender.

Felony – a crime of a serious or grave nature which would usually require imprisonment rather than jail (in addition to any other penalty imposed) should the accused be found guilty.

Fugitive – one who flees; a flight, evasion or escape from arrest, prosecution or imprisonment.

Hearing – a proceeding in which definite issues of fact or law are tried, witnesses and the accused have a right to be heard; much the same as a trial and may end in a final disposition.

Incarceration – imprisonment in a jail or penitentiary.

Indictment – a formal written accusation originating with a prosecutor and issued by a grand jury against a party charged with a crime. Also called a "true bill." NOTE: grand juries base decisions on probable cause, trial juries base decisions on evidence beyond a reasonable doubt!

Misdemeanor – offenses lower than felonies, usually punishable by fine or custody in jail…not imprisonment in a penitentiary.

Recognizance – an obligation entered into before the court whereby the defendant acknowledges that he will do some act required by law or pay a specific amount if he fails to perform the required act.

Revoke – to annul or make void, to cancel, rescind or reverse.

Suspend – to postpone or stay with purpose of resumption.

Warrant – a written order to arrest and bring before a judicial officer, which is made on behalf of the state and based upon a complaint issued pursuant to statute or court rule.

Writ – an order issued from a court requiring the performance of a specific act, giving authority to have it done.

PARTICULARS OF BAIL BOND AGENTS & THEIR OBLIGATIONS

Principal, Obligee and Surety:

The Contracted Parties to the Agreement are as follows:

1) Principal – the defendant or person whose performance is being guaranteed. Also know as the Obligator.

a) Indemnity for Principal – the Indemnitor or cosigner that guarantees the surety against financial loss and restores it to the prior financial condition should the Principal violate or fail to comply with the conditions or provisions of the bail bond.

b) Indemnity Agreement—written contract where the parties agree to restore the surety to the same financial conditions as existed before the loss.

2) Obligee – the person or entity that the Obligator or Principal (the defendant) is obligated to; the person or entity that the penal amount of the bond is paid to in the case of a forfeiture.

THE STATE OF OHIO IS ALWAYS THE OBLIGEE ON A SURETY BAIL BOND IN STATE COURT.

3) Surety – An insurer that agrees to be responsible for the fulfillment of the obligation of a Principal if the Principal fails to fulfill that obligation. The person or entity that guarantees the performance of the Obligator, Principal or defendant to the Obligee and is subject to the penal amount of the bond.

THE SURETY ON A BAIL BOND IN OHIO MUST BE AN INSURANCE AGENT LICENSED TO TRANSACT THE BUSINESS OF SURETY BAIL.

Trust Obligations and Collateral:

Legal and trust obligations for acceptance and maintenance of collateral, to secure the indemnification of the surety, is set forth in the Ohio Revised Code for Surety Bail Bond Agents:

1) A Surety Bail Bond Agent must comply with the following requirements to accept collateral security or other indemnity:

a) collateral security or other indemnity must be reasonable in relation to the amount of the bond,

b) collateral security or other indemnity must not be used by the Surety Bail Bond Agent for personal benefit or gain and must be returned in the same condition as it was received,

c) cash or its equivalent, a promissory note, an indemnity agreement or real property mortgage in the name of the surety are acceptable forms of collateral security or indemnity. If the agent accepts collateral security in excess of $50,000 in cash, the cash amount must be made payable to the surety in the form of a cashier's check, US Postal Money Order, certificate of deposit or wire transfer,

d) a written, numbered receipt describing in detail the collateral security or other indemnity received and copies of any documents rendered, must be provided to the person giving the collateral security or indemnity by the Surety Bail Bond Agent.

e) the collateral security or other indemnity shall be received and held in the surety's name by the Surety Bail Bond Agent in a fiduciary capacity, and, prior to any forfeiture of bail, shall be kept separate and apart from any other funds or assets of the Surety Bail Bond Agent; if collateral security in excess of $50,000 in cash or its equivalent is received, the Surety Bail Bond Agent must promptly forward the entire amount to the surety (insurance company) or Managing General Agent.

2) Collateral Security may be placed in an interest-bearing account in a Federally Insured Bank or Savings and Loan Association in this state, to accrue to the benefit of the person giving the collateral security. The Surety Bail Bond Agent, surety or Managing General Agent can make no pecuniary gain on the collateral security deposited.

3) The surety is liable for all collateral security or other indemnity accepted by a Surety Bail Bond Agent. If, upon final termination of liability on a bond, the agent or Managing General Agent fails to return the collateral security to the person that gave it, the surety must return the actual collateral to that person or, in the event that the surety cannot locate the collateral, shall pay the person in accordance with the law.

The surety's liability survives the termination of the Surety Bail Bond Agent's appointment, with respect to those bonds that were executed by the Surety Bail Bond Agent prior to the termination of the appointment.

4) If a forfeiture occurs, the Surety Bail Bond Agent or surety must give the principal and the person that gave the collateral security 10 days written notice of intent to convert the collateral deposit into cash to satisfy the forfeiture. The notice must be sent by certified mail, return receipt requested, to the last known address of the principal and the person that gave the collateral.

The Surety Bail Bond Agent or surety shall convert the collateral deposit into cash within a reasonable period of time and return that which is in excess of the face value of the bond minus the actual and reasonable expenses of converting the collateral into cash. These expenses must not exceed 10% of the face value of the bond unless, upon actual expenses are greater than 10% and the court has allowed recovery of the full amount of the actual and reasonable expenses.

If there is a remission of forfeiture that required the surety to pay the bond to the court, the surety shall pay to the person that gave the collateral the value of any collateral received for the bond minus the actual and reasonable expenses permitted to be received in accordance with the law.

5) A Surety Bail Bond Agent or surety must not solicit or accept a waiver of any of the provisions of the law, or enter into any agreement as to the value of the collateral.

Build Up Funds and Legal Requirements:

This is a trust account wherein the Surety Bail Bond Agent deposits a percentage of the premium or fee charged for the execution of a bail bond to further secure the surety and/or its Managing General Agent against any loss. The buildup fund procedure is regulated by the Ohio Revised Code.

1) All build-up funds posted by a Surety Bail Bond Agent or Managing General Agent, either with an insurer or Managing General Agent representing an insurer, must be maintained in an individual build-up trust account for the Surety Bail Bond Agent by the insurer or the Managing General Agent.

The insurer or Managing General Agent must establish the account in a federally insured bank or savings and loan association in this state jointly in the name of the agent and the insurer or Managing General Agent. The account shall be open to inspection and examination by the Dept. of Insurance at all times and a complete accounting of all funds, i.e. the amounts collected on each bond written, must be maintained by the insurer or Managing General Agent.

2) Build-up funds must not exceed 40% of the premium as established by the Surety Bail Bond Agent's contract agreement with the insurer or Managing General Agent. Build-up funds received shall be immediately deposited to the build-up trust account. Interest earned on build-up trust accounts shall accrue to the Surety Bail Bond Agent.

3) Build-up funds are due upon termination of the Surety Bail Bond Agent and discharge of liabilities on the bonds for which the build-up funds were posted. The insurer or Managing General Agent not later than 6 months after the funds are due.

TYPES OF SURETY BAIL BONDS

Personal Surety Bond:

With a Personal Surety Bond, the individual agrees to be answerable for his own debt, default or miscarriage; and, upon breach of a material condition of the bond, the individual is personally liable for the penal (monetary) amount of said bond.

A Personal Surety Bond is not secured by surety, deposit or lien on property only on the promise of the individual.

Corporate Surety Bond:

With a Corporate Surety Bond, a corporate surety and the individual (principal) agree to be answerable for the principal's debt, default or miscarriage; and, upon breach of a material condition of the bond, both the principal and surety are liable for the penal (monetary) amount of said bond.

A Corporate Surety Bond may be collected directly from the corporate surety.

Criminal Defendant Bonds:

Bail –

This is a written undertaking, executed by the defendant or one or more sureties, that the defendant – designated in such instrument – will, while at liberty as a result of an order fixing bail and of the execution of a bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and process of the court.

It is understood, that in the event he fails to appear, the signers of the bail bond will pay to the court the amount of money specified in the order fixing bail.

Appeal Bond (Criminal Cases) –

This is a written undertaking, executed by the defendant or one or more sureties, that the defendant designated in such instrument, remain free on bond pending review of the judicial action of the inferior court and staying the judgment rendered or action taken in that court by the appellate court.

Appeal Bond (Civil Cases) –

The bond given or taking an appeal by which the appellate and his sureties are bound to pay costs if he fails to prosecute the appeal with effect.

Habeas Corpus –

This is a written undertaking, entered into by the defendant and one or more sureties, that the defendant so designated in such instrument, be released from custody to remain free on bond pending review by the court of the defendant's Writ of Habeas Corpus.
Extradition –

This is a written undertaking entered into by the defendant and one or more sureties, that the defendant so designated in such instrument, be released from custody to remain free on bond pending the court's review of demand for extradition from another state or jurisdiction.

This applies for both intrastate and interstate extradition.

Property Bond –

This is a written undertaking, executed by the defendant or one of more sureties, i.e., private individuals, who own real estate and act without compensation, that the defendant designated in such instrument will, while at liberty as a result of the order fixing bail and of execution of a bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and process of the court.

In the event that the defendant fails to appear in court, the penal (monetary) amount of the bond shall become a judgment lien against the pledged property and may be executed upon and the property sold to pay the penal amount to the court.

Non-Surety Bond –

This is the same as a "Personal Recognizance Bond" which is, in actuality, pre-trial release based upon the individual's personal promise to appear in court for trial.

This type of bail is where the defendant acknowledges personally, without sureties, his obligation to appear in court at the next hearing or trial date of his case.

Cash Bonds –

Ohio Revised Code says that "Cash Bonds" and "Surety Bonds" are the same thing.

There are two areas surrounding cash bonds:

1) Minor Misdemeanors – When a defendant is charged with a minor traffic violation or a misdemeanor in the Fourth Degree that, as a penalty, carries no jail time, he may post with the jail or at any authorized bonding station (Police Department) a cash deposit equal to the amount set forth in the court's schedule of bond amounts.

If the defendant elects not to appear in court and the cash deposit will be forfeited to pay his fine and costs.

2) Criminal Actions Other Than Minor Misdemeanors – This is a written undertaking, executed by the defendant and further secured by a deposit of cash in the penal (monetary) amount of the bond; that the defendant designated in such instrument will, while at liberty as a result of an order affixing bail, and of the execution of a bail bond in satisfaction thereof, appear at a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders or process of the court.

It the event that the defendant fails to appear in court, the cash deposited in the penal amount of the bond is forfeited and a *capias warrant* will be issued for his arrest.

Forfeiture of the Bond:

The Ohio Revised Code is very clear:

"If a prisoner admitted to bail fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he is within this state.

Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings."

HOW BAIL BONDS ARE OBTAINED IN THE STATE OF OHIO

The Applicant and Contract:

Surety Bail Bond Agents must follow certain required procedures. As an agent writing surety bail bonds, they utilize specific pre-printed forms. While each insurer or surety may modify the specific language or format, these forms are counted as a "standard" of the bail bond industry.

The Application and Bail Bond Contract is a one-page form. The Application is on one side with the contract and its provisions on the reverse side. Both sides of the document are incorporated by specific references to each other.

It must always be remembered that **THE APPLICATION IS THE MOST IMPORTANT TOOL THAT THE SURETY BAIL BOND AGENT POSSESSES IN THE UNDERWRITING** of the risk and his assessment as to whether the client/defendant will comply with the conditions of release and appear in court as directed.

This form provides for the recording of detailed personal information, employment information, criminal and family information that not only allows the agent to make an informed decision as to whether to execute the surety bail bond, but also, to locate the client/defendant should he or she fail to apprear.

It is very important that the agent asks each and every question that appears on this form and clearly and concisely record the answer. When a question does not apply, for example, when the parents of the client/defendant are deceased, the agent should put a strike through the question to indicate that the question has been asked and answered.

The reverse of the document is the action bail bond contract. The standard contract is an Indemnity and Security Agreement. It is the agent's responsibility to make sure that the parties to the agreement, usually a client/defendant and at least one co-signer/ indemnitor, understand the contract liability that they are assuming.

While the parties certainly can take the time to read the contract completely, they usually do not. Therefore, it is very important for the agent to give a brief and exact statement of the nature of the contract, which can easily be understood.

It is also important that you use the same basic statement for each and every transaction. You may well have to testify in a civil action to enforce the conditions of the bail bond contract, sometimes years after the bond was written. If you always use the same warning statement, e.g. "this is a standard bail bond agreement, you are responsible for any and all losses or expenses resulting from this bail bond," then you can testify with confidence as to what you told your clients.

Collateral Security:

It is lawful, accepted and approved practice of insurers who write Surety Bail Bonds to further indemnify themselves against any losses or expenses, resulting from the execution of a bail bond, by requiring collateral security.

In most cases, when the penal (monetary) amount is not large, the only security used is a co-signer/indemnitor. When the amount reaches a certain limit, the Surety requires real or personal property as collateral, from the client/defendant and/or the co-signer/indemnitor.

Some bail bond agents have abused the system of taking collateral. This abuse has caused strict regulatory and statutory controls. It is very important that the Surety Bail Bond Agent knows and understands these statutes. Violation can result in severe penalties. The statutory regulations are as follows:

A) A Surety Bail Bond Agent that accepts collateral security or other indemnity must comply with all the following requirements:

1) The collateral security or other indemnity must be reasonable in relation to the amount of the bond.

2) The collateral security or other indemnity must not be used by the Surety Bail Bond Agent for personal benefit or gain and must be returned in the same condition as received.

3) Acceptable forms of collateral security or indemnity include cash or its equivalent, a promissory note, an indemnity agreement or a real property mortgage in the name of the surety. If the Surety Bail Bond Agent accepts on a bond collateral security in excess of $50,000 in cash, the cash amount must be made payable to the Surety in the form of a cashier's check, US Postal Money Order, Certificate of Deposit or wire transfer.

4) The Surety Bail Bond Agent must provide to the person giving the collateral security or other indemnity, a written, numbered receipt that describes in a detailed manner the collateral security or other indemnity received, along with copies of any documents rendered.

5) The collateral security or other indemnity must be received and held in the Surety's name by the Surety Bail Bond Agent in an fiduciary capacity and, prior to any forfeiture of bail, shall be kept separate and apart from any other funds or assets of the Surety Bail Bond Agent. However, when collateral security in excess of $50,000 is cash or its equivalent is received on a bond, the Surety Bail Bond Agent promptly must forward the entire amount to the surety or Managing General Agent.

B) Collateral Security may be placed in an interest-bearing account in a federally insured bank or savings and loan association in this state, to accrue to the benefit of the person giving the collateral security. The Surety Bail Bond Agent, surety or Managing General Agent must not make any pecuniary gain on the collateral security deposited.

C) 1) The surety is liable for all collateral security or other indemnity accepted by a Surety Bail Bond Agent, if, upon final termination of liability on a bond, the Surety Bail Bond Agent or Managing General Agent fails to return the collateral security to the person that gave it, the surety shall return the actual collateral to that person, or, in the event that the surety cannot locate the collateral, shall pay the person in accordance with the Ohio Revised Code.

2) The surety's liability as described in the above paragraph survives the termination of the Surety Bail Bond Agent's appointment, with respect to those bonds that were executed by the Surety Bail Bond Agent prior to the termination of the appointment.

D) If forfeiture occurs, the Surety Bail Bond Agent or surety must give the principal and the person that gave the collateral security 10 days written notice of intent to convert the collateral deposit into cash to satisfy the forfeiture. The notice shall be sent by certified mail, return receipt requested, to the last known address of the principal and the person that gave the collateral.

The Surety Bail Bond Agent must convert the collateral deposit into cash within a reasonable period of time and return that which is in excess of the face value of the bond minus the actual and reasonable expenses of converting the collateral into cash. In no event must these expenses exceed 10% of the face value of the bond. However, upon motion and proof that the actual and reasonable expenses exceed 10%, the court may allow recovery of the full amount of the actual and reasonable expenses.

If there is a remission of forfeiture that required the surety to pay the bond to the court, the surety must pay to the person that gave the collateral the value of any collateral received for the bond minus the actual and reasonable expenses permitted to be recovered under the Ohio Revised Code.

E) A Surety Bail Bond Agent or surety must not solicit or accept a waiver of any of the provisions of the Ohio Revised Code, or enter into any agreement as to the value of the collateral.

Posting the Bond, Premium Rates and Expense Fees:

Once the necessary paperwork is completed, the agent is ready to post the bail bond. The Ohio Revised Code sets forth certain prerequisites that the agent must perform prior to the actual posting or execution of the bail bond:

A Surety Bail Bond Agent must not execute a bail bond without doing both of the following:

1) Charging the premium rate filed with and approved by the Superintendent of Insurance;

2) Disclosing the expense fee that will be charged to cover the costs incurred by the agent in executing the bond. (All expense fees collected must be itemized.)

Federal Privacy Notice:

Federal law now requires that certain classes of business, e.g., financial and insurance services, must give to each customer a written Privacy Notice setting forth the policy of the company. Furthermore, on July 1st of each year, you are required to mail a new Privacy Notice to all current customers (bonds that are still pending), even if the Policy Notice has not changed.

PROCEDURES OF THE COURT SYSTEM

Elements of the Legal Process:

There are three main types of court procedures.

The client/defendant may be required to make several appearances before the court. Those appearances may be for the following specific purposes:

Arraignment –

This is a procedure whereby the accused is brought before the court to plead to the criminal charge in the indictment or information.

Trial –

This is a judicial examination, in accordance with the law of the land, of a cause, either civil or criminal, or issues between the parties, whether of law or fact, before a court that has proper jurisdiction.

Appeal –

This is when a defendant resorts to a superior court to review the decision of an inferior court or administrative agency.

Release and its Conditions:

The specific acts required of the defendant or specific restrictions placed against the defendant by the court at the time bail is fixed, and, if not complied with, may result in the arrest of the defendant, revocation of the bail bond and/or forfeiture of the penal (monetary/face value) amount of the bail bond.

1) Prior to Trial – Acts or restrictions that the defendant must comply with to remain free on bond until his trial date.

a) Non-Capital Cases – Having been charged with a Non-Capital Offense, the defendant is not facing the possibility of life or the death penalty.

The acts and restrictions that the defendant must comply with to remain free on bond until his trial date must be strictly complied with in order for him to remain free on bond until his trail date.

b) Capital Cases – Having been charged with a Capital Offense, the defendant is facing the possibility of life or the death penalty. It is very rare that bail is granted in such a case.

When bail is granted, it is usually very restrictive and the acts of restriction placed on the defendant must be strictly complied with in order for him to remain free on bond until his trial date.

2) Pending Appeal – After the conviction of a defendant, the trial court may continue the pre-trial bail bond and release the defendant pending appeal.

The court may require an appeal bond once the formal appeal is filed. The court may amend or continue the same acts or restrictions upon the defendant and he must comply in order for him to remain free on bond pending the filing of his appeal or the adjudication of his appeal.

Failure to Appear:

This is when the defendant fails to present himself and appear at court when his attendance was required by said court. This is a breach of conditions of the bail bond.

Bail Revocation by the Court:

For any just cause and to the satisfaction of the court, the court may at any time, amend, annul, rescind or cancel its order granting bail to the defendant and order his immediate arrest and re-incarceration.

Release of Surety:

When all of the conditions of the bond have been satisfied, the surety is released from all liability.

This occurs when the principal is incarcerated.

This occurs in a misdemeanor case when the principal is found guilty or innocent of the charges.

EXONERATION OF THE BOND

Surrender of the Principal:

This is the action of the Surety Bail Bond Agent returning the principal client/defendant to the jurisdiction of the court where he had been released on bail. Making his appearance at court.

Discharge of the Surety:

Upon surrender of the Principal (client/defendant) by his surety, the condition of the bail bond having been satisfied, the liability of the surety is discharged and released.

Return of Premium:

It must be stressed that the act of the Surety Bail Bond Agent returning the principal client/defendant to the jurisdiction of the court does not, in itself, require a return of fee or premium.

The question as to whether the premium or fee is earned or unearned, is governed by the provisions of the Bail Bond Contract. If, however, a refund is due, it must be made in accordance to the insurance regulations pertaining to refunds as found in the Ohio Revised Code:

1) The Superintendent may suspend, revoke, or refuse to issue or renew any license as an agent, Surety Bail Bond Agent, surplus line broker, or limited insurance representative, or impose any other sanction authorized by law for failing to fulfill a refund obligation in a timely manner.

A refund is not fulfilled in a timely manner unless it is fulfilled within one of the following time periods:

a) 30 days after the date the policyholder, applicant or insurer takes action resulting in a refund.

b) 30 days after the date of the insurer's refund check, if the agent is expected to issue a portion of the total refund.

c) 45 days after the date of the agent's statement of account on which the refund first appears.

Return of Collateral:

According to the Ohio Revised Code:

A) If collateral security or other indemnity is accepted on a bond, the Surety Bail Bond Agent, Managing General Agent or surety must make, upon demand, a written request to the court for a discharge of the bond to be delivered to the surety or the surety's agent.

If the obligation of the surety on the bond is released in writing by the court and a discharge is provided to the surety or the surety's agent, the collateral security or other indemnity, except a promissory note or an indemnity agreement, shall be returned.

It must be returned within 21 days after the discharge is provided, to the person that gave the collateral security or other indemnity, unless another disposition is provided for by legal assignment of the right to receive collateral to another person.

If, despite diligent inquiry by the surety or the surety's agent to determine that the bond has been discharged, the court fails to provide a written discharge within 30 days after the written request was made to the court, the bond shall be considered cancelled by operation of law, and the collateral security or other indemnity, except a promissory note or an indemnity agreement, shall be returned, within 21 days after the written request for discharge was made to the court, to the person that gave the collateral security or other indemnity.

B) No fee or other charge, other than those authorized by the Ohio Revised Code or by rule of the Superintendent of Insurance, shall be deducted from the collateral due. However, allowable expenses incurred in the apprehension of a defendant because of forfeiture of bond or judgment may be deducted if those expenses are accounted for.

Again, collateral MUST BE returned to the person who gave it!

C) 1) No person shall fail to return collateral security in accordance with the Ohio Revised Code.

2) A violation of this shall be punishable as follows:

a) if the collateral is of a value of less than $500, a violation is a misdemeanor of the First Degree;

b) if the collateral is of a value of at least $500 but less than $5,000, a violation is a felony of the Fifth Degree;

c) if the collateral is of a value of at least $5,000 but less than $10,000, a violation is a felony of the Fourth Degree;

d) if the collateral is of value of $10,000 or more, a violation is a felony of the Third Degree.

Declaration of Forfeiture and Proceedings:

The Ohio Revised Code states:

"If a prisoner admitted to bail fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he is within this state. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings."

"As to recognizances he shall notify the accused and each surety by ordinary mail at the address shown by them in their affidavits of qualification or on the forfeiture and to require each of them to show cause on or before a date certain to be stated in the notice, why judgment should not be entered against each of them for the penalty stated in the recognizance. If good cause by production of the body of the accused or otherwise is not shown, the court or magistrate shall thereupon enter judgment against the sureties, or either of them, so notified, in such amount, not exceeding the penalty of the bond, as had been set in the adjudication of forfeiture, and shall award execution therefore as in civil cases. The proceeds of sale shall be received by the clerk or magistrate and distributed as on forfeiture of cash bail."

2011 HOUSE BILL 86 AND BAIL FORFEITURES

The bill changes notice timeframes for recognizances by requiring the clerk to notify the accused and each surety within 15 days of the forfeiture declaration (there was no deadline before) and to show cause within 45 to 60 days (the old limits were 20 to 30 days). (§2937.36(C).)

Time Limits for Appeals:

As in all civil cases in the State of Ohio, the surety has 30 days from the date of judgment to file Notice of Appeal. The filing of the Notice of Appeal can, but does not necessarily stay or suspend, the execution of the judgment. The court may require that the surety post an appeal bond in order to stay execution of the judgment.

Ohio Laws on Aprehension:

The Ohio Revised Code states:

"After judgment has been rendered against the surety, the court or magistrate, on the appearance, surrender or re-arrest of the accused on the charge, may remit all or such portion of the penalty as it deems just."

Furthermore….

A) No person, other than a law enforcement officer, shall apprehend, detain or arrest a principal on bond, wherever issued, unless that person meets all of the following criteria:

1) The person is any of the following:

a) Qualified, licensed and appointed as a Surety Bail Bond Agent under the Ohio Revised Code;
b) Licensed as a Surety Bail Bond Agent by the state where the bond was written;

c) Licensed as a private investigator under ORC;
d) Licensed as a private investigator by the state where the bond was written;
e) An off-duty peace officer, as defined by the ORC.

2) The person, prior to apprehending, detaining or arresting the principal, has entered into a written contract with the surety or with a licensed Surety Bail Bond Agent appointed by the surety, which contracts sets forth the name of the principal who is to be apprehended, detained or arrested.

3) The person, prior to apprehending, detaining or arresting the principal, has notified the local law enforcement agency having jurisdiction over the area in which such activities will be performed and has provided any form of identification or other information requested by the law enforcement agency.

B) No person shall represent the person's self to be a "bail enforcement agent" or "bounty hunter" or claim any similar title in this state.

Violation of either section A or B is a misdemeanor of the First Degree, or, it the offender previously as been convicted of or pleaded guilty to 2 or more similar violations in that section, a felony of the Third Degree.

EVOLUTION OF THE SYSTEM OF CRIMINAL JUSTICE

Capital Punishment 4,000 Years Ago:

Some historians have written that there were laws and some sort of police enforcement as long ago as 4000 B.C. in China and Egypt. It is only logical to assume this if there was any form of civilization. The first permanent record of any sort concerning law enforcement are the Codes of Hammurabi, the Babylonian ruler who lived about 2000 B.C.

His codes were inscribed on stones of black diorite, found by modern archaeologists, and are still legible. They allow and forbid rules of conduct and provide for specific methods of punishment for the violators. They have been called one of the greatest contributions to mankind.

The 4,000 lines of script, broken down into 282 clauses, included three essential parts, in addition to the death penalty, as punishment for most of the crimes: (1) the concept of "if a freeman destroys the eye of another, his eye shall be destroyed," and "if anyone breaks a freeman's bone, his bone shall be broken," (2) the sanctity of an oath before God, and (3) the requirement of written evidence in all legal matters.

In Ancient Greece, the board of Ephors was comprised of five elected citizens of Sparta. This all-powerful board served as executive, judicial and legislative officials of government. This body existed from about 800 B.C. until about A.D. 200.

An Ephor presided over the Senate and Assembly, carried out its decrees, supervised education, levied fines, inflicted other forms of punishment, arrested and tried other Ephori for suspected transgressions, and performed all other types of regulation.

Ancient History and Roman Law:

Plato (427-347 B.C.) was the Greek philosopher who developed the idea that justice was the central force of morality that inspires men to do what is right. He categorized crimes according to time of day and seriousness and prescribed punishment in degrees to match the degree of the crime. His student, Aristotle (384-322 B.C.) defined law as an agreement between people to do justice to each other. He addressed the differences between rule of law and rule of men and stated that rule of law should prevail.

In 450 B.C. two groups of magistrates were appointed in Rome to draw up a code of laws, known as the Twelve Tablets. They still exist as the basis for modern Roman Law, and much of our civil law in such matters as ownership, inheritance, torts and judicial process. The use of courts and judges to settle disputes began in Rome. In 250 B.C. the rights of habeas corpus and appeal were added to the Roman Laws.

The most significant contribution to law by Rome was in the Emperor Justinian's (A.D. 483-565) *Corpus Juris Civilis* or *Body of Civil Law*. Three Roman rules that are intrinsic to the United States' system of laws include: 1) the right of the accused to face his accuser, 2) the right to be considered innocent until proven guilty, and, 3) the right to a fair trial.

Background of Our U.S. Police System:

The first recorded police agency in Egypt was created about 1400 B.C. when Pharaoh Amenhotep set up custom houses and a marine patrol to guard against smuggling. In France, marshals were appointed by the King to serve as the police for the nation. In A.D. 875 a body of armed and trained men was created. In 1502 a military force of mounted archers was formed to protect the highways.

The police role as we know it in the United States is to serve as the enforcement arm of the executive branch of the government. The powers and limitations are established by law and are generally limited to the protection of life and property and the enforcement of written laws only. The judging and punishing of offenders is the responsibility of other government branches.

The U.S. police system is principally based upon the English system. Federal, state and local law enforcement agencies operate independently within their own spheres of jurisdiction. Through the various Anglo-Saxon and Norman Periods the role of sheriff developed, the Magna Carta was enacted to provide all people with "due process of the laws," becoming a symbol of supremacy of the Constitution over the king! One of the most significant contributions of the Magna Carta is that it showed opposition to excessive use of royal power.

By 1792 the population of London had grown to nearly One Million and in 1829 the Metropolitan Police Act was proposed. The force was organized along military lines and even a

detective bureau was established for the purpose of conducting investigations under circumstances in which the appearance of the uniform would hinder investigation.

Twelve principles of modern law enforcement emerged with the establishment of the new London Metropolitan Police Department:

1) The police must be stable, efficient and organized along military lines.
2) The police must be under government control.
3) The absence of crime will best prove the efficiency of the police.
4) The distribution of crime news is essential.
5) The deployment of police strength, both by time and area, is essential.
6) No quality is more indispensable to a policeman than a perfect command of temper. A quiet, determined manner has more effect than violent action.
7) Good appearance commands respect.
8) The selection and training of proper persons are at the root of efficient law enforcement.
9) Public security demands that every police officer be given and identifying number.
10) Police headquarters should be centrally located and easily accessible to the people.
11) Policemen should be hired on a probationary basis before permanent assignment.
12) Police crime records are necessary to the best distribution of police strength.

Evolution in the United States:

In 1833, the City of New York was so impressed with the efficiency of the Metropolitan Police Department in London that a delegation was sent to that city to study the department with a view toward adopting their ideas. The result was the formation of the New York City Police Department in 1844 along the general lines of Scotland Yard. The department in New York was the first of its kind in the United States, followed by Boston in 1850, Chicago in 1851, Cincinnati in 1852, Philadelphia in 1855, Baltimore in 1857 and Detroit in 1865.

Development of the Court and Correctional Systems:

Lower Courts – The judicial system in the United States operated on a very localized level for many years, and much of the system that migrated with the people from England still remains quite similar in many respects to today's small-unit courts, whether it be a justice of the peace with his justice court or use of magistrates, these come from 14th century England.

Jury – The jury by peers of the accused, or persons selected from the same community occupied by the accused, and the grand jury originated in the year 1166 during the reign of King Henry of England. The jury heard testimony and passed judgment on guilt or innocence. The grand jury was charged with the responsibility to make inquisitions into facts of crime and render verdicts, which were called indictments.

Federal Courts – The system of federal courts was established by the Judiciary Act of 1789, which also established the office of Attorney General and the federal marshal, who serves as the court bailiff for the thirteen federal districts.

Contemporary Court Systems – The court systems of today are little different in basic structure from the times when they were established. The court of last resort, or the highest appeal court, is the state supreme court. The next level is the intermediate appellate court, which exists in approximately one-half of the states, and which hears appeals from trial courts. The third level is the court of original or general jurisdiction, which hears criminal felonies and civil cases of greater significance. The fourth level consists of courts of limited jurisdiction, which handle misdemeanors, most traffic cases, small claims, police courts, and civil cases of lesser significance.

Juvenile Court – The first juvenile court in the world was established in Illinois in 1899. It gave to juvenile delinquency a status of something less than crime. Youthful deviance defined as delinquency was to be treated correctively, not by punishment.

Traditional methods of punishment for many centuries were capital punishment, physical torture and banishment. Such methods were decisive and permanent; the punishment of death served the needs of the group by eliminating the wrongdoer and satisfying the desire for revenge. Torture was an extension of the "eye-for-an-eye" philosophy, and included such things as crucifixion, exile into starvation, maiming, drawing and quartering, branding, dragging through the streets and cutting off or out the offending part. These served as public spectacle to deter others from committing similar crimes.

Probation – The practice of conditional release on the individual's own recognizance and the suspended sentence originated in Anglo-Saxon times. Probation as practiced today, which involves a period of supervised freedom during which time the probationer is expected to develop acceptable lifestyle and behavior patterns and to divert his energy and desires from criminal activities, originated in Boston in 1841.

Parole – Although involving casework and other techniques quite similar to those of probation, parole has been separate and distinct in origin and development. The program involves "aftercare" type casework with convicted offenders following a period or imprisonment, and the principal thrust of parole is reintegration and socialization.

Parole and Pardon are related in some respects. They both follow a period of incarceration. Pardon may involve a reduction in sentence in return for some favor or for good conduct. Parole is structured as a conditional release from imprisonment.

CONSTITUTIONAL CONSIDERATIONS

Declaration of Independence:

When John Hancock and his colleagues signed the Declaration of Independence on July 4, 1776, it included an extensive list of grievances against the tyranny of King George III. The purpose of the document was to declare independence of the Colonies from England and the King's oppression.

The document also included a statement supporting the new nation's secession from the mother country that in effect stated that governments should not be changed for "light and transient causes," but "when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."

Life, Liberty and Happiness:

The Declaration reflected the philosophy of the men who fashioned the framework for the newly formed independent government: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed…"

Thus, according to the Declaration, the purpose of the Government is to insure all people in the nation that they shall equally enjoy the rights of "Life, Liberty and the pursuit of Happiness." Also pointed out in this document is that the right of the government to govern, comes from the will of the people.

United States Constitutuion:

The people in the United States of America have the fundamental right to be free and enjoy their liberties but also the right to be secure and have protection against others who would interfere with their rights to "Life, Liberty and the pursuit of Happiness." When the authors of the Constitution met, they obviously had those rights in mind, as reflected in the Preamble:

"We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Fundamental Rights and Liberties:

By virtue of police power, the nation's hundreds of thousands of local, state and federal criminal justice professionals have the responsibility and the authority to maintain an ordered liberty through the exercise of their respective duties.

They must enforce the Constitution, and they, too, must be governed by its requirements. In their respective duties, the individuals in the justice system should be guided by this statement by Justice Brandeis in *Olmstead v. United States* (277 U.S. 438,485). Frequently referred to in many cases, this has been considered a guiding view in judicial philosophy. Justice Brandeis wrote these words in his dissenting opinion:

"Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizens. In a government of laws, existence of

the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means – to declare that the Government may commit crimes in order to secure the conviction of a private criminal – would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

Police Power:

This term does not simply denote "uniformed" police officers performing their various duties. Police power is that constitutionally authorized power of government to enact and enforce laws to regulate the conduct of the people who are within the jurisdiction of that government.

Police power rests primarily with the respective states, which are sovereign in the United States' system of government. It is the power of the legislative branch of government to make laws that provide for the public health, welfare, prosperity, morality and safety. Enforcement of the laws is carried out by the executive branch of government through its investigative and enforcement arms.

Adjudication is accomplished in the courts by the prosecution and defense, under supervision and arbitration of the judiciary. Most criminal law is the responsibility of state and local governments, and the federal government reserves for itself only limited police powers.

Police Power, Interpretation and the Bill of Rights:

The first ten amendments to the U.S. Constitution, better known as the Bill of Rights, were added to the original document just a few months after ratification of the Constitution itself. They include some of the inalienable rights that were alluded to in the Declaration of Independence written several years earlier.

These rights must be zealously guarded by everyone, most particularly the local police departments, who have the sworn duty to preserve the public peace and to protect lives and property. One very important fact that should never be overlooked with respect to the Bill of Rights is that along with the "rights" goes a corresponding set of responsibilities to assure liberty to others, as well as to self.

Certain amendments have clear intentions for the police:
Article 1 – The police role involves one of visiting or observing an assemblage of people to ascertain its lawful nature; the police are responsible for the maintenance of peace, and there may be good cause for the officers to remain present or nearby to assure the continued peaceful and lawful nature of the assembly; police are not censors, nor should they be.
Article 2 – When public safety demands it, the police has a duty to search persons known or suspected of having weapons on their person or in their possession, to confiscate the weapon and to arrest the persons for violations of the laws.

Article 3 – This was intended to prohibit the quartering of military troops in private residences, in the manner practiced by the British Army in the American Colonies. It would apply equally to any police agency that would entertain such ideas.
Article 4 – The article was originally designed as a protection against abusive practices that had been the rule rather than the exception for the British Army and from which the framers of the Bill of Rights sought protection. Provisions requiring an affidavit for a search warrant were designed to prevent the practice of police "fishing expeditions."
Articles 5 & 6 – The self-incrimination and "due process" clauses of this article are those that affect the police on a more regular basis than the other clauses. The due process provision is a reference to the normal and legal procedure, which may not be bypassed for any purpose. A series of cases eventually led to adoption of the Miranda Rule in 1966. The speedy trial provision is met by the police officers' taking the suspect before a magistrate without undue delay and filing charges against him.
Article 10 – This article provides for the primary police power to be vested in the individual states, which are sovereign in our system of government in the United States.

Judicial Review and Interpretation of the Law:

The courts have the ultimate authority to interpret laws and their enforcement through their authority to review the actions of both legislature and executive officers – the police – in consideration of the intentions of the Constitution, which is the acknowledged supreme law of the land. Beyond the authority of the courts, of course, lies the ultimate authority of the people to change the Constitution through the voting process.

The effects of judicial review can best be illustrated by a review of some of the "landmark" court decisions that have directly affected the police and other components of the criminal justice system through changes in their procedures necessitated by those decisions. Some "landmark" examples include:

Weeks v. US – Rendered inadmissible in federal court any evidence seized by federal agents in violation of search and seizure rules. (1914)
Powell v. US – A defendant's right to counsel at a trial. (1932)
Nardone v. US – The exclusionary rule extends beyond the unreasonably obtained evidence to the "fruits of the poisoned tree." Thus the evidence obtained is "tainted." (1939)
McNabb v. US – Requires a prompt arraignment. (1943) *Mapp*
v. Ohio – Prohibited unconstitutional searches. (1961) *Miranda*
v. Arizona – Established rules for interrogation. (1966)
Terry v. Ohio – Distinguishes between a "stop/arrest" and a "frisk/search." (1968)
Argersinger v. Hamlin – No imprisonment may be imposed unless the accused is represented by counsel. (1972)
Faretta v. California – An accused has a constitutional right to waive counsel and to represent himself in a criminal proceeding. (1975)

SCOPE OF THE CRIME CHALLENGE

Origins of Criminal Law:

Why call crime a *challenge*? More appropriate terms, you might argue, might be *scourge* or *plague* or *blight* or—if nothing else—the *crime problem*. But a *challenge*?

Possibly the most plausible response to your arguments is that crime has been such an intrinsic part of society that no matter what efforts have been exerted to eradicate it, crime is still here—you can find it everywhere. Crime is to everyday life what those little stones are to a bag full of pinto beans; there always seems to be an ample amount of each. For that reason, crime is called a challenge!
Along with the civilizing of man came the rules of society designed to assure the civilization process. It can't be emphasized enough, that the common thread found in all precursors of the modern day legal system, was that written laws prescribed required behavior and specific punishments for violations of those laws, making the individual responsible for his/her own acts.

As we have said, in Ancient Egypt, the "seat of wisdom," the death penalty was one of the forms of punishment, but for certain crimes it was often commuted to penal servitude. Punishment was mild, compared to the Babylonians punishments, which included death for incest, adultery and theft, and branding the forehead for certain other violations. Egyptian law reflected Egyptian culture at that time. Incest was permitted "because the gods did it!"

Israel and Mosaic laws also incorporated many of the laws already established. Some of the highlights of Mosaic Law were 1) the laws applied to Israelite and non-Israelite equally, 2) polygamy was allowed, 3) slavery was practiced, but every seventh year each slave was given a year of freedom, 4) most sexual law violations were punishable by death, and, 5) individuals found guilty of crimes of violence were either fined, or they were punished according to the "eye-for-an-eye" philosophy.

As laws developed, they reflected the economic, social and religious beliefs held by the people at the time and place the laws existed. Laws evolved from religious tenets; customs, mores and folkways of society; social taboos; prejudices and preconceived attitudes and biases toward people other than those who lobbied for specific laws enforcing their point of view; demands of special interest and pressure groups; and the general needs and wishes of society as perceived by lawmaking bodies of men and women representing their human constituents.

A cursory review of the criminal codes in our own state will reveal a wealth of information about all of the above factors in our modern society. A check of the date when a certain crime was committed may give the criminal law historian an idea as to the social priorities at that time. In other words, laws—including criminal laws—are the "game rules" of society.

England and Common Law:

Since the country's first government was under English rule, the English legal system was adopted by the new nation when it emancipated itself from the grips—but not the customs—of the mother country.

There are vestiges of Spanish influence in California and Florida and French influence in Louisiana, and other influences elsewhere, but the principal foundation of law in the United States is English Common Law.

United States, a Nation of Laws:

Rather than rely upon unwritten laws, and because of their suspicion of a government ridden with tyrants, the leaders of the new nation decided that all laws should be codified, or written. This assured more continuity, more objectivity, and less likelihood that men could change the laws at their whim and fancy as the winds changed the bends of branches in trees. Specificity is very essential to our legal system. The law must be clearly understood—it must specifically state what is intended. A law that is vague or uncertain as to its meaning or to what circumstances it would apply or that may be so broad that it covers too many different types of misconduct may be ruled unconstitutional because of its vagueness.

We are a nation of laws. The entire system is regulated by laws, all of which must be specifically written. A nation that is not ruled by law is one that is ruled by the whim of fallible men, constantly changing with no rhyme or reason depending on the changing moods of the individuals in charge at that moment.

Although there are individuals who interpret the laws through their own intellectualizing process, and lack of justice does occur, the laws of the nation will prevail and be used as guide-lines for uniformity and fairness. There is a greater assurance of equal treatment regardless of individual differences, as opposed to chaotic inconsistency.

Law as a Social Force:

Criminal laws are used as a means of controlling human behavior positively—rather than negatively—by publishing the law and the punishments for violations of the law. Hopefully, such publication will cause a general awareness of the law, and many people will make their own private decisions not to participate in conduct that would be in violation of the laws. Individuals have the freedom to decide whether they will break the rules of society, and many do just that, as they have the same freedom to decide not to break the rules.

Mores, customs, taboos, religious codes, moral and ethical standards, habit, traditions and everyday behavior are all social forces. Law is another social force. The difference lies in the control of behavior that is contrary to law, and how the violator is dealt with by the government rather than by private sources.

Peer Pressures and "Criminal Stigma":

Peer pressures work on individuals to break the law and other forces are at work among peers to make them want to comply with the law. Sometimes the rewards are greater in the eyes of the offended to commit a crime than the reward would be for not committing the crime.

Consider the tremendous pressures at work environments favoring the use of marijuana and other behavior modification substances, such as drugs and alcohol, certain language styles, manner of dress (or undress), antisocial behavior and incorrigibility toward parents and other symbols of institutional control, authority figures.

Fear of criticism by one's peers may overpower any less personal fear of apprehension and punishment, which may seem more remote and less personal. In fact, there may be a feeling that even though an act is against the law, there will be no punishment or that it will be minimal and far less to fear than ostracism by one's friends. When the controls are removed, the violator literally goes berserk in his or her efforts to yield to peer pressures on all sides and to express emancipation.

The stigma of being labeled "criminal" or "thief" or "child molester" may cause such a trauma for the offender or would-be offender that the mere fear of being found out serves as an effective social control. Fear in itself is a powerful force. On the other hand, the "stigmata" might serve as a badge of skill or courage and be sought by some offenders, such as in some violent street gangs which require initiates to perform some sort of violence in order to prove its accomplishment.

The town "bully" doesn't get to enjoy the reputation unless he gets to beat someone senseless once in a while to perpetuate his "social image" and status.

Criminal Statistics – "Uniform Crime Reports":

Statistical reports are essential to virtually every discussion and study of the problem of crime. The reports reflect trends, identify specific problems, and give tabulated facts about crimes and the people who commit them. It is extremely important that any set of statistics, no matter how valid or reliable, be considered with certain reservations.

One of the most reliable sources of criminal statistics in the United States that deals in nationwide computations and comparisons is the annual publication of the FBI, *The Uniform Crime Reports*. This *crime index* represents those crimes that are most likely to be reported to the police. They are: 1) criminal homicide, 2) forcible rape, 3) robbery, 4) aggravated assault, 5) burglary or breaking and entering, 6) theft of property valued $50 and over, 7) auto theft, and, 8) arson.

Overall Justice System and the Crime Problem:

Simply put, the courts and the officers attached to the court as prosecutors, defense attorneys, as well as the judges themselves are pledged to uphold the laws and the constitutions of the federal and state governments…it's just that simple!

And, ideally, the principal thrust of corrections programs is toward the eventual rehabilitation of criminal law violators.

THE CRIMINAL JUSTICE SYSTEM

Components of the System:

The criminal justice system throughout the United States is actually a conglomerate of systems. It is unique because of the governmental relationships in the U.S. political system. There are literally thousands of independent yet interrelated agencies with similar or identical responsibilities linked together into what appear to the casual observer to be a garbled collection of different bureaucracies.

There are four major components of the system of criminal justice. Those four are most commonly referred to as 1) the legislature, 2) police or law enforcement, 3) the courts, and, 4) corrections.
The legislative component promulgates the laws, which serve as the tools of the criminal justice professions. The police component consists of federal, state and local agencies responsible for protection, investigation and law enforcement.

The courts component comprises the judicial systems of all strata of government and includes the prosecuting attorneys and defense attorneys, as well as quasi-judicial (arbitration, fact- finding, investigating) agencies and the courts, which referee and regulate the many aspects of the system. The corrections component includes the local, state and federal agencies of probation and parole as well as the various correctional institutions throughout the country. Legislature—Based upon the provisions and limitations of the United States Constitution and the constitutions of all the individual states, the various legislative bodies create the laws and agencies responsible for the enforcement of those laws.

Virtually, every government has its own lawmaking authority, regardless of level of government. The result is an array of separate sets of laws for federal, state and local governments to be enforced by the executive branch of each government through their respective police agencies. Police power is the term, which describes the power of government to make and enforce these laws through legislative action.

Police—Although many laws are enacted by one legislative body, such as the federal or state legislature, many of those laws may be enforced by the police of any of the government levels regardless of geographic or legal jurisdictions. Thus, it is not unusual for state and local agencies to arrest violators of federal laws, and it is most usual for local police officers to arrest for state law violations.

In order to accomplish their goals of maintaining peace and tranquility in a state of ordered liberty, basic objectives of the police include the following:

a) to create a feeling of ever-presence of the uniformed patrol force in the community through motorized or foot patrol;
b) to provide benevolent services in cooperation with other agencies, such as giving directions and information regarding the community and its facilities, providing emergency counseling services, rescue and emergency first aid assistance;
c) to perform crisis-intervention activities for the purpose of minimizing criminal conduct, e.g. domestic disputes;

d) to attend public gatherings to ascertain they are lawful and not infringing on others rights and to assure peaceful assembly;
e) to investigate allegations of criminal behavior and take appropriate steps to identify, arrest and bring to a fair trial the alleged perpetrators of those crimes;
f) to enforce the laws and ordinances of the federal, state and local government which are charged to the department for enforcement, and, to cooperate with other government agencies in enforcement of the laws charged to those agencies;
g) to investigate the causes of traffic collisions and take appropriate action to reduce or eliminate such accidents, including reporting engineering or educational problems and enforcing traffic laws, including the arrest of violators;
h) to investigate conditions and other matters related to licensing and other regulatory concerns of the jurisdiction and make appropriate reports to other responsible agencies;
i) to direct vehicular/pedestrian traffic to expedite its flow with the greatest degree of efficiency and safety to all concerned;
j) to maintain a peaceful/crime-free community through crime prevention, public information and preventative techniques;
k) to investigate complaints and handle calls for police intervention in matters that involve the legal and traditional responsibilities of the department;
l) to maintain thorough investigation and enforcement activities, an effective balance of vice control, in accordance with prevailing community standards;
m) to perform as effectively as possible in activities to discover delinquent and pre-delinquent behavior of juveniles and take direct action to deter development of criminal and other asocial behavior patterns;
n) to interact with as many individuals and groups in the community to explain the goals and objectives of the department and to secure their advice and assistance;
o) to maintain a property and evidence storage facility to assure procedurally correct presentation of physical evidence in court and return of lost and stolen property to lawful owners;
p) to prepare essential reports and records required by law and provide appropriate information to legally authorized persons.

The Courts – Federal and State Systems:

The courts throughout the U.S. are, like the police, organized (or disorganized) in a fashion similar to the interrelationships of the local, state and federal governments, each operating within its own separate sphere of authority and responsibility.

The local courts at the municipal level and county level, numbering into the many thousands, have primary jurisdiction over criminal cases of misdemeanor and felony categories that involve municipal, county and state laws. An appeals process, through progressively higher court levels, provides for certain issues to be appealed through the state court system to the state supreme court, and, in some cases, to the U .S. Supreme Court.

The federal court system consists of the U.S. Supreme Court, the appellate courts, the military courts and the district courts. Jurisdiction of the Supreme Court includes appeals in matters of constitutionality, controversies involving certain public officials and other matters in which a state is a party to a legal action.

The courts of appeal, eleven in number, hear appeals from the district courts. Other special purpose appeals courts include the Court of Systems and Patent Appeals and the Court of Military Appeals. At the trial level in federal court are ninety-three district courts, the Court of Claims, Customs Court, and Courts Martial for the military services.

The Systems of Correction:

It is evident that the term *corrections* encompasses a multitude of functions, people, concepts and ideals. Corrections generally involves the rehabilitation—or correcting—phase of the process through which an individual must proceed once he has been determined guilty of a crime and inducted into the justice system. There are three basic parts to this component, although the first and third are quite similar. Those three parts are probation, institutions and parole.

Parole—Paroles are granted by federal, state or county boards from the various institutions. Following release from prison, the parolee is placed under the supervision of a parole or probation officer. A parolee is considered "still in custody" and only on leave from the institution during the period of time he is on his good behavior. He lives under the threat of immediate return to prison if he does not live according to the strict rules set forth.

The conditions of parole are also similar to those for the person on probation, but the two should not be confused. Probation refers to the term spent by the individual in lieu of a term of imprisonment. Parole follows imprisonment and is merely considered a continuation of that prison sentence while outside the walls of the institution.

The American Bar Association suggests that a significant reduction in crime is possible if specific objectives are followed:

1) Society must seek to prevent crime before it happens by assuring all Americans a stake in the benefits and responsibilities of American life, by strengthening law enforcement, and by reducing criminal opportunities.
2) Society's aim of reducing crime would be better served if the system of criminal justice developed a far broader range of techniques with which to deal with individual offenders.
3) The system of criminal justice must eliminate its existing lack of fairness if it is to achieve its ideals and win the respect and cooperation of all citizens.
4) The system of criminal justice must attract more people and better people—police, prosecutors, judges, defense attorneys, probation and parole officers and correctional officials with more knowledge, expertise, initiative and integrity.
5) There must be much more operational and basic research into the problems of crime and criminal administration, by those both within and without the system.
6) The police, courts and correctional agencies must be given substantially greater amounts of money if they are to improve their ability to control crime.
7) Individual citizens, civic and business organizations, religious institutions and all levels of government must take responsibility for planning and implementing the changes that must be made in the criminal justice system if crime is to be reduced.

THE COURTS

The Process Phase of Criminal Justice:

The courts component of the criminal justice system is the "process" part of what we present as a three-part system.

The police comprise the "input" part, courts are the processing component, and "output" includes the corrections subunits of probation, parole and the correctional institutions.
Representatives of the police, or "input" phase, make the initial decision of whether to introduce individuals to the system through arrests and summonses. Based upon facts discovered during their investigations, they make the decision to proceed with criminal charges. The next step is for the police to present the case to the prosecuting attorney, the first step in the "process" phase.

It is here, in the office of the people's prosecutor (also called the district attorney or state's attorney), that the hard decisions are made of whether to proceed with the charges originally presented by the police, to file an alternative charge, or not to file at all. Once the decision is made to proceed, the matter then goes to court.

Relationship to the Police and Corrections:

The American system of jurisprudence is based upon codified laws. There are criminal codes covering literally thousands of acts (or non-acts) of human behavior that legislators have defined as criminal law violations. New laws are added with fervent zeal to maintain a peaceful ordered liberty, and existing laws are reviewed and changed from time to time.

Sometimes old and unused laws are retired, or "decriminalized." The legislature provides the tools for the police to work with and the legal restrictions on how the correctional process should work. But the key to the system's success or failure lies in how the courts interpret the laws, process the accused and provide for correction and rehabilitation of the convicted offenders.

Three major premises comprise the doctrine of *judicial review*, which some legalists refer to as "judicial supremacy." Those premises are that:

1) the courts may make the final determination as to what is law and what is not;
2) the courts may require—through legal means at their disposal—adherence to lawful conduct by the administrative branch of government;
3) the courts may invalidate a legislative action on the basis of unconstitutionality.

This doctrine refers to the Supreme Court, but the general principle is carried down to the lowest court at state level.

Judicial discretion is practiced by a lower court judge when hearing testimony and examining evidence to determine that a crime was, in fact, committed, and if the accused should be held to answer to the charges—or be bound over—in the higher court where the trial is to be held. During the trial, the judge has the authority to exclude evidence on the basis of unconstitutional

behavior of the police in collecting and presenting such evidence. The judge may even declare a mistrial and dismiss the charges on Constitutional grounds.

The corrections component of the system is directly related to the authority of the court. Probation officers in many jurisdictions serve under the direction and at the pleasure of the local courts. Conditions of probation may be standardized, but they are articulated by the judge who grants probation in lieu of all or part of the incarceration in jail or prison.

Although sentencing laws may restrict the latitude within which the judge may function, the judge decides whether to sentence an individual to concurrent or consecutive terms in prison. Three concurrent terms of 5 years would mean that the convicted person would serve only 5 years, less time off for good behavior, while 3 consecutive terms of 5 years each would mean that the individual would spend 15 years less "good time" off. Obviously, there is a very substantial difference.

Municipal Courts:

This court may be called the mayor's court, the police court, or by some other name that designates it as one of the trial court where the greatest volume of cases are tried in civil and criminal matters. The municipal court may serve one city or several.

Misdemeanors committed within the municipal court's jurisdiction are tried in this court, and preliminary hearings for felonies may be held in the municipal court to determine if there is sufficient proof that a crime has been committed and that there is reason to believe that the accused should be held to answer to the charges in superior court—in the State of Ohio, know as the Court of Common Pleas.

In misdemeanor cases, the municipal court judge may sentence the accused to jail and/or probation and/or a fine. Although the term of probation is not considered as punishment, violation of that probation may lead to a period of incarceration for the violation. In a felony case, the judge may receive a guilty plea but must first *certify* the plea to the superior court (Court of Common Pleas) along with the case, where the Common Pleas judge will pronounce the sentence.

Superior Court – in Ohio, the Court of Common Pleas:

There is usually only one superior court per county, although there may be literally hundreds of divisions of that court as there are divisions of the municipal court.

Jurisdictions of the superior court usually include:
1) juvenile court, a separate civil division of the court that directs the county's juvenile justice network, including guidance and direction of the juvenile probation efforts;
2) all felony trials and related hearings;
3) certain "high misdemeanors" in some states;
4) civil suits involving reparation for an amount larger than that allowed in the municipal court;

5) court of equity, in which an order to "right a wrong or injustice" is sought rather than money damages;
6) probate court, which is involved in the states and related matters of the deceased;
7) appeals from the lower courts on matters of judicial error or constitutional issues;
8) courts of conciliation or divorce;
9) writs of habeas corpus and other types of legal actions involving property and debts;
10) reciprocal enforcement of family support laws in cooperation with other states;
11) sanity and alcoholic commitment hearings.

Courts of Appeal and Supreme Court:

The appellate division serves a specified portion of the state and its various trial courts. The division is comprised of three judges who sit and decide on issues as a group. They also review cases on an individual basis, meet to discuss their cases, and then either concur with the judge who is writing the decision, or they dissent. The majority view is the binding one.

Jurisdiction of the appellate court extends to case review that may be a court-determined, or legally prescribed right to review, and to other cases that the appellate court reviews at its discretion upon petition for such review. The effect of the appeal may be a reversal, which puts the litigants back to their original starting point, or the case may be returned to the trial court to correct earlier errors that had been made during the trial, or a new trial may be ordered.

The court of last resort in the state, the Supreme Court, is the highest appeals court to which most cases may be taken from the trial courts or the intermediate appeals court. Exceptions, of course, involve issues of the U.S. Constitution and other matters that are clearly within the purview of the U.S. Supreme Court.

With great respect for the sovereignty of the states, the rights of the state supreme courts are recognized and enforced. The chief justice and the justices of the Supreme Court hear cases on appeal or by their direction. The cases appealed to the Supreme Court are decided upon and disposed of in the same manner as are those that are handled by the appellate courts.

The Grand Jury:

The grand jury is a body of citizens chosen for a specified period of time (usually one year) to audit the various offices of government and to conduct investigations of public offenses committed or subject to trial in its county of jurisdiction. The grand jury's origin was in England, when it was instituted in 1215 with the Magna Carta. The original principal purpose of the grand jury was to protect the people against the tyranny of their own government.

Prosecution and Defense:

Presentation of cases in a court involves the adversary system. In a non-criminal—or civil—case, the *plaintiff* and the *respondent* or *defendant*, both enter the trial at an even point, with an equal advantage. The *litigants* each present their case by introducing evidence and testimony.

The case is weighed by the judge or jury on its merits, which consists principally of the evidence presented. Whichever side in the case has the *preponderance* of weight in favor of his side of the case will win the lawsuit. The process involves a balancing of the scales with each side having an equal weight at the start of the case.

In a criminal trial, the accused is presumed to be innocent, or the preponderance of the case is immediately in his favor. The burden of proving the accused guilty of the crime rests on the prosecutor. The defense at no time has to prove innocence. As a matter of fact, and procedure, the defendant shall be considered innocent at all times until he is proven guilty *beyond all reasonable doubt* in the judgment of the judge or—in a jury trial—the jury.

"Beyond all reasonable doubt" does not mean absolute certainty, but the courts have held that there must be a moral certainty that the accused did commit the crime.

THE ACCUSED IS INNOCENT UNTIL, AND, ONLY IF, HE IS PROVEN TO BE GUILTY, BY DUE PROCESS IN A COURT OF LAW. NO ONE CAN THINK OTHERWISE!

The prosecutor represents the people of the state as the victim of the crime committed in the state because a crime is considered to be a *public* offense.

Every person accused of a crime shall have legal representation. This is a provision of the Sixth Amendment of the U.S. Constitution. The defense attorney will represent the accused to protect his interests.

In a trial by jury, the judge determines legality, while the jury determines fact. Without a jury, the judge determines both the legality and the fact and it is he who declares guilt. In the absence of a guilty finding, the accused goes free, still an innocent person.

TRACKING THE CRIMINAL TRIAL PROCESS

Although there are similarities in procedure with both felony and misdemeanor violations, they are tracked differently.

The Misdemeanor:

The Offense—If observed or discovered, the crime is then considered by one or more persons in view of the circumstances and a decision is made of whether to report it to the police.

Police Intervention—The investigating officer must rely upon evidence and statements of others in order to make a decision regarding the course of action to take. The officer's discretionary powers then determine the next step. The officer may determine that there was no crime, or that there was a crime and that he will arrest the violator, if available for arrest.

Arrest—If a person who observed the offense being committed in his presence calls the police, and if the officer appraises the situation and determines there is sufficient cause for the arrest, the officer will accept the arrestee. If the officer was present when the violation occurred, then the officer makes a personal decision of whether to arrest at the time or to postpone the arrest until later, at which time a complaint/warrant will be necessary.

Diversion—There are certain types of crimes and individuals that may call for some type of corrective action to prevent or reduce the likelihood of repetition. As part of the authority of the police, the prosecutor and the courts to proceed with criminal charges, there is also the authority to use discretion and decide not to proceed. One type of discretionary alternative is *diversion*, which may include an agreement not to file criminal charges providing the accused agrees to go through a voluntary detoxification program for drug or alcohol addicts; another would be to submit to a civil court process and be committed to psychiatric treatment or counseling.

Citation or Jail—The officer may collect evidence and testimony, then issue a citation to the offender in lieu of taking the arrestee to jail for booking. While the offender is being cited, he is under arrest. Then, when he signs a promise to appear, which is on the citation form, the offender is—in effect—being released on his promise to appear in court to answer the charges.

Bail—When the offender signs a promise to appear in court on the prescribed date, he is actually offering his promise to appear as his bail. This is known as "own recognizance." Whatever form of bail the accused offers, its purpose is to assure the person's appearance in court to answer to the charges. A bail bond is an insurance policy, used in place of money.

Complaint and Warrant—The officer prepares an investigative report, and processes the evidence. The report is examined by the prosecutor and makes a determination as to what charge, if any, will be filed against the suspect. The prosecutor prepares a complaint if the decision is to proceed with the case. A judge reviews the complaint/affidavit and issues the arrest warrant.

Arraignment—This is the first appearance of the accused person in the criminal offense. If the person had been held in jail, the law requires an early date for the arraignment. This is where the accused is advised of the charges and constitutional rights. Bail or trial dates may be set. If the accused has legal representation and wishes to plead guilty, a guilty plea will be accepted.

Pretrial Motions—Usually limited to felony cases, this is the time prior to trial when the defense attorney files for discovery of information and makes various other motions.

Trial—The jury is selected—if it is a jury trial—to serve as a trier of fact, while the judge rules on matters of law. Both sides present their case and the jury deliberates to reach a verdict.

The Felony:

The Offense—A private person may arrest someone for committing a felony, even though not committed in their presence; the arrest requires actual perception by one or more of the senses

that amounts to physical presence. The arrest cannot be made on suspicion; however, most felony arrests made by peace officers are on suspicion only, without an arrest warrant.

Police Intervention—The nature of the crime being a felony, the police will take a more positive action than they would in a misdemeanor case. Police latitude is greater in felony cases.

Arrest—Usually made without a warrant, the arrest may be made even though the investigation has just begun. The officer may arrest on multiple charges that may later be dropped because they are all related to the same series of acts. The prosecutor will later decide on sufficiency of evidence and appropriate charges to file.
Jail and Bail—Citations are not issued for felonies. The accused is taken to jail and taken through the booking process. Bail may be cash or bond or own regognizance.

Complaint and Warrant—This phase of the process is identical to the misdemeanor process. There may be more changes in charges filed versus "arrested for" because of sufficiency of evidence, availability of witnesses, and greater pressures to "plea bargain" for lower charges, reduction of felonies to misdemeanors, reduced number of offenses charged, or a plea of guilty in exchange for assurance of less punishment, possibly a trade of release for information against a codefendant or more serious violator.

Arraignment—The first arraignment is held in the lower, municipal court, even though the trial will be held later in Superior Court (in Ohio, the Court of Common Pleas). This is the same as with the misdemeanor.

Plea Bargaining—The accused is allowed to plead guilty to a lesser charge than originally filed. The following circumstances might justify plea bargaining: suspicion arrests, stacked charges, multiple arrests, improper arrests based upon faulty information or unacceptable evidence, witness difficulties, communications problems, attorney's judgment.

Preliminary Hearing—Held in municipal court, the purpose is to have the prosecution prove the elements of the crime, and to produce sufficient evidence and testimony to convince the judge that the accused should be held to answer the charges in superior court (in Ohio, the Court of Common Pleas).

Grand Jury—If the prosecutor chooses not to go through the preliminary hearing process in a felony, the matter is brought before the grand jury. If the grand jury determines there is sufficient proof that a crime was committed and if they believe the accused should be held to answer, then the grand jury instructs the prosecutor to file an indictment in superior court. The grand jury takes the place of the preliminary hearing.

Motions—The defense has an opportunity to attack sufficiency of evidence and make other motions as necessary.

Arraignment—This arraignment is made in superior court. It is similar to the arraignment held in municipal court, except that the charges and other information may have changed in the interim.

Trial—The felony trial is similar to the misdemeanor trial, except it is held in superior court and verbatim transcripts are made of the entire trial…an integral part of the felony process.

The Jury Trial:

The accused has a Constitutional right to a jury trial. Jurors are selected by a lottery system from the citizens in the county who have a valid Ohio Driver's License -- assumed to be the peers of the accused, who is likely to be a resident of the same county occupied by the jurors. Once empanelled to sit as a jury in a criminal trial, they function as the judges of fact in the case. While the judge determines which evidence and witnesses will be authorized for presentation during the trial in accordance with the rules of procedure and evidence and serves as the arbiter on the law, the jury determines the truth and weight of the evidence and then passes judgment on the guilt of the accused.

Juries usually consist of 12 members, except when waived in accordance with accepted practice. They hear testimony and examine evidence, receive instructions from the judge as to the legal considerations as to their role in the matter, and provides them guidelines to follow when arriving at their conclusions.

The jurors then retire to their chambers where they meet as a committee to discuss and to vote on the issues.

In criminal trial, the jury must vote unanimously for a guilty verdict. They may decide that there is no justification for a guilty verdict, or they may become hopelessly deadlocked over the issues. In the third instance, the judge may declare a mistrial, which would necessitate a new trial at the initiation of the prosecutor again.

In the absence of a finding of guilt, the jurors vote for a not-guilty plea. The jury advises the judge that they find the accused guilty or not guilty, at which time the judge assumes his role in the case to proceed with sentencing or to order the release of the accused.

COURTS AND THE POOR

American society contains a complete spectrum of wealth, from affluent people enjoying the lifestyles of the rich and famous to destitute homeless people living in cardboard boxes in the street.

Anyone in the United States, regardless of their income, can enter the court system. Some people are dragged into court by being arrested for violating criminal laws while others voluntarily seek judicial assistance by filing lawsuits.

The American legal system is supposed to apply the same rules and procedures to all people. Inscribed in large letters above the entrance to the Supreme Court of the United States are the words "Equal Justice Under Law." These words represent the aspirational ideal of the American

judicial system, namely that law and legal procedures will treat people equally regardless of their race, gender, religion or social status.

Because the judiciary portrays itself as providing impartial decisions, it deserves close scrutiny to determine the extent to which legal principles and court procedures achieve the aspirational ideal of equal justice.

Unlike the legislative and executive branches, in which wealthy and organized interests obviously receive preferential treatment because of their lobbyists and campaign contribution, the pervasiveness of wealth discrimination is less apparent in the components of American law and judicial process.

Bail and Jail:

People who are arrested and charged with criminal violations face the possibility of sitting in jail for weeks or months if they cannot make bail. For lesser offenses, people may be released with merely a promise to appear. For more serious infractions, bail may be set by the court. The amount of bail is usually based upon a discretionary determination.

In either case, poor people suffer disproportionately from a loss of freedom prior to trial, despite the judicial system's supposed adherence to the presumption of innocence until guilt is proven, because poor people lack the resources to gain pretrial release by posting bail.

Traditionally, bail was intended to insure the appearance of the defendant at trial. It can also be utilized by judges for punitive purposes by setting bail so high that the defendant cannot gain release. Although the Eighth Amendment to the Constitution forbids "excessive bail," that term has not been clearly defined and there is no federal constitutional right to release before trial, although some state constitutions grant a right to have bail set.

Effects of Pretrial Detention:

The consequences of failing to gain pretrial release can be significant. Fact is, people who are processed through the criminal justice system, whether or not they are ultimately convicted, suffer a variety of punishments simply from being dragged through the process. They must lose income-producing time from work in order to attend court appearances. In addition, while sitting in jail they may lose their jobs and their homes and suffer other detrimental consequences to their families' lives.

In a documented study of courts in three cities—Baltimore, Chicago and Detroit—the burdens on defendants, most of whom were poor, were considerable:

"Many will not be able to remove the blemish of their arrest from police records despite the lack of conviction. Some are forced to spend time in pretrial detention. It is likely that the economic costs of these unsuccessful prosecutions are considerable (even if small in absolute terms for each defendant) because most of the defendants in felony cases come from the working poor or welfare families. In addition, there is considerable psychic cost to have the possibility of a long

term prison term hanging over one's future for several weeks or months."

In addition to suffering financial and personal costs from pretrial detention, defendants have less ability to assist in the preparation of their defenses. Moreover, jails are dangerous, depressing institutions which contain a continually changing population of criminal offenders, mentally ill people and substance abusers. These people are frequently placed in jail because police seek to remove them from the streets and authorities have few other places to send them.

While the middle-class defendant who can afford to make bail will reappear at trial well-dressed and accompanied by family and friends, the poor defendant who cannot make bail may be dragged into the courtroom wearing handcuffs and a prison jumpsuit. The imagery may affect the judges and juries regardless of the evidence of guilty or innocence.

Right to Counsel and Indigent Defense Systems:

During most of America's past, criminal defendants had to pay for a lawyer if they wished to be represented in court. The right to "have assistance of counsel for his defense" contained in the Sixth Amendment of the Constitution simply meant that defendants had a right to have a defense attorney if they could afford one. Obviously, poorer defendants were significantly disadvantages in a system in which the existence of any legal representation was based upon ability to pay.

It wasn't until 1938, that the Supreme Court construed the Sixth Amendment right to counsel as requiring the appointment of lawyers to represent indigent defendants in federal cases. The broad application of a constitutional right to counsel within state court systems occurred in 1963 when the Supreme Court decided that the Due Process Clause of the Fourteenth Amendment required states to provide defense counsel for all indigent defendants facing penalties of six months incarceration or greater.

The right to counsel was subsequently recognized for all cases of incarceration in 1972, but was not extended to encompass cases punished merely by fines. Although some states began to provide representation for poor defendants earlier in the twentieth century, it is only in the past few decades that all poor people have been protected by the right to counsel when facing jail or prison sentences.

Representation of Poor Criminal Defendants:

There are three primary methods of providing attorneys for defendants who are too poor to hire their own counsel. In public defender systems, salaried staff provide representation for indigent defendants. There are assigned counsels, private attorneys who are appointed to represent indigent defendants on a case-by-case basis and are then paid by local governments. And there are contract attorneys, private attorneys or law firms who submit a bids to local governments and a contract is awarded to provide representation for all poor defendants throughout the year for a set contract fee.

A variety of specific problems exist with each defense system, which can detract from the quality of representation received by indigent defendants. The timing of appointment of counsel,

for example, can affect the outcome of the case. Although someone with means to hire a private attorney may acquire private representation immediately, some jurisdictions do not provide attorneys for indigent defendants until the formal arraignment.

By this delayed time, the defendant may inadvertently make incriminating statements, witnesses may disappear, and the defense may be placed at a significant disadvantage when pitted against a prosecutor who has been utilizing the government's investigative resources since the day of arrest or earlier.

Attorney-Client Relationships and Jury Composition:

The title of one classic study of indigent criminal defendants neatly sums up the attitudes of defendants toward their appointed legal representatives: "Did you Have a Lawyer When You Went to Court? No, I Had a Public Defender." Distrust can develop between attorneys and clients because the defendants perceive their lawyers as representing the government. The same government pays all the salaries!"

Moreover, because the first contact between the attorneys and clients is often in the courtroom moments before a hearing, and the defense lawyers' first words are frequently to the effect that, "if you plead guilty, I can get you a reduced sentence," the defendants perceive that the lawyers are not concerned about their version of the events underlying the alleged criminal violation and are not interested in pursuing an acquittal.

The jury process is intended to provide citizens involvement in judicial decisions making, both to legitimate verdicts and to provide a check upon potential abuses of power by prosecutors and judges. Although there is a common notion that defendants should be tried before a "jury of peers," the actual composition of juries is usually not completely representative of the various groups within a community.

Studies find jury compositions in favor of middle-class affluent people, excluding minorities and young people. The reduced representation from these exclusions can disadvantage poor defendants, who are frequently young or minority group members. Discrimination in sentencing also occurs. Statistics show that more severe sentences have been applied to juvenile offenders of lower socioeconomic status. The bottom line is that poor people suffer detrimental consequences that collide with the aspirational ideal of "Equal Justice Under Law."

EXPLANATION & REVIEW OF CRIMINAL BEHAVIOR

Depending on your personal bias and interests, you will find explanations for human behavior, including criminal behavior, virtually everywhere. Psychologists, sociologists, biologists, psychiatrists, astrologers, numerologists, human behaviorists, social workers, carpenters, cab drivers, teachers, parents, bartenders, journalists, novelists, television talk-show hosts, even priests, ministers and rabbi's, all have their own theories.

Other crime theories are expressed by airline pilots, salespeople, secretaries and the average person on the street. Many of their theories are based on scientific knowledge, many are not. Most have some degree of authenticity, whether scholarly or not. Let us share some of the more widely held theories dating from the early studies of human behavior to the present.

Crime as a Social Dysfunction:

The Utopian society, Sir Thomas Moore's ideal state where all is ordered for the best of mankind as a whole and where the evils of society have been eliminated, is impossibly and impractically ideal. Each individual seeks his own Utopia, and one of the many problems confronting him in his quest is that one person's happiness is another person's agony, and his ideals are often in conflict with those of other persons. Life, therefore, is a series of compromises between freedoms and restrictions commingled with the freedoms and restrictions of other individuals in society.

Competition and conflict are intrinsic to a society that is characterized by dynamism, materialism, individualism fierce loyalty to special interest groups, strong pressures for prestige and affluence and differences of opinions and moral standards. Absolute conformity to unrealistic mores on a nonexistent "perfect" society is neither desirable, nor is it possible.

In 1806 it was observed by many, that crime in London was the result of bad laws, improper police methods, illness, depraved morals, bad education and criminal habits of the lower class. In early America it was reported that:

"American thought is to equate crime with sin, pauperism and immorality. Even when crime was recognized as a distinct phenomenon, it was usually regarded as an ill that had no place in social life."

Similarly, criminologist discuss crime in today's society:

"Both criminal law and crime in the United States express social values, even though not all specific laws are implementations of the mores of the people generally. Sometimes two sets of values are in conflict; sometimes crime and non-crime are different expressions of the same value. Group loyalty, for example, may be loyalty to a criminal gang or to a respected community. In American society, restricted group loyalties are expected and approved. The property owner wishes to keep his property, the thief to take it away; both value property, both personally seek the prestige which comes from possessing property and both crave status in their immediate groups. In a society where material success is a major requisite to social status, there will be more crimes against property and more laws for the protection of property than in a society where less material basis for status is dominant." Sound familiar?

Classical Theories:

Rene Descartes (1596-1650)—A person's free will is involved in choosing whether or not to commit crime. The power of reasoning and free will are divine gifts, setting man apart from all other forms of life. He acknowledged that natural laws governed not only events external to

man, but also events occurring within him, that is, his own bodily process of growth, sustenance and decay. His doctrine of *Classical School* criminology helped shape the eventual reformation of criminal law, provided an important rationalization for punishment and produced an image of man's mental workings which prevail to this day.

Cesare Beccaria (1738-1794)—Based his theory on the belief that a would-be law violator made his decision whether to commit crime or not upon a process of "pain-avoidance" reasoning, making a comparison of the pleasure he would derive from the forbidden act versus the possibility of getting caught and the pain he would suffer if caught and punished. This fear of punishment, he believed, would discourage the individual and he would choose to obey the law.

Jeremy Bentham (1742-1832)—Almost totally divorced from theological dogma, this school maintained 1) that the seriousness of crimes should be measured by their respective social harm rather than by their "sinfulness" or other transcendental qualities, and, 2) that crime is caused by the *rational* efforts of men to increase their pleasures and to minimize their pains. His philosophy established that for each crime a punishment whose pains would outweigh any possible pleasure to be granted from them and by assuring the certain and swift administration of justice, rational men, deterred by the realization that a net loss will inevitably result from a criminal act, will refrain from breaking the law.

Biological Positivism Theories:

Cesare Lombroso (1836-1909)—His basic premise was that a person was a "born criminal," or a criminal by heredity, a theory of biological positivism. As a medical doctor and professor of legal medicine at the University of Turin, he classified criminal inmates by their physical characteristics. According to his theory, there were three basic classes of criminals: born criminals, insane criminals and criminaloids. The criminal was a degenerate or defective in some way, a "throwback" to a more primitive and savage version of man.

His approach to the study of crime was positivisitic in that he utilized the point of view and methodology of the natural sciences…while the *Classical School* emphasized the idea of the choice of right and wrong, the positive school placed the emphasis on the determination of the conduct.

J. Baptiste della Porte (1535-1615)—He was credited with a study of cadavers of criminals to determine a relationship between body form and types of crime. His theory was that he could recognize a thief by his small ears, bushy eyebrows, small nose, mobile eyes, sharp vision, open and large lips and long slender fingers. The description sounds more like a country-western guitar player! Similar studies of criminals and non-criminals concluded that criminals are inferior to "civilians" in nearly all their body measurements, whatever that means. The physical characteristics of the criminal always seemed to have low foreheads, characteristic shapes and sizes of noses, compressed faces, narrow jaws and other anomalies attributed to the criminal. Racial superiority and inferiority theories are also widespread and have been grossly exaggerated because of discriminatory arrest practices on the part of police agencies. Race, income levels, where a person lives, how many times in conversation have you heard said, "he sure fooled me, I would never have guessed him capable of such a thing because he looks honest?"

One serious problem with attempting to explain criminal behavior with the biological positivism theory is that some individuals tend to believe the predictions for their future, and they feel almost obligated to develop into the type of person they are expected to be. Consider the child who is constantly reminded that he is dumb, that he will never amount to anything and that he is awkward. He is likely to become dumb and awkward because he is convinced he has no other alternative, a self-fulfilled prophesy.

Consider these common stereotypes that become self-fulfilled prophesies for far too many people: 1) she has the temper of a red hat, 2) Indians and alcohol don't mix—they go crazy when they drink, 3) Irish temper, 4) "a loser, just like his father," 5) "the image of her mother," 6) "once a crook, always a crook," and on ad infinitum! It is hard to distinguish which came first, the conduct or the diagnosis.

As reported in *Psychology Today, An Introduction* Abraham Maslow, in *Motivation and Personality*, listed five levels of needs and arranged them in hierarchical order, or a 'hierarchy of needs" sequence. His thesis is that the more basic levels of needs must first be satisfied before the individual is able to function effectively to strive toward satisfaction of the next level of needs. From lower to higher categories, this is the sequence:

1) Physiological: thirst, hunger, sex, relaxation, body integrity, air.
2) Safety: orderly, safe, consistent, "just."
3) Love and Belongingness: human relationships.
4) Esteem: achievement, competence, independence, freedom, reputation, prestige.
5) Self-actualization: exploitation of talents, capabilities and potentialities.

In a Nutshell…This is How it Works:

As a person matures from childhood to adulthood, he progressively develops his own combination of needs and his own methods for seeking satisfaction of those needs. He learns by doing, by watching others, by studying the methods written and taught by others and by trial and error. The child learns the many taboos of his own culture that frequently frustrate the drives involved in seeking his goals of satisfaction. The child learns that the pain of punishment may be avoided by minding his parents. As an adult, he learns that sexual satisfaction is sometimes gained by reciprocating for the satisfying experience by assumption of the responsibilities of personal commitment or marriage. He also learns that basic sustenance is achieved with reasonably little effort or conflict, but certain minimum requirements must be met, such as work to earn money to spend.

The individual learns to share, to be patient, and to go about satisfying those needs in an orderly manner in keeping with the customs and mores of the particular society in which he holds membership. Frustrations are experienced and he learns that he will never satisfy all his needs. What he must learn is self-control and compromise. He learns to work for his money, study for his education and to respect the rights and property of others if he is to have them respect his rights and property.

He learns that some actions are right and others are wrong. There are laws, rules, customs, taboos, regulations, bans and a variety of agents and agencies to enforce them. Through interaction with others, and with respect to all of these laws and regulations the individual has to obey, the majority of the population somehow manages to develop into law-abiding, socially acceptable members of society!

We must remember that crimes and the people who commit them should not be classified or graded as one labels fruits or vegetables for canning and the market…the study of criminology is not an exact science, but an on-going searching inquiry into the never-ending unexpected and mysterious changes of man in relationship to others and his environment.

OHIO REVISED CODE
PRELIMINARY EXAMINATION

There are many sections of the "Criminal Code" Title 29 of the Ohio Revised Code that specifically apply to bail, the accused and procedures of Surety Bail Bond Agents. A study and understanding of these sections of Ohio Revised Code is essential in the Bail Bond profession.

2937.02 Court to inform defendant of charge and rights.

When, after arrest, the accused is taken before a court or magistrate, or when the accused appears pursuant to terms of summons or notice, the affidavit or complaint being first filed, the court or magistrate shall, before proceeding further:

(A) Inform the accused of the nature of the charge against him and the identity of the complainant and permit the accused or his counsel to see and read the affidavit or complaint or a copy thereof;

(B) Inform the accused of his right to have counsel and the right to a continuance in the proceedings to secure counsel;

(C) Inform the accused of the effect of pleas of guilty, not guilty, and no contest, of his right to trial by jury, and the necessity of making written demand therefor;

(D) If the charge be a felony, inform the accused of the nature and extent of possible punishment on conviction and of the right to preliminary hearing. Such information may be given to each accused individually or, if at any time there exists any substantial number of defendants to be arraigned at the same session, the judge or magistrate may, by general announcement or by distribution of printed matter, advise all those accused concerning those rights general in their nature, and informing as to individual matters at arraignment.

2937.03 Arraignment - explanation of rights.

After the announcement, as provided by section 2937.02 of the Revised Code, the accused shall be arraigned by the magistrate, clerk, or prosecutor of the court reading the affidavit or complaint, or reading its substance, omitting purely formal parts, to the accused unless the

reading of the affidavit or complaint is waived. The judge or magistrate shall then inquire of the accused whether the accused understands the nature of the charge. If the accused does not indicate understanding, the judge or magistrate shall give explanation in terms of the statute or ordinance claimed violated. If the accused is not represented by counsel and expresses a desire to consult with an attorney at law, the judge or magistrate shall continue the case for a reasonable time to allow the accused to send for or consult with counsel and shall set bail for the later appearance if the offense is bailable. If the accused is not able to make bail, bail is denied, or the offense is not bailable, the court or magistrate shall require the officer having custody of the accused immediately to take a message to any attorney at law within the municipal corporation where the accused is detained, or immediately to make available to the accused use of a telephone for calling to arrange for legal counsel or bail.

2937.04 Motion to dismiss complaint or affidavit.

If accused does not desire counsel or, having engaged counsel, appears at the end of granted continuance, he may then raise, by motion to dismiss the affidavit or complaint, any exception thereto which could be asserted against an indictment or information by motion to quash, plea in abatement, or demurrer. Such motion may be made orally and ruled upon by the court or magistrate at the time of presentation, with minute of motion and ruling made in the journal (if a court of record) or on the docket (if a court not of record) or such motion may be presented in writing and set down for argument at later time. Where the motion attacks a defect in the record by facts extrinsic thereto, proof may be offered by testimony or affidavit.

2937.05 Discharge of defendant - amendment of complaint.

If the motion pursuant to section 2937.04 of the Revised Code be sustained, accused shall be discharged unless the court or magistrate finds that the defect can be corrected without changing the nature of the charge, in which case he may order the complaint amended or a proper affidavit filed forthwith and require the accused to plead thereto. The discharge of accused upon the sustaining of a motion to dismiss shall not be considered a bar to further prosecution either of felony or misdemeanor.

2937.06 Pleas - advice as to effects of plea.

(A) After all motions are disposed of or if no motion is presented, the court or magistrate shall require the accused to plead to the charge.

(1) In cases of felony, only a plea of not guilty or a written plea of guilty shall be received and if the defendant declines to plead, a plea of not guilty shall be entered for the defendant and further proceedings had as set forth in sections 2937.09 to 2937.12 of the Revised Code.

(2) In cases of misdemeanor, the following pleas may be received:

(a) Guilty;

(b) Not guilty;

(c) No contest;

(d) Once in jeopardy, which includes the defenses of former conviction or former acquittal.

(B) Prior to accepting a plea of guilty or a plea of no contest under division (A) of this section, the court shall comply with sections 2943.031 and2943.032 of the Revised Code.

(C) Entry of any plea pursuant to this section shall constitute a waiver of any objection that could be taken advantage of by motion pursuant to section 2937.04 of the Revised Code.

2937.07 Court action on pleas of guilty and no contest in misdemeanor cases.

If the offense is a misdemeanor and the accused pleads guilty to the offense, the court or magistrate shall receive and enter the plea unless the court or magistrate believes that it was made through fraud, collusion, or mistake. If the court or magistrate believes that it was made through fraud, collusion, or mistake, the court or magistrate shall enter a plea of not guilty and set the matter for trial pursuant to Chapter 2938. of the Revised Code. Upon receiving a plea of guilty, the court or magistrate shall call for an explanation of the circumstances of the offense from the affiant or complainant or the affiant's or complainant's representatives unless the offense to which the accused is pleading is a minor misdemeanor in which case the court or magistrate is not required to call for an explanation of the circumstances of the offense. After hearing the explanation of circumstances, together with any statement of the accused or after receiving the plea of guilty if an explanation of the circumstances of the offense is not required, the court or magistrate shall proceed to pronounce the sentence or shall continue the matter for the purpose of imposing the sentence.

A plea to a misdemeanor offense of "no contest" or words of similar import shall constitute an admission of the truth of the facts alleged in the complaint and that the judge or magistrate may make a finding of guilty or not guilty from the explanation of the circumstances of the offense. If the offense to which the accused is entering a plea of "no contest" is a minor misdemeanor, the judge or magistrate is not required to call for an explanation of the circumstances of the offense, and the judge or magistrate may base a finding on the facts alleged in the complaint. If a finding of guilty is made, the judge or magistrate shall impose the sentence or continue the case for sentencing accordingly. A plea of "no contest" or words of similar import shall not be construed as an admission of any fact at issue in the criminal charge in any subsequent civil or criminal action or proceeding.

2937.08 Court action on pleas of not guilty or once in jeopardy in misdemeanor cases.

Upon a plea of not guilty or a plea of once in jeopardy, if the charge be a misdemeanor in a court of record, the court shall proceed to set the matter for trial at a future time, pursuant to Chapter 2938. of the Revised Code, and shall let accused to bail pending such trial. Or he may, but only if both prosecutor and accused expressly consent, set the matter for trial forthwith.

Upon the entry of such pleas to a charge of misdemeanor in a court not of record, the magistrate shall forthwith set the matter for future trial or, with the consent of both state and defendant may

set trial forthwith, both pursuant to Chapter 2938. of the Revised Code, provided that if the nature of the offense is such that right to jury trial exists, such matter shall not be tried before him unless the accused, by writing subscribed by him, waives a jury and consents to be tried by the magistrate.

If the defendant in such event does not waive right to jury trial, then the magistrate shall require the accused to enter into recognizance to appear before court of record in the county, set by such magistrate, and the magistrate shall thereupon certify all papers filed, together with transcript of proceedings and accrued costs to date, and such recognizance if given, to such designated court of record. Such transfer shall not require the filing of indictment or information and trial shall proceed in the transferee court pursuant to Chapter 2938 of the Revised Code.

2937.09 Court action on pleas in felony cases.

If the charge is a felony, the court or magistrate shall, before receiving a plea of guilty, advise the accused that such plea constitutes an admission which may be used against him at a later trial. If the defendant enters a written plea of guilty or, pleading not guilty, affirmatively waives the right to have the court or magistrate take evidence concerning the offense, the court or magistrate forthwith and without taking evidence may find that the crime has been committed and that there is probable and reasonable cause to hold the defendant for trial pursuant to indictment by the grand jury, and, if the offense is bailable, require the accused to enter into recognizance in such amount as it determines to appear before the court of common pleas pursuant to indictment, otherwise to be confined until the grand jury has considered and reported the matter.

2937.10 Setting preliminary hearing for felony cases.

If the charge be a felony and there be no written plea of guilty or waiver of examination, or the court or magistrate refuses to receive such waiver, the court or magistrate, with the consent of the prosecutor and the accused, may set the matter for hearing forthwith, otherwise he shall set the matter for hearing at a fixed time in the future and shall notify both prosecutor and defendant promptly of such time of hearing.

2937.11 Conduct of preliminary hearing.

(A)(1) As used in this section, “victim” includes any person who was a victim of a felony violation identified in division (B) of this section or a felony offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a felony violation identified in division (B) of this section or a felony offense of violence.

(2) At the preliminary hearing set pursuant to section 2937.10 of the Revised Code and the Criminal Rules, the prosecutor may state, but is not required to state, orally the case for the state and shall then proceed to examine witnesses and introduce exhibits for the state. The accused and the magistrate have full right of cross examination, and the accused has the right of inspection of exhibits prior to their introduction. The hearing shall be conducted under the rules of evidence prevailing in criminal trials generally. On motion of either the state or the accused, witnesses shall be separated and not permitted in the hearing room except when called to testify.

(B) In a case involving an alleged felony violation of section 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2907.24, 2907.31, 2907.32,2907.321, 2907.322, 2907.323, or 2919.22 of the Revised Code or an alleged felony offense of violence and in which an alleged victim of the alleged violation or offense was less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, upon motion of the prosecution, the testimony of the child victim at the preliminary hearing may be taken in a room other than the room in which the preliminary hearing is being conducted and be televised, by closed circuit equipment, into the room in which the preliminary hearing is being conducted, in accordance with division (C) of section 2945.481 of the Revised Code.

(C) In a case involving an alleged felony violation listed in division (B) of this section or an alleged felony offense of violence and in which an alleged victim of the alleged violation or offense was less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, the court, on written motion of the prosecutor in the case filed at least three days prior to the hearing, shall order that all testimony of the child victim be recorded and preserved on videotape, in addition to being recorded for purposes of the transcript of the proceeding. If such an order is issued, it shall specifically identify the child victim concerning whose testimony it pertains, apply only during the testimony of the child victim it specifically identifies, and apply to all testimony of the child victim presented at the hearing, regardless of whether the child victim is called as a witness by the prosecution or by the defense.

2937.12 Preliminary hearing - presentation of case of accused.

(A) At the conclusion of the presentation of the state's case accused may move for discharge for failure of proof or may offer evidence on his own behalf. Prior to the offering of evidence on behalf of the accused, unless accused is then represented by counsel, the court or magistrate shall advise accused:

(1) That any testimony of witnesses offered by him in the proceeding may, if unfavorable in any particular, be used against him at later trial;

(2) That accused himself may make a statement, not under oath, regarding the charge, for the purpose of explaining the facts in evidence;

(3) That he may refuse to make any statement and such refusal may not be used against him at trials [trial];

(4) That any statement he makes may be used against him at trial.

(B) Upon conclusion of all the evidence and the statement, if any, of the accused, the court or magistrate shall either:

(1) Find that the crime alleged has been committed and that there is probable and reasonable cause to hold or recognize defendant to appear before the court of common pleas of the county or any other county in which venue appears, for trial pursuant to indictment by grand jury;

(2) Find that there is probable cause to hold or recognize defendant to appear before the court of common pleas for trial pursuant to indictment or information on such other charge, felony or misdemeanor, as the evidence indicates was committed by accused;

(3) Find that a misdemeanor was committed and there is probable cause to recognize accused to appear before himself or some other court inferior to the court of common pleas for trial upon such charge;

(4) Order the accused discharged from custody.

2937.13 Finding of presence of substantial credible evidence.

In entering a finding, pursuant to section 2937.12 of the Revised Code, the court, while weighing credibility of witness, shall not be required to pass on the weight of the evidence and any finding requiring accused to stand trial on any charge shall be based solely on the presence of substantial credible evidence thereof. No appeal shall lie from such decision nor shall the discharge of defendant be a bar to further prosecution by indictment or otherwise.

2937.14 Entering reason for change in charge on journal of court.

In any case in which accused is held or recognized to appear for trial on any charge other than the one on which he was arraigned the court or magistrate shall enter the reason for such charge on the journal of the court (if a court of record) or on the docket (if a court not of record) and shall file with the papers in the case the text of the charge found by him to be sustained by the evidence.

2937.15 Transcript of preliminary hearing.

Upon the conclusion of the hearing and finding, the magistrate, or if a court of record, the clerk of such court, shall complete all notations of appearance, motions, pleas, and findings on the criminal docket of the court, and shall transmit a transcript of the appearance docket entries, together with a copy of the original complaint and affidavits, if any, filed with the complaint, the journal or docket entry of reason for changes in the charge, if any, together with the order setting bail and the bail deposit, if any, filed, and together with the videotaped testimony, if any, prepared in accordance with division (C) of section 2937.11 of the Revised Code, to the clerk of the court in which the accused is to appear. Such transcript shall contain an itemized account of the costs accrued.

2937.16 When witnesses shall be recognized to appear.

When an accused enters into a recognizance or is committed in default thereof, the judge or magistrate shall require such witnesses against the prisoner as he finds necessary, to enter into a recognizance to appear and testify before the proper court at a proper time, and not depart from such court without leave. If the judge or magistrate finds it necessary he may require such witnesses to give sufficient surety to appear at such court.

2937.17 Recognizance for minor.

A person may be liable in a recognizance for a minor to appear as a witness, or the judge or magistrate may take the minor's recognizance, in a sufficient sum, which is valid notwithstanding the disability of minority.

2937.18 Commitment of witness refusing to give recognizance.

If a witness ordered to give recognizance fails to comply with such order, the judge or magistrate shall commit him to such custody or open or close detention as may be appropriate under the circumstances, until he complies with the order or is discharged. Commitment of the witness may be to the custody of any suitable person or public or private agency, or to an appropriate detention facility other than a jail, or to a jail, but the witness shall not be confined in association with prisoners charged with or convicted of crime. The witness, in lieu of the fee ordinarily allowed witnesses, shall be allowed twenty-five dollars for each day of custody or detention under such order, and shall be allowed mileage as provided for other witnesses, calculated on the distance from his home to the place of giving testimony and return. All proceedings in the case or cases in which the witness is held to appear shall be given priority over other cases and had with all due speed.

2937.19 Subpoenas or other process to bring witnesses or documents.

The magistrate or judge or clerk of the court in which proceedings are being had may issue subpoenas or other process to bring witnesses or documents before the magistrate or court in hearings pending before him either under Chapter 2937. or 2938. of the Revised Code.

In complaints to keep the peace a subpoena must be served within the county, or, in cases of misdemeanors and ordinance offenses, it may be served at any place in this state within one hundred miles of the place where the court or magistrate is scheduled to sit; in felony cases it may be served at any place within this state. In cases where such process is to be served outside the county, it may be issued to be served either by the bailiff or constable of the court or by a sheriff or police officer either by the county in which the court or magistrate sits or in which process is to be served.

2937.21 Continuances.

No continuance at any stage of the proceeding, including that for determination of a motion, shall extend for more than ten days unless both the state and the accused consent thereto. Any continuance or delay in ruling contrary to the provisions of this section shall, unless procured by defendant or his counsel, be grounds for discharge of the defendant forthwith.

2937.22 Form of bail.

(A) Bail is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to

which a case may be continued, and not depart without leave. It may take any of the following forms:

(1) The deposit of cash by the accused or by some other person for the accused;

(2) The deposit by the accused or by some other person for the accused in form of bonds of the United States, this state, or any political subdivision thereof in a face amount equal to the sum set by the court or magistrate. In case of bonds not negotiable by delivery such bonds shall be properly endorsed for transfer.

(3) The written undertaking by one or more persons to forfeit the sum of money set by the court or magistrate, if the accused is in default for appearance, which shall be known as a recognizance.

(B)Whenever a person is charged with any offense other than a traffic offense that is not a moving violation and posts bail, the person shall pay a surcharge of twenty-five dollars. The clerk of the court shall retain the twenty-five dollars until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk shall transmit the twenty-five dollars on or before the twentieth day of the month following the month in which the person was convicted, pleaded guilty, or forfeited bail to the treasurer of state, and the treasurer of state shall deposit it into the indigent defense support fund created under section 120.08 of the Revised Code. If the person is found not guilty or the charges are dismissed, the clerk shall return the twenty-five dollars to the person.

(C)All bail shall be received by the clerk of the court, deputy clerk of court, or by the magistrate, or by a special referee appointed by the supreme court pursuant to section 2937.46 of the Revised Code, and, except in cases of recognizances, receipt shall be given therefor .

(D)As used in this section, “moving violation” has the same meaning as in section 2743.70 of the Revised Code.

2937.221 Deposit of driver's license as bond.

(A) A person arrested without warrant for any violation listed in division (B) of this section, and having a current valid Ohio driver’s or commercial driver’s license, if the person has been notified of the possible consequences of the person’s actions as required by division (C) of this section, may post bond by depositing the license with the arresting officer if the officer and person so choose, or with the local court having jurisdiction if the court and person so choose. The license may be used as bond only during the period for which it is valid.

When an arresting officer accepts the driver’s or commercial driver’s license as bond, the officer shall note the date, time, and place of the court appearance on “the violator’s notice to appear,” and the notice shall serve as a valid Ohio driver’s or commercial driver’s license until the date and time appearing thereon. The arresting officer immediately shall forward the license to the appropriate court.

When a local court accepts the license as bond or continues the case to another date and time, it shall provide the person with a card in a form approved by the registrar of motor vehicles setting forth the license number, name, address, the date and time of the court appearance, and a statement that the license is being held as bond. The card shall serve as a valid license until the date and time contained in the card.

The court may accept other bond at any time and return the license to the person. The court shall return the license to the person when judgment is satisfied, including, but not limited to, compliance with any court orders, unless a suspension or cancellation is part of the penalty imposed.

Neither "the violator's notice to appear" nor a court- granted card shall continue driving privileges beyond the expiration date of the license.

If the person arrested fails to appear in court at the date and time set by the court or fails to satisfy the judgment of the court, including, but not limited to, compliance with all court orders within the time allowed by the court, the court may declare the forfeiture of the person's license . Thirty days after the declaration of the forfeiture, the court shall forward the person's license to the registrar. The court also shall enter information relative to the forfeiture on a form approved and furnished by the registrar and send the form to the registrar. The registrar shall suspend the person's license and send written notification of the suspension to the person at the person's last known address. No valid driver's or commercial driver's license shall be granted to the person until the court having jurisdiction orders that the forfeiture be terminated. The court shall inform the registrar of the termination of the forfeiture by entering information relative to the termination on a form approved and furnished by the registrar and sending the form to the registrar. Upon the termination , the person shall pay to the bureau of motor vehicles a reinstatement fee of fifteen dollars to cover the costs of the bureau in administering this section. The registrar shall deposit the fees so paid into the state bureau of motor vehicles fund created by section 4501.25 of the Revised Code.

In addition, upon receipt from the court of the copy of the declaration of forfeiture, neither the registrar nor any deputy registrar shall accept any application for the registration or transfer of registration of any motor vehicle owned by or leased in the name of the person named in the declaration of forfeiture until the court having jurisdiction over the offense that led to the suspension issues an order terminating the forfeiture. However, for a motor vehicle leased in the name of a person named in a declaration of forfeiture, the registrar shall not implement the preceding sentence until the registrar adopts procedures for that implementation under section 4503.39 of the Revised Code. Upon receipt by the registrar of such an order , the registrar also shall take the measures necessary to permit the person to register a motor vehicle the person owns or leases or to transfer the registration of a motor vehicle the person owns or leases if the person later makes a proper application and otherwise is eligible to be issued or to transfer a motor vehicle registration.

(B) Division (A) of this section applies to persons arrested for violation of:

(1) Any of the provisions of Chapter 4511. or 4513. of the Revised Code, except sections 4511.19, 4511.20, 4511.251, and 4513.36 of the Revised Code;

(2) Any municipal ordinance substantially similar to a section included in division (B)(1) of this section;

(3) Any bylaw, rule, or regulation of the Ohio turnpike commission substantially similar to a section included in division (B)(1) of this section.

Division (A) of this section does not apply to those persons issued a citation for the commission of a minor misdemeanor under section 2935.26 of the Revised Code.

(C) No license shall be accepted as bond by an arresting officer or by a court under this section until the officer or court has notified the person that, if the person deposits the license with the officer or court and either does not appear on the date and at the time set by the officer or the court, if the court sets a time, or does not satisfy any judgment rendered, including, but not limited to, compliance with all court orders, the license will be suspended, and the person will not be eligible for reissuance of the license or issuance of a new license, or the issuance of a certificate of registration for a motor vehicle owned or leased by the person until the person appears and complies with any order issued by the court. The person also is subject to any criminal penalties that may apply to the person.

(D) The registrar shall not restore the person's driving or vehicle registration privileges until the person pays the reinstatement fee as provided in this section.

2937.222 Hearing on bail - grounds for denying.

(A) On the motion of the prosecuting attorney or on the judge's own motion, the judge shall hold a hearing to determine whether an accused person charged with aggravated murder when it is not a capital offense, murder, a felony of the first or second degree, a violation of section2903.06 of the Revised Code, a violation of section 2903.211 of the Revised Code that is a felony, or a felony OVI offense shall be denied bail. The judge shall order that the accused be detained until the conclusion of the hearing. Except for good cause, a continuance on the motion of the state shall not exceed three court days. Except for good cause, a continuance on the motion of the accused shall not exceed five court days unless the motion of the accused waives in writing the five-day limit and states in writing a specific period for which the accused requests a continuance. A continuance granted upon a motion of the accused that waives in writing the five-day limit shall not exceed five court days after the period of continuance requested in the motion.

At the hearing, the accused has the right to be represented by counsel and, if the accused is indigent, to have counsel appointed. The judge shall afford the accused an opportunity to testify, to present witnesses and other information, and to cross-examine witnesses who appear at the hearing. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. Regardless of whether the hearing is being held on the motion of the prosecuting attorney or on the court's own motion, the state has the burden of proving that the proof is evident or the presumption great that the accused

committed the offense with which the accused is charged, of proving that the accused poses a substantial risk of serious physical harm to any person or to the community, and of proving that no release conditions will reasonably assure the safety of that person and the community.

The judge may reopen the hearing at any time before trial if the judge finds that information exists that was not known to the movant at the time of the hearing and that that information has a material bearing on whether bail should be denied. If a municipal court or county court enters an order denying bail, a judge of the court of common pleas having jurisdiction over the case may continue that order or may hold a hearing pursuant to this section to determine whether to continue that order.

(B) No accused person shall be denied bail pursuant to this section unless the judge finds by clear and convincing evidence that the proof is evident or the presumption great that the accused committed the offense described in division (A) of this section with which the accused is charged, finds by clear and convincing evidence that the accused poses a substantial risk of serious physical harm to any person or to the community, and finds by clear and convincing evidence that no release conditions will reasonably assure the safety of that person and the community.

(C) The judge, in determining whether the accused person described in division (A) of this section poses a substantial risk of serious physical harm to any person or to the community and whether there are conditions of release that will reasonably assure the safety of that person and the community, shall consider all available information regarding all of the following:

(1) The nature and circumstances of the offense charged, including whether the offense is an offense of violence or involves alcohol or a drug of abuse;

(2) The weight of the evidence against the accused;

(3) The history and characteristics of the accused, including, but not limited to, both of the following:

(a) The character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, and criminal history of the accused;

(b) Whether, at the time of the current alleged offense or at the time of the arrest of the accused, the accused was on probation, parole, post-release control, or other release pending trial, sentencing, appeal, or completion of sentence for the commission of an offense under the laws of this state, another state, or the United States or under a municipal ordinance.

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(D)(1) An order of the court of common pleas denying bail pursuant to this section is a final appealable order. In an appeal pursuant to division (D) of this section, the court of appeals shall do all of the following:

(a) Give the appeal priority on its calendar;

(b) Liberally modify or dispense with formal requirements in the interest of a speedy and just resolution of the appeal;

(c) Decide the appeal expeditiously;

(d) Promptly enter its judgment affirming or reversing the order denying bail.

(2) The pendency of an appeal under this section does not deprive the court of common pleas of jurisdiction to conduct further proceedings in the case or to further consider the order denying bail in accordance with this section. If, during the pendency of an appeal under division (D) of this section, the court of common pleas sets aside or terminates the order denying bail, the court of appeals shall dismiss the appeal.

(E) As used in this section:

(1) "Court day" has the same meaning as in section 5122.01 of the Revised Code.

(2) "Felony OVI offense" means a third degree felony OVI offense and a fourth degree felony OVI offense.

(3) "Fourth degree felony OVI offense" and "third degree felony OVI offense" have the same meanings as in section 2929.01 of the Revised Code.

2937.23 Bail amount.

(A)(1) In a case involving a felony or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code when the victim of the offense is a peace officer, the judge or magistrate shall fix the amount of bail.

(2) In a case involving a misdemeanor or a violation of a municipal ordinance and not involving a felony or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code when the victim of the offense is a peace officer, the judge, magistrate, or clerk of the court may fix the amount of bail and may do so in accordance with a schedule previously fixed by the judge or magistrate. If the judge, magistrate, or clerk of the court is not readily available, the sheriff, deputy sheriff, marshal, deputy marshal, police officer, or jailer having custody of the person charged may fix the amount of bail in accordance with a schedule previously fixed by the judge or magistrate and shall take the bail only in the county courthouse, the municipal or township building, or the county or municipal jail.

(3) In all cases, the bail shall be fixed with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of the defendant appearing at the trial of the case.

(B) In any case involving an alleged violation of section 2903.211 of the Revised Code or of a municipal ordinance that is substantially similar to that section, the court shall determine whether it will order an evaluation of the mental condition of the defendant pursuant to section 2919.271 of the Revised Code and, if it decides to so order, shall issue the order requiring the evaluation before it sets bail for the person charged with the violation. In any case involving an alleged violation of section 2919.27 of the Revised Code or of a municipal ordinance that is substantially similar to that section and in which the court finds that either of the following criteria applies, the court shall determine whether it will order an evaluation of the mental condition of the defendant pursuant to section 2919.271 of the Revised Code and, if it decides to so order, shall issue the order requiring that evaluation before it sets bail for the person charged with the violation:

(1) Regarding an alleged violation of a protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of a family or household member covered by the order or agreement or conduct by that defendant that caused a family or household member to believe that the defendant would cause physical harm to that member or that member's property;

(2) Regarding an alleged violation of a protection order issued pursuant to section 2903.213 or 2903.214 of the Revised Code, or a protection order issued by a court of another state, as defined in section 2919.27 of the Revised Code, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of the person covered by the order or conduct by that defendant that caused the person covered by the order to believe that the defendant would cause physical harm to that person or that person's property.

(C) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.

2937.24 Oath to surety - form of affidavit.

When a recognizance is offered under section 2937.22 of the Revised Code, the surety on which recognizance qualifies as a real property owner, the judge or magistrate shall require such surety to pledge to this state real property owned by the surety and located in this state. Whenever such pledge of real property has been given by any such proposed surety, he shall execute the usual form of recognizance, and in addition thereto there shall be filed his affidavit of justification of suretyship, to be attached to said recognizance as a part thereof. The surety may be required in such affidavit to depose as to whether he is, at the time of executing the same, surety upon any other recognizance and as to whether there are any unsatisfied judgments or executions against him. He may also be required to state any other fact which the court thinks relevant and material to a correct determination of the surety's sufficiency to act as bail. Such surety shall state in such

affidavit where notices under section 2937.38of the Revised Code may be served on himself, and service of notice of summons at such place is sufficient service for all purposes.

Such affidavit shall be executed by the proposed surety under an oath and may be in the following form:

"State of Ohio, County of . . . . . ., ss:

. . . . . residing at . . . . . ., who offers himself as surety for . . . . . being first duly sworn, says that he owns in his own legal right, real property subject to execution, located in the county of . . . . . ., State of Ohio, consisting of . . . . . and described as follows to wit: . . . . . .; that the title to the same is in his own name; that the value of the same is not less than . . . . . dollars, and is subject to no encumbrances whatever except . . . . . .; that he is not surety upon any unpaid or forfeited recognizance, and that he is not a party to any unsatisfied judgment upon any recognizance; that he is worth not less than . . . . . dollars over and above all debts, liabilities, and lawful claims against him, and all liens, encumbrances, and lawful claims against his property."

2937.25 Lien - form.

Upon the execution of any recognizance in an amount in excess of two hundred dollars in the usual form, and an affidavit of justification under section 2937.24 of the Revised Code, there shall attach to the real property described in said affidavit of justification, a lien in favor of this state in the penal sum of the recognizance, which lien shall remain in full force and effect during such time as such recognizance remains effective, or until further order of the court. Upon the acceptance by the judge or magistrate of such recognizance, containing such affidavit of justification, the said recognizance shall be immediately filed with the clerk of said court, if there is a clerk, or with the magistrate. The clerk of the court or the magistrate shall forthwith, upon the filing with him of such recognizance, file with the county recorder of the county in which such real property is located, a notice or lien, in writing, in substance as follows:

"To whom it may concern:

Take notice that the hereinafter described real property, located in the county of . . . . . ., has been pledged for the sum of . . . . . dollars, to the state of Ohio, by . . . . . surety upon the recognizance of . . . . . in a certain cause pending in the . . . . . court of the county (or city) of . . . . . ., to wit: the state of Ohio, plaintiff, versus . . . . . defendant, known and identified in such court as cause No. . . ..

Description of real estate: . . . . . Clerk of the court for the county of . . . . . or . . . . . Magistrate.

Dated . . . . . ."

From the time of the filing and recording of such notice it is notice to everyone that the real property therein described has been pledged to this state as security for the performance of the

conditions of a criminal recognizance in the penal sum set forth in said recognizance and notice. Such lien does not affect the validity of prior liens on said property.

2937.26 Cancellation of lien - form.

Whenever, by the order of a court, a recognizance under sections 2937.24 and 2937.25 of the Revised Code has been canceled, discharged, or set aside, or the cause in which such recognizance is taken has been dismissed or otherwise terminated the clerk of such court shall forthwith file with the county recorder of the county in which the real property is located, a notice of discharge in writing, in substance as follows:

"To whom it may concern:

Take notice that by the order of the court of . . . . . (naming court) . . . . . of the county (or city) of . . . . . ., the recognizance of . . . . . as principal, and . . . . . as surety, given in the cause of the State of Ohio, plaintiff, versus . . . . . ., defendant, known and identified as Cause No. . . . . in said court, is canceled, discharged, and set aside, and the lien of the State of Ohio on the real property therein pledged as security, is hereby waived, discharged, and set aside.

. . . . . Clerk of the court.

Dated . . . . . ."

2937.27 Duties of county recorder.

The county recorder of the county in which the property of a surety on a recognizance is located, shall keep and file all notices of lien and notices of discharge which are filed with him pursuant to section 2937.26 of the Revised Code, and shall keep in addition thereto, a book or record in which he shall index notice of liens and notice of discharges, as they are filed with him. When a lien has been released or discharged for a period of one year, the county recorder may destroy all notices of such lien.

2937.28 Pledge of real property as bail.

All recognizances shall be returnable to and all deposits shall be held by or subject to the order of the court or magistrate before whom the accused is to appear initially, and upon the transfer of the case to any other court or magistrate shall be returnable to and transmitted to the transferee court or magistrate.

It is not necessary for the accused to give new recognizance for appearance in common pleas court for arraignment upon indictment or pending appeal after judgment and sentence, unless the magistrate or judge of the trial court or the court to which appeal is taken, shall, for good cause shown, increase or decrease the amount of the recognizance, but such recognizance shall continue and be in full force until trial and appeal therefrom is finally determined. When two or

more charges are filed, or indictments returned, against the same person at or about the same time, the recognizance given may be made to include all offenses charged against the accused.

2937.281 Recognizance forms.

In cases of felony, the recognizance shall be signed by the accused and one or more adult residents of the county in which the case is pending, who shall own, in the aggregate, real property double the amount set as bail, over and above all encumbrances and liable to execution in at least that amount; or it may be signed by the accused and a surety company authorized to do business in this state.

In cases of misdemeanor, the recognizance may be signed by the accused and one or more adult residents, qualified as set forth above or as to personal property ownership, by the accused and surety company, or, if authorized by judge or magistrate, by the accused alone. In cases of misdemeanors arising under Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4517., and 4549. of the Revised Code, and related ordinance offenses (except those of driving under the influence of intoxicating liquor or controlled substances and leaving the scene of an accident) the court or magistrate shall accept guaranteed arrest bond with respect to which a surety company has become surety as provided in section 3929.141 of the Revised Code in lieu of cash bail in an amount not to exceed two hundred dollars.

2937.29 Release on own recognizance.

When from all the circumstances the court is of the opinion that the accused will appear as required, either before or after conviction, the accused may be released on his own recognizance. A failure to appear as required by such recognizance shall constitute an offense subject to the penalty provided in section 2937.99 of the Revised Code.

2937.30 Recognizance when accused discharged.

When a defendant is discharged by the trial court otherwise than on a verdict or finding of acquittal, or when the appellate court reverses a conviction and orders the discharge of the defendant and the state or municipality signifies its intention to appeal therefrom, or the record is certified to the supreme court, the defendant shall not be discharged if he is in jail, nor the surety discharged or deposit released if the defendant is on bail, but the trial court, or the court to which appeal is taken may make order for his release on his own recognizance or bail, or recommit him.

2937.31 Recognizance or deposit for appearance of accused.

If an accused is held to answer and offers sufficient bail, a recognizance or deposit shall be taken for his appearance to answer the charge before such magistrate or before such court to which proceedings may be transferred pursuant to Chapter 2937. of the Revised Code, at a date certain, or from day to day, or in case of the common pleas court on the first day of the next term thereof, and not depart without leave.

2937.32 Detention where bail not granted or sufficient bail not offered.

If an offense is not bailable, if the court denies bail to the accused, or if the accused does not offer sufficient bail, the court shall order the accused to be detained.

2937.33 Receipt of recognizance.

When a transcript or [of] recognizance is received by the clerk of the court of common pleas, or of any court of record to which proceedings are transferred, he shall enter the same upon the appearance docket of the court, with the date of the filing of such transcript or recognizance, the date and amount of the recognizance, the names of the sureties, and the costs. Such recognizance is then of record in such court, and is proceeded on by process issuing therefrom, in a like manner as if it had been entered into before such court. When a court having recognizance of an offense takes a recognizance, it is a sufficient record thereof to enter upon the journal of such court the title of the case, the crime charged, the names of the sureties, the amount of the recognizance, and the time therein required for the appearance of the accused. In making the complete record, when required to be made, recognizances whether returned to or taken in such court shall be recorded in full, if required by the prosecutor or the accused.

2937.34 Accused unlawfully detained - examining court to be held.

When a person is committed to jail, charged with an offense for which he has not been indicted, and claims to be unlawfully detained, the sheriff on demand of the accused or his counsel shall forthwith notify the court of common pleas, and the prosecuting attorney, to attend an examining court, the time of which shall be fixed by the judge. The judge shall hear said cause or complaint, examine the witnesses, and make such order as the justice of the case requires, and for such purpose the court may admit to bail, release without bond, or recommit to jail in accordance with the commitment. In the absence of the judge of the court of common pleas, the probate judge shall hold such examining court.

2937.35 Forfeiture of bail.

Upon the failure of the accused or witness to appear in accordance with its terms the bail may in open court be adjudged forfeit, in whole or in part by the court or magistrate before whom he is to appear. But such court or magistrate may, in its discretion, continue the cause to a later date certain, giving notice of such date to him and the bail depositor or sureties, and adjudge the bail forfeit upon failure to appear at such later date.

2937.36 Forfeiture of bail proceedings.

Upon declaration of forfeiture, the magistrate or clerk of the court adjudging forfeiture shall proceed as follows:

(A) As to each bail, the magistrate or clerk shall proceed forthwith to deal with the sum deposited as if the same were imposed as a fine for the offense charged and distribute and

account for the same accordingly provided that prior to so doing, the magistrate or clerk may satisfy accrued costs in the case out of the fund.

(B) As to any securities deposited, the magistrate or clerk shall proceed to sell the same, either at public sale advertised in the same manner as sale on chattel execution, or through any state or national bank performing such service upon the over the counter securities market and shall apply proceeds of sale, less costs or brokerage thereof as in cases of forfeited cash bail. Prior to such sale, the clerk shall give notices by ordinary mail to the depositor, at the depositor's address listed of record, if any, of the intention so to do, and such sale shall not proceed if the depositor, within ten days of mailing of such notice appears, and redeems said securities by either producing the body of the defendant in open court or posting the amount set in the recognizance in cash, to be dealt with as forfeited cash bail.

(C) As to recognizances the magistrate or clerk shall notify the accused and each surety within fifteen days after the declaration of the forfeiture by ordinary mail at the address shown by them in their affidavits of qualification or on the record of the case, of the default of the accused and the adjudication of forfeiture and require each of them to show cause on or before a date certain to be stated in the notice, and which shall be not less than forty-five nor more than sixty days from the date of mailing notice, why judgment should not be entered against each of them for the penalty stated in the recognizance. If good cause by production of the body of the accused or otherwise is not shown, the court or magistrate shall thereupon enter judgment against the sureties or either of them, so notified, in such amount, not exceeding the penalty of the bond, as has been set in the adjudication of forfeiture, and shall award execution therefor as in civil cases. The proceeds of sale shall be received by the clerk or magistrate and distributed as on forfeiture of cash bail.

2937.37 Levy on personal property in judgment against surety.

A magistrate or court of record inferior to the court of common pleas may proceed to judgment against a surety on a recognizance, and levy on his personal property, notwithstanding that the bond may exceed the monetary limitations on the jurisdiction of such court in civil cases, and jurisdiction over the person of surety shall attach from the mailing of the notice specified in section 2937.36 of the Revised Code, notwithstanding that such surety may not be within the territorial jurisdiction of the court; but levy on real property shall be made only through issuance, return, and levy made under certificate of judgment issued to the clerk of the court of common pleas pursuant to section 2329.02 of the Revised Code.

2937.38 Forfeiture of bail proceedings - minority no defense.

In any matter in which a minor is admitted to bail pursuant to Chapter 2937 of the Revised Code, the minority of the accused shall not be available as a defense to judgment against principal or surety, or against the sale of securities or transfer of cash bail, upon forfeiture.

2937.39 Remitting all or part of penalty.

After judgment has been rendered against surety or after securities sold or cash bail applied, the court or magistrate, on the appearance, surrender, or rearrest of the accused on the charge, may remit all or such portion of the penalty as it deems just and in the case of previous application and transfer of cash or proceeds, the magistrate or clerk may deduct an amount equal to the amount so transferred from subsequent payments to the agencies receiving such proceeds of forfeiture until the amount is recouped for the benefit of the person or persons entitled thereto under order or remission.

2937.40 Discharge and release of bail and sureties.

(A) Bail of any type that is deposited under sections 2937.22 to 2937.45 of the Revised Code or Criminal Rule 46 by a person other than the accused shall be discharged and released, and sureties on recognizances shall be released, in any of the following ways:

(1) When a surety on a recognizance or the depositor of cash or securities as bail for an accused desires to surrender the accused before the appearance date, the surety is discharged from further responsibility or the deposit is redeemed in either of the following ways:

(a) By delivery of the accused into open court;

(b) When, on the written request of the surety or depositor, the clerk of the court to which recognizance is returnable or in which deposit is made issues to the sheriff a warrant for the arrest of the accused and the sheriff indicates on the return that he holds the accused in his jail.

(2) By appearance of the accused in accordance with the terms of the recognizance or deposit and the entry of judgment by the court or magistrate;

(3) By payment into court, after default, of the sum fixed in the recognizance or the sum fixed in the order of forfeiture, if it is less.

(B) When cash or securities have been deposited as bail by a person other than the accused and the bail is discharged and released pursuant to division (A) of this section, or when property has been pledged by a surety on recognizance and the surety on recognizance has been released pursuant to division (A) of this section, the court shall not deduct any amount from the cash or securities or declare forfeited and levy or execute against pledged property. The court shall not apply any of the deposited cash or securities toward, or declare forfeited and levy or execute against property pledged for a recognizance for, the satisfaction of any penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea, except upon express approval of the person who deposited the cash or securities or the surety.

(C) Bail of any type that is deposited under sections 2937.22 to 2937.45 of the Revised Code or Criminal Rule 46 by an accused shall be discharged and released to the accused, and property pledged by an accused for a recognizance shall be discharged, upon the appearance of the accused in accordance with the terms of the recognizance or deposit and the entry of judgment

by the court or magistrate, except that, if the defendant is not indigent, the court may apply deposited bail toward the satisfaction of a penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea, and may declare forfeited and levy or execute against pledged property for the satisfaction of a penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea.

(D) Notwithstanding any other provision of this section, an Ohio driver's or commercial driver's license that is deposited as bond may be forfeited and otherwise handled as provided in section 2937.221 of the Revised Code.

2937.41 Discharge of recognizance.

On the discharge of bail, the magistrate or clerk of the court shall return, subject to division (B) or (C) of section 2937.40 of the Revised Code, deposited cash or securities to the depositor, but the magistrate or clerk of the court may require presentation of an issued original receipt as a condition to the return. In the case of discharged recognizances, subject to division (B) or (C) of section 2937.40 of the Revised Code, the magistrate or clerk of the court shall endorse the satisfaction on the recognizance and shall forthwith transmit to the county recorder the notice of discharge provided for in section 2937.26 of the Revised Code.

2937.42 Defect in form of recognizance.

Forfeiture of a recognizance shall not be barred or defeated or a judgment thereon reversed by the neglect or omission to note or record the default, or by a defect in the form of such recognizance, if it appears from the tenor thereof at what court the party or witness was bound to appear and that the court or officer before whom it was taken was authorized to require and take such recognizance.

2937.43 Issuance of warrant upon failure to appear.

Should the accused fail to appear as required, after having been released pursuant to section 2937.29 of the Revised Code, the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of such accused.

2937.44 Recognizance forms.

Recognizances substantially in the forms following are sufficient:

RECOGNIZANCE OF THE ACCUSED

The State of Ohio, ... County, ss:

Be it remembered, that on the . . . . . day of. . . . ., in the year . . . . E. F. and G. H. personally appeared before me, and jointly and severally acknowledged themselves to owe the

state of Ohio, the sum of . . . . . dollars, to be levied on their goods, chattels, lands, and tenements, if default is made in the condition following, to wit:

The condition of this recognizance is such that if the above bound E. F. personally appears before the court of common pleas on the first day of the next term thereof, then and there to answer a charge of (here name the offense with which the accused is charged) and abide the judgment of the court and not depart without leave, then this recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

Taken and acknowledged before me, on the day and year above written.

A. B., Judge

RECOGNIZANCE OF WITNESS

The State of Ohio, ... County, ss:

Be it remembered, that on the . . . . . day of . . . . . ., in the year . . . . . E. F. and G. H. personally appeared before me and jointly and severally acknowledged themselves to owe the state of Ohio, the sum of . . . . . dollars, to be levied on their goods, chattels, lands, and tenements, if default is made in the condition following, to wit:

The condition of this recognizance is such that if the above bound E. F. personally appears before the court of common pleas on the first day of the next term thereof then and there to give evidence on behalf of the state, touching such matters as shall then and there be required of him, and not depart the court without leave, then this recognizance shall be void, otherwise it shall remain in full force and virtue in law.

Taken and acknowledged before me, on the day and year above written.

A. B., Judge

TO KEEP THE PEACE

The State of Ohio, ... County, ss:

Be it remembered, that on the . . . . . day of . . . . . ., in the year . . . . E. F. and G. H. personally appeared before me, and jointly and severally acknowledged themselves to owe the state of Ohio, the sum of . . . . . dollars, to be levied on their goods, chattels, lands, and tenements, if default is made in the condition following, to wit:

The condition of this recognizance is such that if the above bound E. F. personally appears before the court of common pleas, on the first day of the next term thereof, then and there to answer unto a complaint of C. D. that he has reason to fear, and does fear, that the said E. F. will (here state the charge in the complaint), and abide the order of the court thereon, and in the meantime to keep the peace and be of good behavior toward the citizens of the state generally,

and especially toward the said C. D., then this recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

Taken and acknowledged before me, on the day and year above written.

A. B., Judge

2937.45 Commitment forms.

Commitments substantially in the forms following are sufficient:

COMMITMENT AFTER EXAMINATION

The State of Ohio, ... County, ss:

To the Keeper of the Jail of the County aforesaid, greeting:

Whereas, E. F. has been arrested, on the oath of C. D., for (here describe the offense), and has been examined by me on such charge, and required to give bail in the sum of . . . . . dollars for his appearance before the court of common pleas with which requisition he has failed to comply. Therefore, in the name of the state of Ohio, I command you to receive the said E. F. into your custody, in the jail of the county aforesaid, there to remain until discharged by due course of law.

Given under my hand, this . . . . . day of . . . . . .

A. B., Judge

COMMITMENT PENDING EXAMINATION

The State of Ohio, ... County, ss:

To the Keeper of the Jail of the County aforesaid, greeting:

Whereas, E. F. has been arrested on the oath of C. D., for (here describe the offense) and has been brought before me for examination and the same has been necessarily postponed by reason of (here state the cause of delay). Therefore, I command you, in the name of the state of Ohio, to receive the said E. F. into your custody in the jail of the county aforesaid (or in such other place as the justice shall name) there to remain until discharged by due course of law.

Given under my hand, this . . . . . day of . . . . . .

A. B., Judge

2937.46 Uniform rules for practice and procedure in traffic cases.

(A) The supreme court of Ohio, in the interest of uniformity of procedure in the various courts and for the purpose of promoting prompt and efficient disposition of cases arising under the traffic laws of this state and related ordinances, may make uniform rules for practice and procedure in courts inferior to the court of common pleas not inconsistent with the provisions of Chapter 2937. of the Revised Code, including, but not limited to:

(1) Separation of arraignment and trial of traffic and other types of cases;

(2) Consolidation of cases for trial;

(3) Transfer of cases within the same county for the purpose of trial;

(4) Designation of special referees for hearings or for receiving pleas or bail at times when courts are not in session;

(5) Fixing of reasonable bonds, and disposition of cases in which bonds have been forfeited.

(B) Except as otherwise specified in division (N) of section 4511.19 of the Revised Code, all of the rules described in division (A) of this section, when promulgated by the supreme court, shall be fully binding on all courts inferior to the court of common pleas and on the court of common pleas in relation to felony violations of division (A) of section 4511.19 of the Revised Code and shall effect a cancellation of any local court rules inconsistent with the supreme court's rules.

2937.99 Penalty.

(A) No person shall fail to appear as required, after having been released pursuant to section 2937.29 of the Revised Code. Whoever violates this section is guilty of failure to appear and shall be punished as set forth in division (B) or (C) of this section.

(B) If the release was in connection with a felony charge or pending appeal after conviction of a felony, failure to appear is a felony of the fourth degree.

(C) If the release was in connection with a misdemeanor charge or for appearance as a witness, failure to appear is a misdemeanor of the first degree.

(D) This section does not apply to misdemeanors and related ordinance offenses arising under Chapters 4501., 4503., 4505., 4507., 4509., 4510., 4511., 4513., 4517., 4549., and 5577. of the Revised Code, except that this section does apply to violations of sections 4511.19, 4549.02, and4549.021 of the Revised Code and ordinance offenses related to sections 4511.19, 4549.02, and 4549.021 of the Revised Code.

OHIO REVISED CODE
PENALTIES AND SENTENCING

When an individual is charge with a crime and found guilty, there is always some sort of price to be "paid back to society." This section of the Ohio Revised Code examines the specific options available to a Court of Law.

It is mandatory for the Surety Bail Bond Agent to be knowledgeable and have an understanding of the various laws, terms and options that are available in these determinations.

2929.01 Penalties and sentencing general definitions.

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) "Basic probation 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. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

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

(D) "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 2301.58 of the Revised Code.

(E) "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 or a sanction that is not a jail term and that is described in section 2929.26, 2929.27, or 2929.28 of the Revised Code. "Community control sanction" includes probation if the sentence involved was imposed

for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

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

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

(H) "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.

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

(J) "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.

(K) "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.

(L) "Economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense 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 commission of the offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "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 curricula or their equivalent.

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

(O) "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.

(P) "House arrest" means a period of confinement of an offender that is in the 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 and during which all of the following apply:

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

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

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

(Q) "Intensive probation 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. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(R) "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.

(S) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(T) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (E) or (G) of section 2929.24 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

(U) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(V) "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.

(W) "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

cocaine; at least two thousand five hundred unit doses or two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; 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, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(X) "Mandatory prison term" means any of the following:

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (18) of section 2929.13 and division (B) 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 or 2929.142 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 or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVIoffense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code.

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Y) "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.

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

(AA) "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.

(BB) "Prison term" includes either 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 2929.143, 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073 of the Revised Code.

(CC) “Repeat violent offender” means a person about whom both of the following apply:

(1) The person is being sentenced for committing or for complicity in committing any of the following:

(a) Aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;

(b) 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 described in division (CC)(1)(a) of this section.

(2) The person previously was convicted of or pleaded guilty to an offense described in division (CC)(1)(a) or (b) of this section.

(DD) “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 or 2929.24 to 2929.28 of the Revised Code.

(EE) “Sentence” means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(FF) “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, 2929.142, or 2971.03 of the Revised Code or under section 2919.25 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 house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 of the Revised Code.

(GG) “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.

(HH) “Fourth degree felony OVI offense” means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree.

(II) “Mandatory term of local incarceration” means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.

(JJ) “Designated homicide, assault, or kidnapping offense,” “violent sex 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.

(KK) “Sexually oriented offense,” “child-victim oriented offense,” and “tier III sex offender/child-victim offender,” have the same meanings as in section 2950.01 of the Revised Code.

(LL) 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.

(MM) “Family or household member” has the same meaning as in section 2919.25 of the Revised Code.

(NN) “Motor vehicle” and “manufactured home” have the same meanings as in section 4501.01 of the Revised Code.

(OO) “Detention” and “detention facility” have the same meanings as in section 2921.01 of the Revised Code.

(PP) “Third degree felony OVI offense” means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree.

(QQ) “Random drug testing” has the same meaning as in section 5120.63 of the Revised Code.

(RR) “Felony sex offense” has the same meaning as in section 2967.28 of the Revised Code.

(SS) “Body armor” has the same meaning as in section 2941.1411 of the Revised Code.

(TT) “Electronic monitoring” means monitoring through the use of an electronic monitoring device.

(UU) “Electronic monitoring device” means any of the following:

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (UU)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional

control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (UU)(1)(a) of this section, can transmit continuously those signals by a wireless or landline telephone connection to a central monitoring computer of the type described in division (UU)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the device has been turned off or altered without prior court approval or otherwise tampered with. The device is designed specifically for use in electronic monitoring, is not a converted wireless phone or another tracking device that is clearly not designed for electronic monitoring, and provides a means of text-based or voice communication with the person.

(c) The device has a central monitoring computer that can receive continuously the signals transmitted by a wireless or landline telephone connection by a receiver of the type described in division (UU)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (UU)(1)(a) of this section is attached.

(2) Any device that is not a device of the type described in division (UU)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(3) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

(VV) “Non-economic loss” means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

(WW) “Prosecutor” has the same meaning as in section 2935.01 of the Revised Code.

(XX) “Continuous alcohol monitoring” means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(YY) A person is “adjudicated a sexually violent predator” if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

(ZZ) An offense is “committed in proximity to a school” if the offender commits the offense in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

(AAA) “Human trafficking” means a scheme or plan to which all of the following apply:

(1) Its object is to subject a victim or victims to involuntary servitude, as defined in section 2905.31 of the Revised Code, to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.

(2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:

(a) Each of the felony offenses is a violation of section 2905.01, 2905.02, 2905.32, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.

(b) At least one of the felony offenses was committed in this state.

(c) The felony offenses are related to the same scheme or plan and are not isolated instances.

(BBB) “Material,” “nudity,” “obscene,” “performance,” and “sexual activity” have the same meanings as in section 2907.01 of the Revised Code.

(CCC) “Material that is obscene, sexually oriented, or nudity oriented” means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

(DDD) “Performance that is obscene, sexually oriented, or nudity oriented” means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

2929.02 Murder penalties.

(A) Whoever is convicted of or pleads guilty to aggravated murder in violation of section 2903.01 of the Revised Code shall suffer death or be imprisoned for life, as determined pursuant to sections 2929.022, 2929.03, and 2929.04 of the Revised Code, except that no person who raises the matter of age pursuant to section 2929.023 of the Revised Code and who is not found to have been eighteen years of age or older at the time of the commission of the offense shall suffer death. In addition, the offender may be fined an amount fixed by the court, but not more than twenty-five thousand dollars.

(B)(1) Except as otherwise provided in division (B)(2) or (3) of this section, whoever is convicted of or pleads guilty to murder in violation of section2903.02 of the Revised Code shall be imprisoned for an indefinite term of fifteen years to life.

(2) Except as otherwise provided in division (B)(3) of this section, if a person is convicted of or pleads guilty to murder in violation of section2903.02 of the Revised Code, the victim of the offense was less than thirteen years of age, and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the court shall impose an indefinite prison term of thirty years to life pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(3) If a person is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code and also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information that charged the murder, the court shall impose upon the offender a term of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(4) In addition, the offender may be fined an amount fixed by the court, but not more than fifteen thousand dollars.

(C) The court shall not impose a fine or fines for aggravated murder or murder which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim’s wrongful death.

(D)(1) In addition to any other sanctions imposed for a violation of section 2903.01 or 2903.02 of the Revised Code, if the offender used a motor vehicle as the means to commit the violation, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of section 4510.02 of the Revised Code.

(2) As used in division (D) of this section, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

2929.021 Notice to supreme court of indictment charging aggravated murder with aggravating circumstances.

(A) If an indictment or a count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the clerk of the court in which the indictment is filed, within fifteen days after the day on which it is filed, shall file a notice with the supreme court indicating that the indictment was filed. The notice shall be in the form prescribed by the clerk of the supreme court and shall contain, for each charge of aggravated murder with a specification, at least the following information pertaining to the charge:

(1) The name of the person charged in the indictment or count in the indictment with aggravated murder with a specification;

(2) The docket number or numbers of the case or cases arising out of the charge, if available;

(3) The court in which the case or cases will be heard;

(4) The date on which the indictment was filed.

(B) If the indictment or a count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code and if the defendant pleads guilty or no contest to any offense in the case or if the indictment or any count in the indictment is dismissed, the clerk of the court in which the plea is entered or the indictment or count is dismissed shall file a notice with the supreme court indicating what action was taken in the case. The notice shall be filed within fifteen days after the plea is entered or the indictment or count is dismissed, shall be in the form prescribed by the clerk of the supreme court, and shall contain at least the following information:

(1) The name of the person who entered the guilty or no contest plea or who is named in the indictment or count that is dismissed;

(2) The docket numbers of the cases in which the guilty or no contest plea is entered or in which the indictment or count is dismissed;

(3) The sentence imposed on the offender in each case.

2929.022 Sentencing hearing - determining existence of aggravating circumstance.

(A) If an indictment or count in an indictment charging a defendant with aggravated murder contains a specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code, the defendant may elect to have the panel of three judges, if the defendant waives trial by jury, or the trial judge, if the defendant is tried by jury, determine the existence of that aggravating circumstance at the sentencing hearing held pursuant to divisions (C) and (D) of section 2929.03 of the Revised Code.

(1) If the defendant does not elect to have the existence of the aggravating circumstance determined at the sentencing hearing, the defendant shall be tried on the charge of aggravated murder, on the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code, and on any other specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code in a single trial as in any other criminal case in which a person is charged with aggravated murder and specifications.

(2) If the defendant does elect to have the existence of the aggravating circumstance of a prior conviction listed in division (A)(5) of section2929.04 of the Revised Code determined at the sentencing hearing, then, following a verdict of guilty of the charge of aggravated murder, the panel of three judges or the trial judge shall:

(a) Hold a sentencing hearing pursuant to division (B) of this section, unless required to do otherwise under division (A)(2)(b) of this section;

(b) If the offender raises the matter of age at trial pursuant to section 2929.023 of the Revised Code and is not found at trial to have been eighteen years of age or older at the time of the commission of the offense, conduct a hearing to determine if the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt. After conducting the hearing, the panel or judge shall proceed as follows:

(i) If that aggravating circumstance is proven beyond a reasonable doubt or if the defendant at trial was convicted of any other specification of an aggravating circumstance, the panel or judge shall impose sentence according to division (E) of section 2929.03 of the Revised Code.

(ii) If that aggravating circumstance is not proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance, except as otherwise provided in this division, the panel or judge shall impose sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender. If that aggravating circumstance is not proven beyond a reasonable doubt, the defendant at trial was not convicted of any other specification of an aggravating circumstance, the victim of the aggravated murder was less than thirteen years of age, and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in

the indictment, or information charging the offense, the panel or judge shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(B) At the sentencing hearing, the panel of judges, if the defendant was tried by a panel of three judges, or the trial judge, if the defendant was tried by jury, shall, when required pursuant to division (A)(2) of this section, first determine if the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt. If the panel of judges or the trial judge determines that the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt or if they do not determine that the specification is proven beyond a reasonable doubt but the defendant at trial was convicted of a specification of any other aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge and trial jury shall impose sentence on the offender pursuant to division (D) of section 2929.03 and section 2929.04 of the Revised Code. If the panel of judges or the trial judge does not determine that the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge shall terminate the sentencing hearing and impose sentence on the offender as follows:

(1) Subject to division (B)(2) of this section, the panel or judge shall impose a sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender.

(2) If the victim of the aggravated murder was less than thirteen years of age and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the panel or judge shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

2929.023 Raising the matter of age at trial.

A person charged with aggravated murder and one or more specifications of an aggravating circumstance may, at trial, raise the matter of his age at the time of the alleged commission of the offense and may present evidence at trial that he was not eighteen years of age or older at the time of the alleged commission of the offense. The burdens of raising the matter of age, and of going forward with the evidence relating to the matter of age, are upon the defendant. After a defendant has raised the matter of age at trial, the prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the defendant was eighteen years of age or older at the time of the alleged commission of the offense.

2929.024 Investigation services and experts for indigent defendant.

If the court determines that the defendant is indigent and that investigation services, experts, or other services are reasonably necessary for the proper representation of a defendant charged with aggravated murder at trial or at the sentencing hearing, the court shall authorize the defendant's counsel to obtain the necessary services for the defendant, and shall order that payment of the fees and expenses for the necessary services be made in the same manner that payment for appointed counsel is made pursuant to Chapter 120. of the Revised Code. If the court determines that the necessary services had to be obtained prior to court authorization for payment of the fees and expenses for the necessary services, the court may, after the services have been obtained, authorize the defendant's counsel to obtain the necessary services and order that payment of the fees and expenses for the necessary services be made as provided in this section.

OHIO REVISED CODE
MURDER & DEATH PENALTY PROVISIONS

Our society mandates that under certain specific circumstances, the Death Penalty may be considered. The State of Ohio is in agreement with this position and imposes the Death Penalty under certain conditions; however, there are stringent rules that must be followed by the sentencing Court in these cases.

2929.03 Imposition of sentence for aggravated murder.

(A) If the indictment or count in the indictment charging aggravated murder does not contain one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge of aggravated murder, the trial court shall impose sentence on the offender as follows:

(1) Except as provided in division (A)(2) of this section, the trial court shall impose one of the following sentences on the offender:

(a) Life imprisonment without parole;

(b) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;

(c) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(d) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(e) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does

not impose a sentence of life imprisonment without parole on the offender pursuant to division (A)(1)(a) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be served pursuant to that section.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender was eighteen years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender pursuant to section 2929.023 of the Revised Code, and whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard. The instruction to the jury shall include an instruction that a specification shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but the instruction shall not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C)(1) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge but not guilty of each of the specifications, and regardless of whether the offender raised the matter of age pursuant to section 2929.023 of the Revised Code, the trial court shall impose sentence on the offender as follows:

(a) Except as provided in division (C)(1)(b) of this section, the trial court shall impose one of the following sentences on the offender:

(i) Life imprisonment without parole;

(ii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;

(iii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(iv) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(v) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the

indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (C)(1)(a)(i) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(2)(a) If the indictment or count in the indictment contains one or more specifications of aggravating circumstances listed in division (A) of section2929.04 of the Revised Code and if the offender is found guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be one of the following:

(i) Except as provided in division (C)(2)(a)(ii) or (iii) of this section, the penalty to be imposed on the offender shall be death, life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(ii) Except as provided in division (C)(2)(a)(iii) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of death or life imprisonment without parole on the offender pursuant to division (C)(2)(a)(i) of this section, the penalty to be imposed on the offender shall be an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section.

(iii) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the penalty to be imposed on the offender shall be death or life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(b) A penalty imposed pursuant to division (C)(2)(a)(i), (ii), or (iii) of this section shall be determined pursuant to divisions (D) and (E) of this section and shall be determined by one of the following:

(i) By the panel of three judges that tried the offender upon the offender's waiver of the right to trial by jury;

(ii) By the trial jury and the trial judge, if the offender was tried by jury.

(D)(1) Death may not be imposed as a penalty for aggravated murder if the offender raised the matter of age at trial pursuant to section 2929.023of the Revised Code and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense. When death may be imposed as a penalty for aggravated murder, the court shall proceed under this division. When death may be imposed as a penalty, the court, upon the request of the defendant, shall require a pre-sentence investigation to be made and, upon the request of the defendant, shall require a mental examination to be made, and shall require reports of the investigation and of any mental examination submitted to the court, pursuant to section 2947.06 of the Revised Code. No statement made or information provided by a defendant in a mental examination or proceeding conducted pursuant to this division shall be disclosed to any person, except as provided in this division, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination shall not be made except upon request of the defendant. Copies of any reports prepared under this division shall be furnished to the court, to the trial jury if the offender was tried by a jury, to the prosecutor, and to the offender or the offender's counsel for use under this division. The court, and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division and furnished to it and any evidence raised at trial that is relevant to the aggravating circumstances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, shall hear testimony and other evidence that is relevant to the nature and circumstances of the aggravating circumstances the offender was found guilty of committing, the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, and any other factors in mitigation of the imposition of the sentence of death, and shall hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender. The defendant shall be given great latitude in the presentation of evidence of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, the offender is subject to cross-examination only if the offender consents to make the statement under oath or affirmation.

The defendant shall have the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death.

(2) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted pursuant to division (D)(1) of this section, the trial jury, if the offender was tried by a jury, shall determine whether the aggravating circumstances the offender was found guilty of committing are sufficient to outweigh the mitigating factors present in the case. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following:

(a) Except as provided in division (D)(2)(b) or (c) of this section, to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(b) Except as provided in division (D)(2)(c) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the jury does not recommend a sentence of life imprisonment without parole pursuant to division (D)(2)(a) of this section, to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section.

(c) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, to life imprisonment without parole.

If the trial jury recommends that the offender be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, life imprisonment with parole eligibility after serving thirty full years of imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of section 2971.03of the Revised Code, the court shall impose the sentence recommended by the jury upon the offender. If the sentence is an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment imposed as described in division (D)(2)(b) of this section or a sentence of life imprisonment without parole imposed under division (D)(2)(c) of this section, the sentence shall be served pursuant to section2971.03 of the Revised Code. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving pursuant to division (D)(2) of this section the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, or if the panel of three judges unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, it shall impose sentence of death on the offender. Absent such a finding by the court or panel, the court or the panel shall impose one of the following sentences on the offender:

(a) Except as provided in division (D)(3)(b) of this section, one of the following:

(i) Life imprisonment without parole;

(ii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(iii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(iv) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (D)(3)(a)(i) of this section, the court or panel shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(E) If the offender raised the matter of age at trial pursuant to section 2929.023 of the Revised Code, was convicted of aggravated murder and one or more specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court or the panel of three judges shall not impose a sentence of death on the offender. Instead, the court or panel shall impose one of the following sentences on the offender:

(1) Except as provided in division (E)(2) of this section, one of the following:

(a) Life imprisonment without parole;

(b) Subject to division (E)(2)(d) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(c) Subject to division (E)(2)(d) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(d) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (E)(2)(a) of this section, the court or panel shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the

indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(F) The court or the panel of three judges, when it imposes sentence of death, shall state in a separate opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors. The court or panel, when it imposes life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment under division (D) of this section, shall state in a separate opinion its specific findings of which of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code it found to exist, what other mitigating factors it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. For cases in which a sentence of death is imposed for an offense committed before January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. For cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.

(G)(1) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed before January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the appellate court.

(2) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed on or after January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the supreme court.

2929.04 Death penalty or imprisonment - aggravating and mitigating factors.

(A) Imposition of the death penalty for aggravated murder is precluded unless one or more of the following is specified in the indictment or count in the indictment pursuant to section 2941.14 of the Revised Code and proved beyond a reasonable doubt:

(1) The offense was the assassination of the president of the United States or a person in line of succession to the presidency, the governor or lieutenant governor of this state, the president-elect or vice president-elect of the United States, the governor-elect or lieutenant governor-elect of this state, or a candidate for any of the offices described in this division. For purposes of this division, a person is a candidate if the person has been nominated for election according to law, if the person has filed a petition or petitions according to law to have the person's name placed on the ballot in a primary or general election, or if the person campaigns as a write-in candidate in a primary or general election.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(4) The offense was committed while the offender was under detention or while the offender was at large after having broken detention. As used in division (A)(4) of this section, "detention" has the same meaning as in section 2921.01 of the Revised Code, except that detention does not include hospitalization, institutionalization, or confinement in a mental health facility or mental retardation and developmentally disabled facility unless at the time of the commission of the offense either of the following circumstances apply:

(a) The offender was in the facility as a result of being charged with a violation of a section of the Revised Code.

(b) The offender was under detention as a result of being convicted of or pleading guilty to a violation of a section of the Revised Code.

(5) Prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of or attempt to kill another, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer, as defined in section 2911.01 of the Revised Code, whom the offender had reasonable cause to know or knew to be a law enforcement officer as so defined, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a law enforcement officer as so defined.

(7) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design.

(8) The victim of the aggravated murder was a witness to an offense who was purposely killed to prevent the victim's testimony in any criminal proceeding and the aggravated murder was not committed during the commission, attempted commission, or flight immediately after the commission or attempted commission of the offense to which the victim was a witness, or the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for the victim's testimony in any criminal proceeding.

(9) The offender, in the commission of the offense, purposefully caused the death of another who was under thirteen years of age at the time of the commission of the offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with prior calculation and design.

(10) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit terrorism.

(B) If one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment or count in the indictment and proved beyond a reasonable doubt, and if the offender did not raise the matter of age pursuant to section 2929.023 of the Revised Code or if the offender, after raising the matter of age, was found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court, trial jury, or panel of three judges shall consider, and weigh against the aggravating circumstances proved beyond a reasonable doubt, the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors:

(1) Whether the victim of the offense induced or facilitated it;

(2) Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation;

(3) Whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law;

(4) The youth of the offender;

(5) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;

(6) If the offender was a participant in the offense but not the principal offender, the degree of the offender's participation in the offense and the degree of the offender's participation in the acts that led to the death of the victim;

(7) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.

(C) The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death.

The existence of any of the mitigating factors listed in division (B) of this section does not preclude the imposition of a sentence of death on the offender but shall be weighed pursuant to divisions (D)(2) and (3) of section 2929.03 of the Revised Code by the trial court, trial jury, or the panel of three judges against the aggravating circumstances the offender was found guilty of committing.

2929.05 Supreme court review upon appeal of sentence of death.

(A) Whenever sentence of death is imposed pursuant to sections 2929.03 and 2929.04 of the Revised Code, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall review upon appeal the sentence of death at the same time that they review the other issues in the case. The court of appeals and the supreme court shall review the judgment in the case and the sentence of death imposed by the court or panel of three judges in the same manner that they review other criminal cases, except that they shall review and independently weigh all of the facts and other evidence disclosed in the record in the case and consider the offense and the offender to determine whether the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors in the case, and whether the sentence of death is appropriate. In determining whether the sentence of death is appropriate, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases. They also shall review all of the facts and other evidence to determine if the evidence supports the finding of the aggravating circumstances the trial jury or the panel of three judges found the offender guilty of committing, and shall determine whether the sentencing court properly weighed the aggravating circumstances the offender was found guilty of committing and the mitigating factors. The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court shall affirm a sentence of death only if the particular court is persuaded from the record that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors present in the case and that the sentence of death is the appropriate sentence in the case.

A court of appeals that reviews a case in which the sentence of death is imposed for an offense committed before January 1, 1995, shall file a separate opinion as to its findings in the case with the clerk of the supreme court. The opinion shall be filed within fifteen days after the court issues its opinion and shall contain whatever information is required by the clerk of the supreme court.

(B) The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall give priority over all other cases to the review of judgments in which the sentence of death is imposed and, except as otherwise provided in this section, shall conduct the review in accordance with the Rules of Appellate Procedure.

(C) At any time after a sentence of death is imposed pursuant to section 2929.022 or 2929.03 of the Revised Code, the court of common pleas that sentenced the offender shall vacate the sentence if the offender did not present evidence at trial that the offender was not eighteen years of age or older at the time of the commission of the aggravated murder for which the offender was sentenced and if the offender shows by a preponderance of the evidence that the offender was less than eighteen years of age at the time of the commission of the aggravated murder for which the offender was sentenced. The court is not required to hold a hearing on a motion filed pursuant to this division unless the court finds, based on the motion and any supporting information submitted by the defendant, any information submitted by the prosecuting attorney, and the record in the case, including any previous hearings and orders, probable cause to believe

that the defendant was not eighteen years of age or older at the time of the commission of the aggravated murder for which the defendant was sentenced to death.

2929.06 Resentencing hearing.

(A) If a sentence of death imposed upon an offender is set aside, nullified, or vacated because the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court, in cases in which the supreme court reviews the sentence upon appeal, could not affirm the sentence of death under the standards imposed by section 2929.05 of the Revised Code, is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of death thatis set forth in sections 2929.03 and2929.04 of the Revised Code is unconstitutional, is set aside, nullified, or vacated pursuant to division (C) of section 2929.05 of the Revised Code, or is set aside, nullified, or vacated because a court has determined that the offender is mentally retarded under standards set forth in decisions of the supreme court of this state or the United States supreme court, the trial court that sentenced the offender shall conduct a hearing to resentence the offender. At the resentencing hearing, the court shall impose upon the offender a sentence of life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of section 2929.03 of the Revised Code, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section, the court shall impose the sentence so required. In all other cases, the sentences of life imprisonment that are available at the hearing, and from which the court shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed. Nothing in this division regarding the resentencing of an offender shall affect the operation of section 2971.03 of the Revised Code.

(B) Whenever any court of this state or any federal court sets aside, nullifies, or vacates a sentence of death imposed upon an offender because of error that occurred in the sentencing phase of the trial and if division (A) of this section does not apply, the trial court that sentenced the offender shall conduct a new hearing to resentence the offender. If the offender was tried by a jury, the trial court shall impanel a new jury for the hearing. If the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges shall conduct the hearing. At the hearing, the court or panel shall follow the procedure set forth in division (D) of section 2929.03 of the Revised Code in determining whether to impose upon the offender a sentence of death, a sentence of life imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment. If, pursuant to that procedure, the court or panel determines that it will impose a sentence other than a sentence of death, the court or panel shall impose upon the offender one of the sentences of life imprisonment that could have been imposed at the time the offender committed the offense for which the sentence of death was imposed, determined as specified in this division, or an indefinite term consisting of a

minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of section 2929.03 of the Revised Code, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section, the court or panel shall impose the sentence so required. In all other cases, the sentences of life imprisonment that are available at the hearing, and from which the court or panel shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed.

(C) If a sentence of life imprisonment without parole imposed upon an offender pursuant to section 2929.021 or 2929.03 of the Revised Code is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of life imprisonment without parole that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, the trial court that sentenced the offender shall conduct a hearing to resentence the offender to life imprisonment with parole eligibility after serving twenty-five full years of imprisonment or to life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(D) Nothing in this section limits or restricts the rights of the state to appeal any order setting aside, nullifying, or vacating a conviction or sentence of death, when an appeal of that nature otherwise would be available.

(E) This section, as amended by H.B. 184 of the 125th general assembly, shall apply to all offenders who have been sentenced to death for an aggravated murder that was committed on or after October 19, 1981, or for terrorism that was committed on or after May 15, 2002. This section, as amended by H.B. 184 of the 125th general assembly, shall apply equally to all such offenders sentenced to death prior to, on, or after March 23, 2005, including offenders who, on March 23, 2005, are challenging their sentence of death and offenders whose sentence of death has been set aside, nullified, or vacated by any court of this state or any federal court but who, as of March 23, 2005, have not yet been resentenced.

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2929.11 Purposes of felony sentencing.

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future

crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

2929.12 Seriousness of crime and recidivism factors.

(A) Unless otherwise required by section 2929.13 or 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 or had been unfavorably terminated from post-release control for a prior offense pursuant to division (B) of section 2967.16 or section 2929.141 of the Revised Code.

(2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. 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 prior to January 1, 2002, or pursuant to Chapter 2152. 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.

2929.13 Sanction imposed by degree of felony.

(A) Except as provided in division (E), (F), or (G) of this section and unless a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, a court that imposes a sentence upon an offender for a felony may impose any sanction or combination of sanctions on the offender that are provided in sections 2929.14 to 2929.18 of the Revised Code.

If the offender is eligible to be sentenced to community control sanctions, the court shall consider the appropriateness of imposing a financial sanction pursuant to section 2929.18 of the Revised Code or a sanction of community service pursuant to section 2929.17 of the Revised Code as the sole sanction for the offense. Except as otherwise provided in this division, if the court is required to impose a mandatory prison term for the offense for which sentence is being imposed, the court also shall impose any financial sanction pursuant to section 2929.18 of the Revised Code that is required for the offense and may impose any other financial sanction pursuant to that section but may not impose any additional sanction or combination of sanctions under section 2929.16 or 2929.17 of the Revised Code.

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

(1) For a fourth degree felony OVI offense for which sentence is imposed under division (G)(1) of this section, an additional community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code. If the court imposes upon the offender a community control sanction and the offender violates any condition of the community control sanction, the court may take any action prescribed in division (B) of section 2929.15 of

the Revised Code relative to the offender, including imposing a prison term on the offender pursuant to that division.

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

(B)(1) (a) Except as provided in division (B)(1)(b) of this section, if an offender is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence, the court shall sentence the offender to a community control sanction of at least one year's duration if all of the following apply:

(i) The offender previously has not been convicted of or pleaded guilty to a felony offense or to an offense of violence that is a misdemeanor and that the offender committed within two years prior to the offense for which sentence is being imposed.

(ii) The most serious charge against the offender at the time of sentencing is a felony of the fourth or fifth degree.

(iii) If the court made a request of the department of rehabilitation and correction pursuant to division (B)(1)(c) of this section, the department, within the forty-five-day period specified in that division, provided the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court.

(b) The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence if any of the following apply:

(i) The offender committed the offense while having a firearm on or about the offender's person or under the offender's control.

(ii) The offender caused physical harm to another person while committing the offense.

(iii) The offender violated a term of the conditions of bond as set by the court.

(iv) The court made a request of the department of rehabilitation and correction pursuant to division (B)(1)(c) of this section, and the department, within the forty-five-day period specified in that division, did not provide the court with the name of, contact information for, and program details of any community control sanction of at least one year's duration that is available for persons sentenced by the court.

(c) If a court that is sentencing an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence believes that no community control sanctions are available for its use that, if imposed on the offender, will adequately fulfill the

overriding principles and purposes of sentencing, the court shall contact the department of rehabilitation and correction and ask the department to provide the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court. Not later than forty-five days after receipt of a request from a court under this division, the department shall provide the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court, if any. Upon making a request under this division that relates to a particular offender, a court shall defer sentencing of that offender until it receives from the department the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court or for forty-five days, whichever is the earlier.

If the department provides the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court within the forty-five-day period specified in this division, the court shall impose upon the offender a community control sanction under division (B)(1)(a) of this section, subject to divisions (B)(1)(b)(i) and (ii) of this section. If the department does not provide the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court within the forty-five-day period specified in this division, the court may impose upon the offender a prison term under division (B)(1)(b)(iii) of this section.

(d) A sentencing court may impose an additional penalty under division (B) of section 2929.15 of the Revised Code upon an offender sentenced to a community control sanction under division (B)(1)(a) of this section if the offender violates the conditions of the community control sanction, violates a law, or leaves the state without the permission of the court or the offender's probation officer.

(2) If division (B)(1) of this section does not apply, except as provided in division (B)(3), (E), (F), or (G) of this section, in sentencing an offender for a felony of the fourth or fifth degree, the sentencing court shall determine whether any of the following apply:

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

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

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

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

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

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

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

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

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

(3)(a) If the court makes a finding described in division (B)(2)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section and if the court, after considering the factors set forth in section 2929.12 of the Revised Code, finds that a prison term is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code and finds that the offender is not amenable to an available community control sanction, the court shall impose a prison term upon the offender.

(b) Except as provided in division (E), (F), or (G) of this section, if the court does not make a finding described in division (B)(2)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this section and if the court, after considering the factors set forth in section 2929.12 of the Revised Code, finds that a community control sanction or combination of community control sanctions is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code, the court shall impose a community control sanction or combination of community control sanctions upon the offender.

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

(D)(1) Except as provided in division (E) or (F) of this section, for a felony of the first or second degree, for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, and for a violation of division (A)(4) or (B) of section 2907.05 of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code. Division (D)(2) of this section does not apply to a presumption established under this division for a violation of division (A)(4) of section 2907.05 of the Revised Code.

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

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

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

(E)(1) Except as provided in division (F) of this section, for any drug offense that is a violation of any provision of Chapter 2925. of the Revised Code and that is a felony of the third, fourth, or fifth degree, the applicability of a presumption under division (D) of this section in favor of a prison term or of division (B) or (C) of this section in determining whether to impose a prison term for the offense shall be determined as specified in section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the Revised Code, whichever is applicable regarding the violation.

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

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

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

(3) A court that sentences an offender for a drug abuse offense that is a felony of the third, fourth, or fifth degree may require that the offender be assessed by a properly credentialed professional within a specified period of time. The court shall require the professional to file a written assessment of the offender with the court. If the offender is eligible for a community control sanction and after considering the written assessment, the court may impose a community control sanction that includes treatment and recovery support services authorized by section

3793.02 of the Revised Code. If the court imposes treatment and recovery support services as a community control sanction, the court shall direct the level and type of treatment and recovery support services after considering the assessment and recommendation of treatment and recovery support services providers.

(F) Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under sections 2929.02 to 2929.06, section 2929.14, section 2929.142, or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20, divisions (C) to (I) of section 2967.19, or section 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code shall not reduce the term or terms pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code for any of the following offenses:

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

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

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

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

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

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

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

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

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

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

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

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

(a) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the Revised Code 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;

(b) 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 in division (F)(7)(a) of this section that resulted in the death of a person or in physical harm to a person.

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

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

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

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

(12) A violation of division (A)(1) or (2) of section 2921.36 of the Revised Code, or a violation of division (C) of that section involving an item listed in division (A)(1) or (2) of that section, if the offender is an officer or employee of the department of rehabilitation and correction;

(13) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, or an investigator of the bureau of criminal identification and investigation, as defined in section

2903.11 of the Revised Code, with respect to the portion of the sentence imposed pursuant to division (B)(5) of section 2929.14 of the Revised Code;

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

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

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

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

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

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

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

not subject to any other Revised Code provision that pertains to a prison term except as provided in division (A)(1) of this section.

(2) If the offender is being sentenced for a third degree felony OVI offense, or if the offender is being sentenced for a fourth degree felony OVIoffense and the court does not impose a mandatory term of local incarceration under division (G)(1) of this section, the court shall impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or shall impose upon the offender a mandatory prison term of sixty days or one hundred twenty days as specified in division (G)(1)(d) or (e) of section 4511.19 of the Revised Code if the offender has not been convicted of and has not pleaded guilty to a specification of that type. Subject to divisions (C) to (I) of section 2967.19 of the Revised Code, the court shall not reduce the term pursuant to section 2929.20, 2967.19, 2967.193, or any other provision of the Revised Code. The offender shall serve the one-, two-, three-, four-, or five-year mandatory prison term consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense. In no case shall an offender who once has been sentenced to a mandatory term of local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OVI offense be sentenced to another mandatory term of local incarceration under that division for any violation of division (A) of section 4511.19 of the Revised Code. In addition to the mandatory prison term described in division (G)(2) of this section, the court may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve the prison term prior to serving the community control sanction. The department of rehabilitation and correction may place an offender sentenced to a mandatory prison term under this division in an intensive program prison established pursuant to section 5120.033 of the Revised Code if the department gave the sentencing judge prior notice of its intent to place the offender in an intensive program prison established under that section and if the judge did not notify the department that the judge disapproved the placement. Upon the establishment of the initial intensive program prison pursuant to section 5120.033 of the Revised Code that is privately operated and managed by a contractor pursuant to a contract entered into under section 9.06 of the Revised Code, both of the following apply:

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

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

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

(I) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under division (A)(2) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that section, or, if required under division (A)(6) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that division.

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

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

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

(L) At the time of sentencing an offender for any sexually oriented offense, if the offender is a tier III sex offender/child-victim offender relative to that offense and the offender does not serve a prison term or jail term, the court may require that the offender be monitored by means of a global positioning device. If the court requires such monitoring, the cost of monitoring shall be borne by the offender. If the offender is indigent, the cost of compliance shall be paid by the crime victims reparations fund.

OHIO REVISED CODE
BASIC PRISON TERMS

Incarceration is still the "standard" penalty for an individual that is found guilty of committing a crime. The State of Ohio is no exception; there are approximately 46,000 individuals behind bars.

The Ohio Department of Rehabilitation and Corrections projects the total to be well over 50,000 by the year 2012!

2929.14 Definite prison terms.

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (E), (G), (H), or (J) of this section or in division (D)(6) of section 2919.25 of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a definite prison term that shall be one of the following:

(1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, ten, or eleven years.

(2) For a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years.

(3)(a) For a felony of the third degree that is a violation of section 2903.06, 2903.08, 2907.03, 2907.04, or 2907.05 of the Revised Code or that is a violation of section 2911.02 or 2911.12 of the Revised Code if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of section 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code, the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.

(b) For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be nine, twelve, eighteen, twenty-four, thirty, or thirty-six months.

(4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

(B) (1)(a) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.141, 2941.144, or 2941.145 of the Revised Code, the court shall impose on the offender one of the following prison terms:

(i) A prison term of six years if the specification is of the type described in section 2941.144 of the Revised Code that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony;

(ii) A prison term of three years if the specification is of the type described in section 2941.145 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm,

brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(iii) A prison term of one year if the specification is of the type described in section 2941.141 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

(b) If a court imposes a prison term on an offender under division (B)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2967.19, section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. Except as provided in division (B)(1)(g) of this section, a court shall not impose more than one prison term on an offender under division (B)(1)(a) of this section for felonies committed as part of the same act or transaction.

(c) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of section 2923.161 of the Revised Code or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in section 2941.146 of the Revised Code that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of section 2923.161 of the Revised Code or for the other felony offense under division (A), (B)(2), or (B)(3) of this section, shall impose an additional prison term of five years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (B)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (B)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (B)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.1411 of the Revised Code that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a prison term of two years. The prison term so imposed, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(1)(d) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term under division (B)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (B)(1)(d) of this section.

(e) The court shall not impose any of the prison terms described in division (B)(1)(a) of this section or any of the additional prison terms described in division (B)(1)(c) of this section upon

an offender for a violation of section 2923.12 or 2923.123 of the Revised Code. The court shall not impose any of the prison terms described in division (B)(1)(a) or (b) of this section upon an offender for a violation of section 2923.122 that involves a deadly weapon that is a firearm other than a dangerous ordnance, section 2923.16, or section 2923.121 of the Revised Code. The court shall not impose any of the prison terms described in division (B)(1)(a) of this section or any of the additional prison terms described in division (B)(1)(c) of this section upon an offender for a violation of section 2923.13 of the Revised Code unless all of the following apply:

(i) The offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree.

(ii) Less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(f) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in section 2941.1412 of the Revised Code that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in section 2935.01 of the Revised Code or a corrections officer, as defined in section 2941.1412 of the Revised Code, the court, after imposing a prison term on the offender for the felony offense under division (A), (B)(2), or (B)(3) of this section, shall impose an additional prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. If an offender is convicted of or pleads guilty to two or more felonies that include, as an essential element, causing or attempting to cause the death or physical harm to another and also is convicted of or pleads guilty to a specification of the type described under division (B)(1)(f) of this section in connection with two or more of the felonies of which the offender is convicted or to which the offender pleads guilty, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(f) of this section for each of two of the specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications. If a court imposes an additional prison term on an offender under division (B)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (B)(1)(a) or (c) of this section relative to the same offense.

(g) If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

(2)(a) If division (B)(2)(b) of this section does not apply, the court may impose on an offender, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 of the Revised Code that the offender is a repeat violent offender.

(ii) The offense of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(iii) The court imposes the longest prison term for the offense that is not life imprisonment without parole.

(iv) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are inadequate to punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism.

(v) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are demeaning to the seriousness of the offense, because one or more of the factors under section 2929.12 of the Revised Code indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that section indicating that the offender's conduct is less serious than conduct normally constituting the offense.

(b) The court shall impose on an offender the longest prison term authorized or required for the offense and shall impose on the offender an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 of the Revised Code that the offender is a repeat violent offender.

(ii) The offender within the preceding twenty years has been convicted of or pleaded guilty to three or more offenses described in division (CC)(1) of section 2929.01 of the Revised Code, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.

(iii) The offense or offenses of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(c) For purposes of division (B)(2)(b) of this section, two or more offenses committed at the same time or as part of the same act or event shall be considered one offense, and that one offense shall be the offense with the greatest penalty.

(d) A sentence imposed under division (B)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20, section 2967.19, or section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.

(e) When imposing a sentence pursuant to division (B)(2)(a) or (b) of this section, the court shall state its findings explaining the imposed sentence.

(3) Except when an offender commits a violation of section 2903.01 or 2907.02 of the Revised Code and the penalty imposed for the violation is life imprisonment or commits a violation of section 2903.02 of the Revised Code, if the offender commits a violation of section 2925.03 or 2925.11 of the Revised Code and that section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, if the offender commits a felony violation of section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161, 4729.37, or 4729.61, division (C) or (D) of section 3719.172, division (C) of section 4729.51, or division (J) of section 4729.54 of the Revised Code that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in section 2941.1410 of the Revised Code charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of section 2907.02 of the Revised Code and, had the offender completed the violation of section 2907.02 of the Revised Code that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of section 2907.02 of the Revised Code, the court shall impose upon the offender for the felony violation a ten-year prison term that, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, cannot be reduced pursuant to section 2929.20, section 2967.19, or any other provision of Chapter 2967. or 5120. of the Revised Code.

(4) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the sentencing court shall impose upon

the offender a mandatory prison term in accordance with that division. In addition to the mandatory prison term, if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced for a third degree felony OVI offense, the sentencing court may sentence the offender to an additional prison term of any duration specified in division (A)(3) of this section. In either case, the additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the mandatory prison term. The total of the additional prison term imposed under division (D)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense. If the court imposes an additional prison term under division (B)(4) of this section, the offender shall serve the additional prison term after the offender has served the mandatory prison term required for the offense. In addition to the mandatory prison term or mandatory and additional prison term imposed as described in division (B)(4) of this section, the court also may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code and the court imposes a mandatory term of local incarceration, the court may impose a prison term as described in division (A)(1) of that section.

(5) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1414 of the Revised Code that charges that the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, or an investigator of the bureau of criminal identification and investigation, as defined in section 2903.11 of the Revised Code, the court shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (B)(5) of this section, the prison term, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(5) of this section for felonies committed as part of the same act.

(6) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1415 of the Revised Code that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 of the Revised Code, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (B)(6) of this section, the prison term, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, shall not be reduced

pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(6) of this section for felonies committed as part of the same act.

(7)(a) If an offender is convicted of or pleads guilty to a felony violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court shall impose on the offender a mandatory prison term that is one of the following:

(i) If the offense is a felony of the first degree, a definite prison term of not less than five years and not greater than ten years;

(ii) If the offense is a felony of the second or third degree, a definite prison term of not less than three years and not greater than the maximum prison term allowed for the offense by division (A) of section 2929.14 of the Revised Code;

(iii) If the offense is a felony of the fourth or fifth degree, a definite prison term that is the maximum prison term allowed for the offense by division (A) of section 2929.14 of the Revised Code.

(b) Subject to divisions (C) to (I) of section 2967.19 of the Revised Code, the prison term imposed under division (B)(7)(a) of this section shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(7)(a) of this section for felonies committed as part of the same act, scheme, or plan.

(8) If an offender is convicted of or pleads guilty to a felony violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1423 of the Revised Code that charges that the victim of the violation was a woman whom the offender knew was pregnant at the time of the violation, notwithstanding the range of prison terms prescribed in division (A) of this section for felonies of the same degree as the violation, the court shall impose on the offender a mandatory prison term that is either a definite prison term of six months or one of the prison terms prescribed in section 2929.14 of the Revised Code for felonies of the same degree as the violation.

(C)(1)(a) Subject to division (C)(1)(b) of this section, if a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony, if a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(c) of this section for committing a felony specified in that division by discharging a firearm from a motor vehicle, or if both types of mandatory prison terms are imposed, the offender shall serve any mandatory

prison term imposed under either division consecutively to any other mandatory prison term imposed under either division or under division (B)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(b) If a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(d) of this section for wearing or carrying body armor while committing an offense of violence that is a felony, the offender shall serve the mandatory term so imposed consecutively to any other mandatory prison term imposed under that division or under division (B)(1)(a) or (c) of this section, consecutively to and prior to any prison term imposed for the underlying felony under division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(c) If a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(f) of this section, the offender shall serve the mandatory prison term so imposed consecutively to and prior to any prison term imposed for the underlying felony under division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(d) If a mandatory prison term is imposed upon an offender pursuant to division (B)(7) or (8) of this section, the offender shall serve the mandatory prison term so imposed consecutively to any other mandatory prison term imposed under that division or under any other provision of law and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(2) If an offender who is an inmate in a jail, prison, or other residential detention facility violates section 2917.02, 2917.03, or 2921.35 of the Revised Code or division (A)(1) or (2) of section 2921.34 of the Revised Code, if an offender who is under detention at a detention facility commits a felony violation of section 2923.131 of the Revised Code, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of division (A)(1) or (2) of section 2921.34 of the Revised Code, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.

(3) If a prison term is imposed for a violation of division (B) of section 2911.01 of the Revised Code, a violation of division (A) of section 2913.02 of the Revised Code in which the stolen property is a firearm or dangerous ordnance, or a felony violation of division (B) of section 2921.331 of the Revised Code, the offender shall serve that prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(4) multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

(5) If a mandatory prison term is imposed upon an offender pursuant to division (B)(5) or (6) of this section, the offender shall serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 of the Revised Code. If a mandatory prison term is imposed upon an offender pursuant to division (B)(5) of this section, and if a mandatory prison term also is imposed upon the offender pursuant to division (B)(6) of this section in relation to the same violation, the offender shall serve the mandatory prison term imposed pursuant to division (B)(5) of this section consecutively to and prior to the mandatory prison term imposed pursuant to division (B)(6) of this section and consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 of the Revised Code.

(6) When consecutive prison terms are imposed pursuant to division (C)(1), (2), (3), (4), or (5) or division (H)(1) or (2) of this section, the term to be served is the aggregate of all of the terms so imposed.

(D)(1) If a court imposes a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division. If a court imposes a sentence including a prison term of a type described in this division on or after July 11, 2006, the failure of a court to include a post-release control requirement in the sentence pursuant to this division does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code applies if, prior to July 11,

2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(2) If a court imposes a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (D)(1) of this section, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division, if the parole board determines that a period of post-release control is necessary. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(3) If a court imposes a prison term on or after the effective date of this amendment for a felony, it shall include in the sentence a statement notifying the offender that the offender may be eligible to earn days of credit under the circumstances specified in section 2967.193 of the Revised Code. The statement also shall notify the offender that days of credit are not automatically awarded under that section, but that they must be earned in the manner specified in that section. If a court fails to include the statement in the sentence, the failure does not affect the eligibility of the offender under section 2967.193 of the Revised Code to earn any days of credit as a deduction from the offender's stated prison term or otherwise render any part of that section or any action taken under that section void or voidable. The failure of a court to include in a sentence the statement described in this division does not constitute grounds for setting aside the offender's conviction or sentence or for granting postconviction relief to the offender.

(E) The court shall impose sentence upon the offender in accordance with section 2971.03 of the Revised Code, and Chapter 2971. of the Revised Code applies regarding the prison term or term of life imprisonment without parole imposed upon the offender and the service of that term of imprisonment if any of the following apply:

(1) A person is convicted of or pleads guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense, and, in relation to that offense, the offender is adjudicated a sexually violent predator.

(2) A person is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, and either the court does not impose a sentence of life without parole when authorized pursuant to division (B) of section 2907.02 of the Revised Code, or division (B) of section 2907.02 of the Revised Code provides that the court shall not sentence the offender pursuant to section 2971.03 of the Revised Code.

(3) A person is convicted of or pleads guilty to attempted rape committed on or after January 2, 2007, and a specification of the type described in section 2941.1418, 2941.1419, or 2941.1420 of the Revised Code.

(4) A person is convicted of or pleads guilty to a violation of section 2905.01 of the Revised Code committed on or after January 1, 2008, and that section requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(5) A person is convicted of or pleads guilty to aggravated murder committed on or after January 1, 2008, and division (A)(2)(b)(ii) of section 2929.022, division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d) of section 2929.03, or division (A) or (B) of section 2929.06 of the Revised Code requires the court to sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(6) A person is convicted of or pleads guilty to murder committed on or after January 1, 2008, and division (B)(2) of section 2929.02 of the Revised Code requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(F) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a prison term or term of imprisonment under this section, sections 2929.02 to 2929.06 of the Revised Code, section 2929.142 of the Revised Code, section 2971.03 of the Revised Code, or any other provision of law, section 5120.163 of the Revised Code applies regarding the person while the person is confined in a state correctional institution.

(G) If an offender who is convicted of or pleads guilty to a felony that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.142 of the Revised Code that charges the offender with having committed the felony while participating in a criminal gang, the court shall impose upon the offender an additional prison term of one, two, or three years.

(H)(1) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.143 of the Revised Code that charges the offender with having committed the offense in a school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years consecutively to and prior to the prison term imposed for the underlying offense.

(2)(a) If an offender is convicted of or pleads guilty to a felony violation of section 2907.22, 2907.24, 2907.241, or 2907.25 of the Revised Code and to a specification of the type described in section 2941.1421 of the Revised Code and if the court imposes a prison term on the offender for the felony violation, the court may impose upon the offender an additional prison term as follows:

(i) Subject to division (H)(2)(a)(ii) of this section, an additional prison term of one, two, three, four, five, or six months;

(ii) If the offender previously has been convicted of or pleaded guilty to one or more felony or misdemeanor violations of section 2907.22, 2907.23, 2907.24, 2907.241, or 2907.25 of the Revised Code and also was convicted of or pleaded guilty to a specification of the type described

in section 2941.1421 of the Revised Code regarding one or more of those violations, an additional prison term of one, two, three, four, five, six, seven, eight, nine, ten, eleven, or twelve months.

(b) In lieu of imposing an additional prison term under division (H)(2)(a) of this section, the court may directly impose on the offender a sanction that requires the offender to wear a real-time processing, continual tracking electronic monitoring device during the period of time specified by the court. The period of time specified by the court shall equal the duration of an additional prison term that the court could have imposed upon the offender under division (H)(2)(a) of this section. A sanction imposed under this division shall commence on the date specified by the court, provided that the sanction shall not commence until after the offender has served the prison term imposed for the felony violation of section 2907.22, 2907.24, 2907.241, or 2907.25 of the Revised Code and any residential sanction imposed for the violation under section 2929.16 of the Revised Code. A sanction imposed under this division shall be considered to be a community control sanction for purposes of section 2929.15 of the Revised Code, and all provisions of the Revised Code that pertain to community control sanctions shall apply to a sanction imposed under this division, except to the extent that they would by their nature be clearly inapplicable. The offender shall pay all costs associated with a sanction imposed under this division, including the cost of the use of the monitoring device.

(I)(1) At the time of sentencing, the court may recommend the offender for placement in a program of shock incarceration under section 5120.031 of the Revised Code or for placement in an intensive program prison under section 5120.032 of the Revised Code, disapprove placement of the offender in a program of shock incarceration or an intensive program prison of that nature, or make no recommendation on placement of the offender. In no case shall the department of rehabilitation and correction place the offender in a program or prison of that nature unless the department determines as specified in section 5120.031 or 5120.032 of the Revised Code, whichever is applicable, that the offender is eligible for the placement.

If the court disapproves placement of the offender in a program or prison of that nature, the department of rehabilitation and correction shall not place the offender in any program of shock incarceration or intensive program prison.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison, and if the offender is subsequently placed in the recommended program or prison, the department shall notify the court of the placement and shall include with the notice a brief description of the placement.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison and the department does not subsequently place the offender in the recommended program or prison, the department shall send a notice to the court indicating why the offender was not placed in the recommended program or prison.

If the court does not make a recommendation under this division with respect to an offender and if the department determines as specified in section 5120.031 or 5120.032 of the Revised Code, whichever is applicable, that the offender is eligible for placement in a program or prison of that

nature, the department shall screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If there is an available program of shock incarceration or an intensive program prison for which the offender is suited, the department shall notify the court of the proposed placement of the offender as specified in section 5120.031 or 5120.032 of the Revised Code and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

(L) If a person is convicted of or pleads guilty to aggravated vehicular homicide in violation of division (A)(1) of section 2903.06 of the Revised Code and division (B)(2)(c) of that section applies, the person shall be sentenced pursuant to section 2929.142 of the Revised Code.

2929.141 Person on release committing a felony.

(A) Upon the conviction of or plea of guilty to a felony by a person on post-release control at the time of the commission of the felony, the court may terminate the term of post-release control , and the court may do either of the following regardless of whether the sentencing court or another court of this state imposed the original prison term for which the person is on post-release control:

(1) In addition to any prison term for the new felony, impose a prison term for the post-release control violation. The maximum prison term for the violation shall be the greater of twelve months or the period of post-release control for the earlier felony minus any time the person has spent under post-release control for the earlier felony. In all cases, any prison term imposed for the violation shall be reduced by any prison term that is administratively imposed by the parole board as a post-release control sanction. A prison term imposed for the violation shall be served consecutively to any prison term imposed for the new felony. The imposition of a prison term for the post-release control violation shall terminate the period of post-release control for the earlier felony.

(2) Impose a sanction under sections 2929.15 to 2929.18 of the Revised Code for the violation that shall be served concurrently or consecutively, as specified by the court, with any community control sanctions for the new felony.

2929.142 Aggravated vehicular homicide - mandatory prison term.

Notwithstanding the definite prison term specified in division (A) of section 2929.14 of the Revised Code for a felony of the first degree, if an offender is convicted of or pleads guilty to aggravated vehicular homicide in violation of division (A)(1) of section 2903.06 of the Revised Code, the court shall impose upon the offender a mandatory prison term of ten, eleven, twelve, thirteen, fourteen, or fifteen years if any of the following apply:

(A) The offender previously has been convicted of or pleaded guilty to three or more prior violations of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(B) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A) of section 1547.11 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(C) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(3) of section 4561.15 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(D) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of section 2903.06 of the Revised Code.

(E) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of section 2903.08 of the Revised Code.

(F) The offender previously has been convicted of or pleaded guilty to three or more prior violations of section 2903.04 of the Revised Code in circumstances in which division (D) of that section applied regarding the violations.

(G) The offender previously has been convicted of or pleaded guilty to three or more violations of any combination of the offenses listed in division (A), (B), (C), (D), (E), or (F) of this section.

(H) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony violation of division (A) of section 4511.19 of the Revised Code.

2929.143 Risk reduction sentences.

(A) When a court sentences an offender who is convicted of a felony to a term of incarceration in a state correctional institution, the court may recommend that the offender serve a risk reduction sentence under section 5120.036 of the Revised Code if the court determines that a risk reduction sentence is appropriate, and all of the following apply:

(1) The offense for which the offender is being sentenced is not aggravated murder, murder, complicity in committing aggravated murder or murder, an offense of violence that is a felony of the first or second degree, a sexually oriented offense, or an attempt or conspiracy to commit or complicity in committing any offense otherwise identified in this division if the attempt, conspiracy, or complicity is a felony of the first or second degree.

(2) The offender's sentence to the term of incarceration does not consist solely of one or more mandatory prison terms.

(3) The offender agrees to cooperate with an assessment of the offender's needs and risk of reoffending that the department of rehabilitation and correction conducts under section 5120.036 of the Revised Code.

(4) The offender agrees to participate in any programming or treatment that the department of rehabilitation and correction orders to address any issues raised in the assessment described in division (A)(3) of this section.

(B) An offender who is serving a risk reduction sentence is not entitled to any earned credit under section 2967.193 of the Revised Code.

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2929.15 Community control sanctions - felony.

(A)(1) If in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code. If the court is sentencing an offender for a fourth degree felony OVIoffense under division (G)(1) of section 2929.13 of the Revised Code, in addition to the mandatory term of local incarceration imposed under that division and the mandatory fine required by division (B)(3) of section 2929.18 of the Revised Code, the court may impose upon the offender a community control sanction or combination of community control sanctions in accordance with sections 2929.16 and 2929.17 of the Revised Code. If the court is sentencing an offender for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, in addition to the mandatory prison term or mandatory prison term and additional prison term imposed under that division, the court also may impose upon the offender a community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

The duration of all community control sanctions imposed upon an offender under this division shall not exceed five years. If the offender absconds or otherwise leaves the jurisdiction of the court in which the offender resides without obtaining permission from the court or the offender's probation officer to leave the jurisdiction of the court, or if the offender is confined in any institution for the commission of any offense while under a community control sanction, the period of the community control sanction ceases to run until the offender is brought before the court for its further action. If the court sentences the offender to one or more nonresidential sanctions under section 2929.17 of the Revised Code, the court shall impose as a condition of the nonresidential sanctions that, during the period of the sanctions, the offender must abide by the law and must not leave the state without the permission of the court or the offender's probation officer. The court may impose any other conditions of release under a community control sanction that the court considers appropriate, including, but not limited to, requiring that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in division (D) of this section to determine whether the offender ingested or was injected with a drug of abuse and requiring that the results of the drug test indicate that the offender did not ingest or was not injected with a drug of abuse.

(2)(a) If a court sentences an offender to any community control sanction or combination of community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, the court shall place the offender under the general control and supervision of a department of probation in the county that serves the court for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer. Alternatively, if the offender resides in another county and a county department of probation has been established in that county or that county is served by a multicounty probation department established under section 2301.27 of the Revised Code, the court may request the court of common pleas of that county to receive the offender into the general control and supervision of that county or multicounty department of probation for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer, subject to the jurisdiction of the trial judge over and with respect to the person of the offender, and to the rules governing that department of probation.

If there is no department of probation in the county that serves the court, the court shall place the offender, regardless of the offender's county of residence, under the general control and supervision of the adult parole authority for purposes of reporting to the court a violation of any of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer.

(b) If the court imposing sentence upon an offender sentences the offender to any community control sanction or combination of community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, and if the offender violates any condition of the sanctions, any condition of release under a community control sanction imposed by the court, violates any law, or departs the state without the permission of the court or the offender's probation officer, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction shall report the violation or departure directly to the sentencing court, or shall report the violation or departure to the county or multicounty department of probation with general control and supervision over the offender under division (A)(2)(a) of this section or the officer of that department who supervises the offender, or, if there is no such department with general control and supervision over the offender under that division, to the adult parole authority. If the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction reports the violation or departure to the county or multicounty department of probation or the adult parole authority, the department's or authority's officers may treat the offender as if the offender were on probation and in violation of the probation, and shall report the violation of the condition of the sanction, any condition of release under a community control sanction imposed by the court, the violation of law, or the departure from the state without the required permission to the sentencing court.

(3) If an offender who is eligible for community control sanctions under this section admits to being drug addicted or the court has reason to believe that the offender is drug addicted, and if the offense for which the offender is being sentenced was related to the addiction, the court may require that the offender be assessed by a properly credentialed professional within a specified period of time and shall require the professional to file a written assessment of the offender with the court. If a court imposes treatment and recovery support services as a community control sanction, the court shall direct the level and type of treatment and recovery support services after consideration of the written assessment, if available at the time of sentencing, and recommendations of the professional and other treatment and recovery support services providers.

(4) If an assessment completed pursuant to division (A)(3) of this section indicates that the offender is addicted to drugs or alcohol, the court may include in any community control sanction imposed for a violation of section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the Revised Code a requirement that the offender participate in a treatment and recovery support services program certified under section 3793.06 of the Revised Code or offered by another properly credentialed program provider.

(B)(1) If the conditions of a community control sanction are violated or if the offender violates a law or leaves the state without the permission of the court or the offender's probation officer, the sentencing court may impose upon the violator one or more of the following penalties:

(a) A longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit specified in division (A) of this section;

(b) A more restrictive sanction under section 2929.16, 2929.17, or 2929.18 of the Revised Code;

(c) A prison term on the offender pursuant to section 2929.14 of the Revised Code.

(2) The prison term, if any, imposed upon a violator pursuant to this division shall be within the range of prison terms available for the offense for which the sanction that was violated was imposed and shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing pursuant to division (B)(2) of section 2929.19 of the Revised Code. The court may reduce the longer period of time that the offender is required to spend under the longer sanction, the more restrictive sanction, or a prison term imposed pursuant to this division by the time the offender successfully spent under the sanction that was initially imposed.

(C) If an offender, for a significant period of time, fulfills the conditions of a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code in an exemplary manner, the court may reduce the period of time under the sanction or impose a less restrictive sanction, but the court shall not permit the offender to violate any law or permit the offender to leave the state without the permission of the court or the offender's probation officer.

(D)(1) If a court under division (A)(1) of this section imposes a condition of release under a community control sanction that requires the offender to submit to random drug testing, the

department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section may cause the offender to submit to random drug testing performed by a laboratory or entity that has entered into a contract with any of the governmental entities or officers authorized to enter into a contract with that laboratory or entity under section 341.26, 753.33, or 5120.63 of the Revised Code.

(2) If no laboratory or entity described in division (D)(1) of this section has entered into a contract as specified in that division, the department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section shall cause the offender to submit to random drug testing performed by a reputable public laboratory to determine whether the individual who is the subject of the drug test ingested or was injected with a drug of abuse.

(3) A laboratory or entity that has entered into a contract pursuant to section 341.26, 753.33, or 5120.63 of the Revised Code shall perform the random drug tests under division (D)(1) of this section in accordance with the applicable standards that are included in the terms of that contract. A public laboratory shall perform the random drug tests under division (D)(2) of this section in accordance with the standards set forth in the policies and procedures established by the department of rehabilitation and correction pursuant to section 5120.63 of the Revised Code. An offender who is required under division (A)(1) of this section to submit to random drug testing as a condition of release under a community control sanction and whose test results indicate that the offender ingested or was injected with a drug of abuse shall pay the fee for the drug test if the department of probation or the adult parole authority that has general control and supervision of the offender requires payment of a fee. A laboratory or entity that performs the random drug testing on an offender under division (D)(1) or (2) of this section shall transmit the results of the drug test to the appropriate department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section.

2929.16 Community residential sanctions - felony.

(A) Except as provided in this division, the court imposing a sentence for a felony upon an offender who is not required to serve a mandatory prison term may impose any community residential sanction or combination of community residential sanctions under this section. The court imposing a sentence for a fourth degree felony OVI offense under division (G)(1) or (2) of section 2929.13 of the Revised Code or for a third degree felony OVIoffense under division (G)(2) of that section may impose upon the offender, in addition to the mandatory term of local incarceration or mandatory prison term imposed under the applicable division, a community residential sanction or combination of community residential 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 or mandatory prison term required for the offense. Community residential sanctions include, but are not limited to, the following:

(1) A term of up to six months at a community-based correctional facility that serves the county;

(2) Except as otherwise provided in division (A)(3) of this section and subject to division (D) of this section, a term of up to six months in a jail;

(3) If the offender is convicted of a fourth degree felony OVI offense and is sentenced under division (G)(1) of section 2929.13 of the Revised Code, subject to division (D) of this section, a term of up to one year in a jail less the mandatory term of local incarceration of sixty or one hundred twenty consecutive days of imprisonment imposed pursuant to that division;

(4) A term in a halfway house;

(5) A term in an alternative residential facility.

(B) The court that assigns any offender convicted of a felony to a residential sanction under this section may authorize the offender to be released so that the offender may seek or maintain employment, receive education or training, or receive treatment. A release pursuant to this division shall be only for the duration of time that is needed to fulfill the purpose of the release and for travel that reasonably is necessary to fulfill the purposes of the release.

(C) If the court assigns an offender to a county jail that is not a minimum security misdemeanant jail in a county that has established a county jail industry program pursuant to section 5147.30 of the Revised Code, the court shall specify, as part of the sentence, whether the sheriff of that county may consider the offender for participation in the county jail industry program. During the offender's term in the county jail, the court shall retain jurisdiction to modify its specification upon a reassessment of the offender's qualifications for participation in the program.

(D) If a court sentences an offender to a term in jail under division (A)(2) or (3) of this section and if the sentence is imposed for a felony of the fourth or fifth degree that is not an offense of violence, the court may specify that it prefers that the offender serve the term in a minimum security jail established under section 341.34 or 753.21 of the Revised Code. If the court includes a specification of that type in the sentence and if the administrator of the appropriate minimum security jail or the designee of that administrator classifies the offender in accordance with section341.34 or 753.21 of the Revised Code as a minimal security risk, the offender shall serve the term in the minimum security jail established under section 341.34 or 753.21 of the Revised Code. Absent a specification of that type and a finding of that type, the offender shall serve the term in a jail other than a minimum security jail established under section 341.34 or 753.21 of the Revised Code.

(E) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a community residential sanction as described in division (A) of this section, at the time of reception and at other times the person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place at which the offender will serve the residential sanction determines to be appropriate, the person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place may cause the convicted offender to be examined and tested for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, and other contagious diseases. The person in charge of the operation of the community-based correctional facility, jail, halfway house, alternative residential facility, or other place at which the offender will serve the residential sanction may cause a convicted offender in the community-based correctional facility, jail, halfway house, alternative residential facility, or

other place who refuses to be tested or treated for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, or another contagious disease to be tested and treated involuntarily.

2929.17 Nonresidential sanctions - felony.

Except as provided in this section, 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 impose as a condition of the sanction that, during the period of the nonresidential sanction, the offender shall abide by the law and shall not leave the state without the permission of the court or the offender's probation officer.

The court imposing a sentence for a fourth degree felony OVI offense under division (G)(1) or (2) of section 2929.13 of the Revised Code or for a third degree felony OVI offense under division (G)(2) of that section may impose upon the offender, in addition to the mandatory term of local incarceration or mandatory prison term imposed under the applicable division, 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 or mandatory prison term required for the offense. The court shall not impose a term in a drug treatment program as described in division (D) of this section until after considering an assessment by a properly credentialed treatment professional, if available. Nonresidential sanctions include, but are not limited to, the following:

(A) A term of day reporting;

(B) A term of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest without electronic monitoring or continuous alcohol monitoring;

(C) A term of community service of up to five hundred hours pursuant to division (B) 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 by the court;

(E) A term of intensive probation supervision;

(F) A term of basic probation supervision;

(G) A term of monitored time;

(H) A term of drug and alcohol use monitoring, including random drug testing;

(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.

OHIO REVISED CODE
THE INITIAL COURT HEARING

In the State of Ohio, this is where the "price for the crime" will be made known to the accused individual. It is important for Surety Bail Bond Agents to be accustomed with these procedures

2929.19 Sentencing hearing.

(A) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony and before resentencing an offender who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to section 2953.07 or 2953.08 of the Revised Code. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative in accordance with section 2930.14 of the Revised Code, and, with the approval of the court, any other person may present information relevant to the imposition of sentence in the case. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender.

(B)(1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person pursuant to division (A) of this section, and, if one was prepared, the presentence investigation report made pursuant to section 2951.03 of the Revised Code or Criminal Rule 32.2, and any victim impact statement made pursuant to section 2947.051 of the Revised Code.

(2) Subject to division (B)(3) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) Impose a stated prison term and, if the court imposes a mandatory prison term, notify the offender that the prison term is a mandatory prison term;

(b) In addition to any other information, include in the sentencing entry the name and section reference to the offense or offenses, the sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms, if sentences are imposed for multiple counts whether the sentences are to be served concurrently or consecutively, and the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications;

(c) Notify the offender that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person. If a court imposes a sentence including a prison term of a type described in division (B)(2)(c) of this section on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(2)(c) of this section that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(2)(c) of this section and failed to notify the offender pursuant to division (B)(2)(c) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(d) Notify the offender that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(2)(c) of this section. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(2)(d) of this section and failed to notify the offender pursuant to division (B)(2)(d) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(2)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 of the Revised Code, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(2)(e) of this section that the parole board may

impose a prison term as described in division (B)(2)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of section 2967.131 of the Revised Code or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of section 2967.28 of the Revised Code, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(2)(e) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(f) Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in section 341.26, 753.33, or 5120.63 of the Revised Code, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

(g) Include in the offender's sentence a statement notifying the offender of the information described in division (F)(3) of section 2929.14 of the Revised Code regarding earned credits under section 2967.193 of the Revised Code.

(3)(a) The court shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, and the court shall comply with the requirements of section 2950.03 of the Revised Code if any of the following apply:

(i) The offender is being sentenced for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator in relation to that offense.

(ii) The offender is being sentenced for a sexually oriented offense that the offender committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iii) The offender is being sentenced on or after July 31, 2003, for a child-victim oriented offense, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iv) The offender is being sentenced under section 2971.03 of the Revised Code for a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007.

(v) The offender is sentenced to a term of life without parole under division (B) of section 2907.02 of the Revised Code.

(vi) The offender is being sentenced for attempted rape committed on or after January 2, 2007, and a specification of the type described in section 2941.1418, 2941.1419, or 2941.1420 of the Revised Code.

(vii) The offender is being sentenced under division (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code for an offense described in those divisions committed on or after January 1, 2008.

(b) Additionally, if any criterion set forth in divisions (B)(3)(a)(i) to (vii) of this section is satisfied, in the circumstances described in division (E) of section 2929.14 of the Revised Code, the court shall impose sentence on the offender as described in that division.

(4) If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to section 2929.14 of the Revised Code.

(5) Before imposing a financial sanction under section 2929.18 of the Revised Code or a fine under section 2929.32 of the Revised Code, the court shall consider the offender's present and future ability to pay the amount of the sanction or fine.

(6) If the sentencing court sentences the offender to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a local detention facility, as defined in section 2929.36 of the Revised Code, and if the local detention facility is covered by a policy adopted pursuant to section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code and section 2929.37 of the Revised Code, both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

(i) If the offender is presented with an itemized bill pursuant to section 2929.37 of the Revised Code for payment of the costs of confinement, the offender is required to pay the bill in accordance with that section.

(ii) If the offender does not dispute the bill described in division (B)(6)(a)(i) of this section and does not pay the bill by the times specified in section 2929.37 of the Revised Code, the clerk of the court may issue a certificate of judgment against the offender as described in that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (B)(6)(a)(ii) of this section.

(7) The failure of the court to notify the offender that a prison term is a mandatory prison term pursuant to division (B)(2)(a) of this section or to include in the sentencing entry any information required by division (B)(2)(b) of this section does not affect the validity of the imposed sentence or sentences. If the sentencing court notifies the offender at the sentencing hearing that a prison term is mandatory but the sentencing entry does not specify that the prison term is mandatory, the court may complete a corrected journal entry and send copies of the corrected entry to the offender and the department of rehabilitation and correction, or, at the request of the state, the court shall complete a corrected journal entry and send copies of the corrected entry to the offender and department of rehabilitation and correction.

(C)(1) If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code, the court shall impose the mandatory term of local incarceration in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code, and, in addition, may impose additional sanctions as specified in sections 2929.15, 2929.16, 2929.17, and 2929.18 of the Revised Code. The court shall not impose a prison term on the offender except that the court may impose a prison term upon the offender as provided in division (A)(1) of section 2929.13 of the Revised Code.

(2) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the court shall impose the mandatory prison term in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code, and, in addition, may impose an additional prison term as specified in section 2929.14 of the Revised Code. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may impose a community control sanction on the offender, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(D) The sentencing court, pursuant to division (I)(1) of section 2929.14 of the Revised Code, may recommend placement of the offender in a program of shock incarceration under section 5120.031 of the Revised Code or an intensive program prison under section 5120.032 of the Revised Code, disapprove placement of the offender in a program or prison of that nature, or make no recommendation. If the court recommends or disapproves placement, it shall make a finding that gives its reasons for its recommendation or disapproval.

OHIO REVISED CODE
JUDICIAL RELEASE

There are circumstances when individuals may be released early back into society

2929.20 Sentence reduction through judicial release.

(A) As used in this section:

(1)(a) Except as provided in division (A)(1)(b) of this section, "eligible offender" means any person who, on or after April 7, 2009, is serving a stated prison term

that includes one or more nonmandatory prison terms.

(b) "Eligible offender" does not include any person who, on or after April 7, 2009, is serving a stated prison term for any of the following criminal offenses that was a felony and was committed while the person held a public office in this state:

(i) A violation of section 2921.02, 2921.03, 2921.05, 2921.31, 2921.32, 2921.41, 2921.42, or 2923.32 of the Revised Code;

(ii) A violation of section 2913.42, 2921.04, 2921.11, or 2921.12 of the Revised Code, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office;

(iii) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (A)(1)(b)(i) of this section;

(iv) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (A)(1)(b)(ii) of this section, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office;

(v) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in division (A)(1)(b)(i) or described in division (A)(1)(b)(iii) of this section;

(vi) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in division (A)(1)(b)(ii) or described in division (A)(1)(b)(iv) of this section, if the conduct constituting the offense that was the subject of the conspiracy, that would have constituted the offense attempted, or constituting the offense in which the offender was complicit was or would have been related to the duties of the offender's public office or to the offender's actions as a public official holding that public office.

(2) "Nonmandatory prison term" means a prison term that is not a mandatory prison term.

(3) "Public office" means any elected federal, state, or local government office in this state.

(B) On the motion of an eligible offender or upon its own motion, the sentencing court may reduce the eligible offender's aggregated nonmandatory prison term or terms through a judicial release under this section.

(C) An eligible offender may file a motion for judicial release with the sentencing court within the following applicable periods:

(1) If the aggregated nonmandatory prison term or terms is less than two years, the eligible offender may file the motion not earlier than thirty days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than thirty days after the expiration of all mandatory prison terms.

(2) If the aggregated nonmandatory prison term or terms is at least two years but less than five years, the eligible offender may file the motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than one hundred eighty days after the expiration of all mandatory prison terms.

(3) If the aggregated nonmandatory prison term or terms is five years, the eligible offender may file the motion not earlier than four years after the eligible offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than four years after the expiration of all mandatory prison terms.

(4) If the aggregated nonmandatory prison term or terms is more than five years but not more than ten years, the eligible offender may file the motion not earlier than five years after the eligible offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than five years after the expiration of all mandatory prison terms.

(5) If the aggregated nonmandatory prison term or terms is more than ten years, the eligible offender may file the motion not earlier than the later of the date on which the offender has served one-half of the offender's stated prison term or the date specified in division (C)(4) of this section.

(D) Upon receipt of a timely motion for judicial release filed by an eligible offender under division (C) of this section or upon the sentencing court's own motion made within the appropriate time specified in that division, the court may deny the motion without a hearing or schedule a hearing on the motion. The court shall not grant the motion without a hearing. If a court denies a motion without a hearing, the court later may consider judicial release for that eligible offender on a subsequent motion filed by that eligible offender unless the court denies the motion with prejudice. If a court denies a motion with prejudice, the court may later consider judicial release on its own motion. If a court denies a motion after a hearing, the court shall not consider a subsequent motion for that eligible offender. The court shall hold only one hearing for any eligible offender.

A hearing under this section shall be conducted in open court within sixty days after the motion is filed, provided that the court may delay the hearing for one hundred eighty additional days. If the court holds a hearing, the court shall enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed.

(E) If a court schedules a hearing under division (D) of this section, the court shall notify the eligible offender and the head of the state correctional institution in which the eligible offender is

confined prior to the hearing. The head of the state correctional institution immediately shall notify the appropriate person at the department of rehabilitation and correction of the hearing, and the department within twenty-four hours after receipt of the notice, shall post on the database it maintains pursuant to section 5120.66 of the Revised Code the offender's name and all of the information specified in division (A)(1)(c)(i) of that section. If the court schedules a hearing for judicial release, the court promptly shall give notice of the hearing to the prosecuting attorney of the county in which the eligible offender was indicted. Upon receipt of the notice from the court, the prosecuting attorney shall notify the victim of the offense or the victim's representative pursuant to section 2930.16 of the Revised Code.

(F) Upon an offender's successful completion of rehabilitative activities, the head of the state correctional institution may notify the sentencing court of the successful completion of the activities.

(G) Prior to the date of the hearing on a motion for judicial release under this section, the head of the state correctional institution in which the eligible offender is confined shall send to the court a report on the eligible offender's conduct in the institution and in any institution from which the eligible offender may have been transferred. The report shall cover the eligible offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the eligible offender. The report shall be made part of the record of the hearing.

(H) If the court grants a hearing on a motion for judicial release under this section, the eligible offender shall attend the hearing if ordered to do so by the court. Upon receipt of a copy of the journal entry containing the order, the head of the state correctional institution in which the eligible offender is incarcerated shall deliver the eligible offender to the sheriff of the county in which the hearing is to be held. The sheriff shall convey the eligible offender to and from the hearing.

(I) At the hearing on a motion for judicial release under this section, the court shall afford the eligible offender and the eligible offender's attorney an opportunity to present written and, if present, oral information relevant to the motion. The court shall afford a similar opportunity to the prosecuting attorney, the victim or the victim's representative, as defined in section 2930.01 of the Revised Code, and any other person the court determines is likely to present additional relevant information. The court shall consider any statement of a victim made pursuant to section 2930.14 or 2930.17 of the Revised Code, any victim impact statement prepared pursuant to section 2947.051 of the Revised Code, and any report made under division (G) of this section. The court may consider any written statement of any person submitted to the court pursuant to division (L) of this section. After ruling on the motion, the court shall notify the victim of the ruling in accordance with sections 2930.03 and 2930.16 of the Revised Code.

(J)(1) A court shall not grant a judicial release under this section to an eligible offender who is imprisoned for a felony of the first or second degree, or to an eligible offender who committed an offense under Chapter 2925. or 3719. of the Revised Code and for whom there was a presumption under section 2929.13 of the Revised Code in favor of a prison term, unless the

court, with reference to factors under section 2929.12 of the Revised Code, finds both of the following:

(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the eligible offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;

(b) That a sanction other than a prison term would not demean the seriousness of the offense because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense.

(2) A court that grants a judicial release to an eligible offender under division (J)(1) of this section shall specify on the record both findings required in that division and also shall list all the factors described in that division that were presented at the hearing.

(K) If the court grants a motion for judicial release under this section, the court shall order the release of the eligible offender, shall place the eligible offender under an appropriate community control sanction, under appropriate conditions, and under the supervision of the department of probation serving the court and shall reserve the right to reimpose the sentence that it reduced if the offender violates the sanction. If the court reimposes the reduced sentence, it may do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation that is a new offense. The period of community control shall be no longer than five years. The court, in its discretion, may reduce the period of community control by the amount of time the eligible offender spent in jail or prison for the offense and in prison. If the court made any findings pursuant to division (J)(1) of this section, the court shall serve a copy of the findings upon counsel for the parties within fifteen days after the date on which the court grants the motion for judicial release.

If the court grants a motion for judicial release, the court shall notify the appropriate person at the department of rehabilitation and correction, and the department shall post notice of the release on the database it maintains pursuant to section 5120.66 of the Revised Code.

(L) In addition to and independent of the right of a victim to make a statement pursuant to section 2930.14, 2930.17, or 2946.051 of the Revised Code and any right of a person to present written information or make a statement pursuant to division (I) of this section, any person may submit to the court, at any time prior to the hearing on the offender's motion for judicial release, a written statement concerning the effects of the offender's crime or crimes, the circumstances surrounding the crime or crimes, the manner in which the crime or crimes were perpetrated, and the person's opinion as to whether the offender should be released.

(M) The changes to this section that are made on the effective date of this division apply to any judicial release decision made on or after the effective date of this division for any eligible offender.

OHIO REVISED CODE
PENALTIES FOR MISDEMEANORS

Penalties vary between felony and misdemeanor crimes.

2929.21 Purposes of misdemeanor sentencing.

(A) A court that sentences an offender for a misdemeanor or minor misdemeanor violation of any provision of the Revised Code, or of any municipal ordinance that is substantially similar to a misdemeanor or minor misdemeanor violation of a provision of the Revised Code, shall be guided by the overriding purposes of misdemeanor sentencing. The overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.

(B) A sentence imposed for a misdemeanor or minor misdemeanor violation of a Revised Code provision or for a violation of a municipal ordinance that is subject to division (A) of this section shall be reasonably calculated to achieve the two overriding purposes of misdemeanor sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar offenses committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a misdemeanor or minor misdemeanor violation of a Revised Code provision or for a violation of a municipal ordinance that is subject to division (A) of this section shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

(D) Divisions (A) and (B) of this section shall not apply to any offense that is disposed of by a traffic violations bureau of any court pursuant to Traffic Rule 13 and shall not apply to any violation of any provision of the Revised Code that is a minor misdemeanor and that is disposed of without a court appearance. Divisions (A) to (C) of this section do not affect any penalties established by a municipal corporation for a violation of its ordinances.

2929.22 Determining appropriate sentence for misdemeanors.

(A) Unless a mandatory jail term is required to be imposed by division (G) of section 1547.99, division (B) of section 4510.14, division (G) of section4511.19 of the Revised Code, or any other provision of the Revised Code a court that imposes a sentence under this chapter upon an offender for a misdemeanor or minor misdemeanor has discretion to determine the most effective way to achieve the purposes and principles of sentencing set forth in section 2929.21 of the Revised Code.

Unless a specific sanction is required to be imposed or is precluded from being imposed by the section setting forth an offense or the penalty for an offense or by any provision of sections 2929.23 to 2929.28 of the Revised Code, a court that imposes a sentence upon an offender for a misdemeanor may impose on the offender any sanction or combination of sanctions under sections 2929.24 to 2929.28 of the Revised Code. The court shall not impose a sentence that imposes an unnecessary burden on local government resources.

(B)(1) In determining the appropriate sentence for a misdemeanor, the court shall consider all of the following factors:

(a) The nature and circumstances of the offense or offenses;

(b) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender has a history of persistent criminal activity and that the offender's character and condition reveal a substantial risk that the offender will commit another offense;

(c) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender's history, character, and condition reveal a substantial risk that the offender will be a danger to others and that the offender's conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences;

(d) Whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious;

(e) Whether the offender is likely to commit future crimes in general, in addition to the circumstances described in divisions (B) (1)(b) and (c) of this section.

(2) In determining the appropriate sentence for a misdemeanor, in addition to complying with division (B)(1) of this section, the court may consider any other factors that are relevant to achieving the purposes and principles of sentencing set forth in section 2929.21 of the Revised Code.

(C) Before imposing a jail term as a sentence for a misdemeanor, a court shall consider the appropriateness of imposing a community control sanction or a combination of community control sanctions under sections 2929.25, 2929.26, 2929.27, and 2929.28 of the Revised Code. A court may impose the longest jail term authorized under section 2929.24 of the Revised Code only upon offenders who commit the worst forms of the offense or upon offenders whose conduct and response to prior sanctions for prior offenses demonstrate that the imposition of the longest jail term is necessary to deter the offender from committing a future crime.

(D)(1) A sentencing court shall consider any relevant oral or written statement made by the victim, the defendant, the defense attorney, or the prosecuting authority regarding sentencing for a misdemeanor. This division does not create any rights to notice other than those rights authorized by Chapter 2930. of the Revised Code.

(2) At the time of sentencing for a misdemeanor or as soon as possible after sentencing, the court shall notify the victim of the offense of the victim's right to file an application for an award of reparations pursuant to sections 2743.51 to 2743.72 of the Revised Code.

2929.23 Sentence for sexually oriented misdemeanor committed on or after 1-1-97.

(A) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to the offense or the offense is any offense listed in division (D)(1) to (3) of section 2901.07 of the Revised Code, the judge shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, shall comply with the requirements of section 2950.03 of the Revised Code, and shall require the offender to submit to a DNA specimen collection procedure pursuant to section 2901.07 of the Revised Code.

(B) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041, 2950.05, and2950.06 of the Revised Code and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under division (A)(2) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that section or, if required under division (A)(6) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that division.

2929.24 Definite jail terms for misdemeanors.

(A) Except as provided in section 2929.22 or 2929.23 of the Revised Code or division (E) or (F) of this section and unless another term is required or authorized pursuant to law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender pursuant to this chapter, the court shall impose a definite jail term that shall be one of the following:

(1) For a misdemeanor of the first degree, not more than one hundred eighty days;

(2) For a misdemeanor of the second degree, not more than ninety days;

(3) For a misdemeanor of the third degree, not more than sixty days;

(4) For a misdemeanor of the fourth degree, not more than thirty days.

(B)(1) A court that sentences an offender to a jail term under this section may permit the offender to serve the sentence in intermittent confinement or may authorize a limited release of the offender as provided in division (B) of section 2929.26 of the Revised Code. The court retains jurisdiction over every offender sentenced to jail to modify the jail sentence imposed at any time, but the court shall not reduce any mandatory jail term.

(2)(a) If a prosecutor, as defined in section 2935.01 of the Revised Code, has filed a notice with the court that the prosecutor wants to be notified about a particular case and if the court is considering modifying the jail sentence of the offender in that case, the court shall notify the prosecutor that the court is considering modifying the jail sentence of the offender in that case. The prosecutor may request a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, and, if the prosecutor requests a hearing, the court shall notify the eligible offender of the hearing.

(b) If the prosecutor requests a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, the court shall hold the hearing before considering whether or not to release the offender from the offender's jail sentence.

(C) If a court sentences an offender to a jail term under this section and the court assigns the offender to a county jail that has established a county jail industry program pursuant to section 5147.30 of the Revised Code, the court shall specify, as part of the sentence, whether the offender may be considered for participation in the program. During the offender's term in the county jail, the court retains jurisdiction to modify its specification regarding the offender's participation in the county jail industry program.

(D) If a person is sentenced to a jail term pursuant to this section, the court may impose as part of the sentence pursuant to section 2929.28 of the Revised Code a reimbursement sanction, and, if the local detention facility in which the term is to be served is covered by a policy adopted pursuant to section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code and section 2929.37 of the Revised Code, both of the following apply:

(1) The court shall specify both of the following as part of the sentence:

(a) If the person is presented with an itemized bill pursuant to section 2929.37 of the Revised Code for payment of the costs of confinement, the person is required to pay the bill in accordance with that section.

(b) If the person does not dispute the bill described in division (D)(1)(a) of this section and does not pay the bill by the times specified in section 2929.37 of the Revised Code, the clerk of the court may issue a certificate of judgment against the person as described in that section.

(2) The sentence automatically includes any certificate of judgment issued as described in division (D)(1)(b) of this section.

(E) If an offender who is convicted of or pleads guilty to a violation of division (B) of section 4511.19 of the Revised Code also is convicted of or also pleads guilty to a specification of the type described in section 2941.1416 of the Revised Code and if the court imposes a jail term on the offender for the underlying offense, the court shall impose upon the offender an additional definite jail term of not more than six months. The additional jail term shall not be reduced pursuant to any provision of the Revised Code. The offender shall serve the additional jail term

consecutively to and prior to the jail term imposed for the underlying offense and consecutively to any other mandatory term imposed in relation to the offense.

(F)(1) If an offender is convicted of or pleads guilty to a misdemeanor violation of section 2907.23, 2907.24, 2907.241, or 2907.25 of the Revised Code and to a specification of the type described in section 2941.1421 of the Revised Code and if the court imposes a jail term on the offender for the misdemeanor violation, the court may impose upon the offender an additional definite jail term as follows:

(a) Subject to division (F)(1)(b) of this section, an additional definite jail term of not more than sixty days;

(b) If the offender previously has been convicted of or pleaded guilty to one or more misdemeanor or felony violations of section 2907.22, 2907.23, 2907.24, 2907.241, or 2907.25 of the Revised Code and also was convicted of or pleaded guilty to a specification of the type described in section 2941.1421 of the Revised Code regarding one or more of those violations, an additional definite jail term of not more than one hundred twenty days.

(2) In lieu of imposing an additional definite jail term under division (F)(1) of this section, the court may directly impose on the offender a sanction that requires the offender to wear a real-time processing, continual tracking electronic monitoring device during the period of time specified by the court. The period of time specified by the court shall equal the duration of an additional jail term that the court could have imposed upon the offender under division (F)(1) of this section. A sanction imposed under this division shall commence on the date specified by the court, provided that the sanction shall not commence until after the offender has served the jail term imposed for the misdemeanor violation of section 2907.23, 2907.24, 2907.241, or 2907.25 of the Revised Code and any residential sanction imposed for the violation under section 2929.26 of the Revised Code. A sanction imposed under this division shall be considered to be a community control sanction for purposes of section 2929.25 of the Revised Code, and all provisions of the Revised Code that pertain to community control sanctions shall apply to a sanction imposed under this division, except to the extent that they would by their nature be clearly inapplicable. The offender shall pay all costs associated with a sanction imposed under this division, including the cost of the use of the monitoring device.

(G) If an offender is convicted of or pleads guilty to a misdemeanor violation of section 2903.13 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1423 of the Revised Code that charges that the victim of the violation was a woman whom the offender knew was pregnant at the time of the violation, the court shall impose on the offender a mandatory jail term that is a definite term of at least thirty days.

(H) If a court sentences an offender to a jail term under this section, the sentencing court retains jurisdiction over the offender and the jail term. Upon motion of either party or upon the court's own motion, the court, in the court's sole discretion and as the circumstances warrant, may substitute one or more community control sanctions under section 2929.26 or 2929.27 of the Revised Code for any jail days that are not mandatory jail days.

OHIO REVISED CODE
COMMUNITY CONTROL

Throughout the State of Ohio, many local jurisdictions have "community based" programs in lieu of actual prison incarceration.

2929.25 Community control sanctions - misdemeanor.

(A)(1) Except as provided in sections 2929.22 and 2929.23 of the Revised Code or when a jail term is required by law, in sentencing an offender for a misdemeanor, other than a minor misdemeanor, the sentencing court may do either of the following:

(a) Directly impose a sentence that consists of one or more community control sanctions authorized by section 2929.26, 2929.27, or 2929.28 of the Revised Code. The court may impose any other conditions of release under a community control sanction that the court considers appropriate. If the court imposes a jail term upon the offender, the court may impose any community control sanction or combination of community control sanctions in addition to the jail term.

(b) Impose a jail term under section 2929.24 of the Revised Code from the range of jail terms authorized under that section for the offense, suspend all or a portion of the jail term imposed, and place the offender under a community control sanction or combination of community control sanctions authorized under section 2929.26, 2929.27, or 2929.28 of the Revised Code.

(2) The duration of all community control sanctions imposed upon an offender and in effect for an offender at any time shall not exceed five years.

(3) At sentencing, if a court directly imposes a community control sanction or combination of community control sanctions pursuant to division (A)(1)(a) or (B) of this section, the court shall state the duration of the community control sanctions imposed and shall notify the offender that if any of the conditions of the community control sanctions are violated the court may do any of the following:

(a) Impose a longer time under the same community control sanction if the total time under all of the offender's community control sanctions does not exceed the five-year limit specified in division (A)(2) of this section;

(b) Impose a more restrictive community control sanction under section 2929.26, 2929.27, or 2929.28 of the Revised Code, but the court is not required to impose any particular sanction or sanctions;

(c) Impose a definite jail term from the range of jail terms authorized for the offense under section 2929.24 of the Revised Code.

(B) If a court sentences an offender to any community control sanction or combination of community control sanctions pursuant to division (A)(1)(a) of this section, the sentencing court

retains jurisdiction over the offender and the period of community control for the duration of the period of community control. Upon the motion of either party or on the court's own motion, the court, in the court's sole discretion and as the circumstances warrant, may modify the community control sanctions or conditions of release previously imposed, substitute a community control sanction or condition of release for another community control sanction or condition of release previously imposed, or impose an additional community control sanction or condition of release.

(C)(1) If a court sentences an offender to any community control sanction or combination of community control sanctions authorized under section 2929.26, 2929.27, or 2929.28 of the Revised Code, the court shall place the offender under the general control and supervision of the court or of a department of probation in the jurisdiction that serves the court for purposes of reporting to the court a violation of any of the conditions of the sanctions imposed. If the offender resides in another jurisdiction and a department of probation has been established to serve the municipal court or county court in that jurisdiction, the sentencing court may request the municipal court or the county court to receive the offender into the general control and supervision of that department of probation for purposes of reporting to the sentencing court a violation of any of the conditions of the sanctions imposed. The sentencing court retains jurisdiction over any offender whom it sentences for the duration of the sanction or sanctions imposed.

(2) The sentencing court shall require as a condition of any community control sanction that the offender abide by the law and 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. The offender's compliance with the additional requirements also shall be a condition of the community control sanction imposed upon the offender.

(D)(1) If the court imposing sentence upon an offender sentences the offender to any community control sanction or combination of community control sanctions authorized under section 2929.26, 2929.27, or 2929.28 of the Revised Code, and if the offender violates any of the conditions of the sanctions, the public or private person or entity that supervises or administers the program or activity that comprises the sanction shall report the violation directly to the sentencing court or to the department of probation or probation officer with general control and supervision over the offender. If the public or private person or entity reports the violation to the department of probation or probation officer, the department or officer shall report the violation to the sentencing court.

(2) If an offender violates any condition of a community control sanction, the sentencing court may impose upon the violator one or more of the following penalties:

(a) A longer time under the same community control sanction if the total time under all of the community control sanctions imposed on the violator does not exceed the five-year limit specified in division (A)(2) of this section;

(b) A more restrictive community control sanction;

(c) A combination of community control sanctions, including a jail term.

(3) If the court imposes a jail term upon a violator pursuant to division (D)(2) of this section, the total time spent in jail for the misdemeanor offense and the violation of a condition of the community control sanction shall not exceed the maximum jail term available for the offense for which the sanction that was violated was imposed. The court may reduce the longer period of time that the violator is required to spend under the longer sanction or the more restrictive sanction imposed under division (D)(2) of this section by all or part of the time the violator successfully spent under the sanction that was initially imposed.

(E) Except as otherwise provided in this division, if an offender, for a significant period of time, fulfills the conditions of a community control sanction imposed pursuant to section 2929.26, 2929.27, or 2929.28 of the Revised Code in an exemplary manner, the court may reduce the period of time under the community control sanction or impose a less restrictive community control sanction. Fulfilling the conditions of a community control sanction does not relieve the offender of a duty to make restitution under section 2929.28 of the Revised Code.

2929.26 Community residential sanctions - misdemeanor.

(A) Except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any community residential sanction or combination of community residential sanctions under this section. Community residential sanctions include, but are not limited to, the following:

(1) A term of up to one hundred eighty days in a halfway house or a term in a halfway house not to exceed the longest jail term available for the offense, whichever is shorter, if the political subdivision that would have responsibility for paying the costs of confining the offender in a jail has entered into a contract with the halfway house for use of the facility for misdemeanor offenders;

(2) A term of up to one hundred eighty days in an alternative residential facility or a term in an alternative residential facility not to exceed the longest jail term available for the offense, whichever is shorter. The court may specify the level of security in the alternative residential facility that is needed for the offender.

(3) If the offender is an eligible offender, as defined in section 307.932 of the Revised Code, a term of up to sixty days in a community alternative sentencing center or district community alternative sentencing center established and operated in accordance with that section, in the circumstances specified in that section, with one of the conditions of the sanction being that the offender complete in the center the entire term imposed.

(B) A sentence to a community residential sanction under division (A)(3) of this section shall be in accordance with section 307.932 of the Revised Code. In all other cases, the court that sentences an offender to a community residential sanction under this section may do either or both of the following:

(1) Permit the offender to serve the offender's sentence in intermittent confinement, overnight, on weekends or at any other time or times that will allow the offender to continue at the offender's occupation or care for the offender's family;

(2) Authorize the offender to be released so that the offender may seek or maintain employment, receive education or training, receive treatment, perform community service, or otherwise fulfill an obligation imposed by law or by the court. A release pursuant to this division shall be only for the duration of time that is needed to fulfill the purpose of the release and for travel that reasonably is necessary to fulfill the purposes of the release.

(C) The court may order that a reasonable portion of the income earned by the offender upon a release pursuant to division (B) of this section be applied to any financial sanction imposed under section 2929.28 of the Revised Code.

(D) No court shall sentence any person to a prison term for a misdemeanor or minor misdemeanor or to a jail term for a minor misdemeanor.

(E) If a court sentences a person who has been convicted of or pleaded guilty to a misdemeanor to a community residential sanction as described in division (A) of this section, at the time of reception and at other times the person in charge of the operation of the halfway house, alternative residential facility, community alternative sentencing center, district community alternative sentencing center, or other place at which the offender will serve the residential sanction determines to be appropriate, the person in charge of the operation of the halfway house, alternative residential facility, community alternative sentencing center, district community alternative sentencing center, or other place may cause the convicted offender to be examined and tested for tuberculosis, HIV infection, hepatitis, including, but not limited to, hepatitis A, B, and C, and other contagious diseases. The person in charge of the operation of the halfway house, alternative residential facility, community alternative sentencing center, district community alternative sentencing center, or other place at which the offender will serve the residential sanction may cause a convicted offender in the halfway house, alternative residential facility, community alternative sentencing center, district community alternative sentencing center, or other place who refuses to be tested or treated for tuberculosis, HIV infection, hepatitis, including, but not limited to, hepatitis A, B, and C, or another contagious disease to be tested and treated involuntarily.

(F) A political subdivision may enter into a contract with a halfway house for use of the halfway house to house misdemeanor offenders under a sanction imposed under division (A)(1) of this section.

OHIO REVISED CODE
OTHER SANCTIONS THAT CAN BE IMPOSED

2929.27 Nonresidential sanctions - misdemeanor.

(A) Except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any

nonresidential sanction or combination of nonresidential sanctions authorized under this division. Nonresidential sanctions include, but are not limited to, the following:

(1) A term of day reporting;

(2) A term of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest without electronic monitoring or continuous alcohol monitoring;

(3) A term of community service of up to five hundred hours for a misdemeanor of the first degree or two hundred hours for a misdemeanor of the second, third, or fourth degree;

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

(5) A term of intensive probation supervision;

(6) A term of basic probation supervision;

(7) A term of monitored time;

(8) A term of drug and alcohol use monitoring, including random drug testing;

(9) A curfew term;

(10) A requirement that the offender obtain employment;

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

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

(13) If authorized by law, suspension of the offender's privilege to operate a motor vehicle, immobilization or forfeiture of the offender's motor vehicle, a requirement that the offender obtain a valid motor vehicle operator's license, or any other related sanction;

(14) A requirement that the offender obtain counseling 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. This division does not limit the court in requiring that the offender obtain counseling for any offense or in any circumstance not specified in this division.

(B) If the court imposes a term of community service pursuant to division (A)(3) of this section, the offender may request that the court modify the sentence to authorize the offender to make a reasonable contribution, as determined by the court, to the general fund of the county, municipality, or other local entity that provides funding to the court. The court may grant the request if the offender demonstrates a change in circumstances from the date the court imposes the sentence or that the modification would otherwise be in the interests of justice. If the court grants the request, the offender shall make a reasonable contribution to the court, and the clerk of the court shall deposit that contribution into the general fund of the county, municipality, or other local entity that provides funding to the court. If more than one entity provides funding to the court, the clerk shall deposit a percentage of the reasonable contribution equal to the percentage of funding the entity provides to the court in that entity's general fund.

(C) In addition to the sanctions authorized under division (A) of this section, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, upon an offender who is not required to serve a mandatory jail term may impose any other sanction that is intended to discourage the offender or other persons from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing.

(D) The court imposing a sentence for a minor misdemeanor may impose a term of community service in lieu of all or part of a fine. The term of community service imposed for a minor misdemeanor shall not exceed thirty hours. After imposing a term of community service, the court may modify the sentence to authorize a reasonable contribution, as determined by the court, to the appropriate general fund as provided in division (B) of this section.

2929.31 Fines for organizations by degree of offense.

(A) Regardless of the penalties provided in sections 2929.02, 2929.14 to 2929.18, and 2929.24 to 2929.28 of the Revised Code, an organization convicted of an offense pursuant to section 2901.23 of the Revised Code shall be fined in accordance with this section. The court shall fix the fine as follows:

(1) For aggravated murder, not more than one hundred thousand dollars;

(2) For murder, not more than fifty thousand dollars;

(3) For a felony of the first degree, not more than twenty-five thousand dollars;

(4) For a felony of the second degree, not more than twenty thousand dollars;

(5) For a felony of the third degree, not more than fifteen thousand dollars;

(6) For a felony of the fourth degree, not more than ten thousand dollars;

(7) For a felony of the fifth degree, not more than seventy-five hundred dollars;

(8) For a misdemeanor of the first degree, not more than five thousand dollars;

(9) For a misdemeanor of the second degree, not more than four thousand dollars;

(10) For a misdemeanor of the third degree, not more than three thousand dollars;

(11) For a misdemeanor of the fourth degree, not more than two thousand dollars;

(12) For a minor misdemeanor, not more than one thousand dollars;

(13) For a felony not specifically classified, not more than ten thousand dollars;

(14) For a misdemeanor not specifically classified, not more than two thousand dollars;

(15) For a minor misdemeanor not specifically classified, not more than one thousand dollars.

(B) When an organization is convicted of an offense that is not specifically classified, and the section defining the offense or penalty plainly indicates a purpose to impose the penalty provided for violation upon organizations, then the penalty so provided shall be imposed in lieu of the penalty provided in this section.

(C) When an organization is convicted of an offense that is not specifically classified, and the penalty provided includes a higher fine than the fine that is provided in this section, then the penalty imposed shall be pursuant to the penalty provided for the violation of the section defining the offense.

(D) This section does not prevent the imposition of available civil sanctions against an organization convicted of an offense pursuant to section2901.23 of the Revised Code, either in addition to or in lieu of a fine imposed pursuant to this section.

2929.32 Additional fines for certain offenses.

(A)(1) Subject to division (A)(2) of this section, notwithstanding the fines prescribed in section 2929.02 of the Revised Code for a person who is convicted of or pleads guilty to aggravated murder or murder, the fines prescribed in section 2929.18 of the Revised Code for a person who is convicted of or pleads guilty to a felony, the fines prescribed in section 2929.28 of the Revised Code for a person who is convicted of or pleads guilty to a misdemeanor, the fines prescribed in section 2929.31 of the Revised Code for an organization that is convicted of or pleads guilty to an offense, and the fines prescribed in any other section of the Revised Code for a person who is convicted of or pleads guilty to an offense, a sentencing court may impose upon the offender a fine of not more than one million dollars if any of the following applies to the offense and the offender:

(a) There are three or more victims, as defined in section 2969.11 of the Revised Code, of the offense for which the offender is being sentenced.

(b) The offender previously has been convicted of or pleaded guilty to one or more offenses, and, for the offense for which the offender is being sentenced and all of the other offenses, there is a total of three or more victims, as defined in section 2969.11 of the Revised Code.

(c) The offense for which the offender is being sentenced is aggravated murder, murder, or a felony of the first degree that, if it had been committed prior to July 1, 1996, would have been an aggravated felony of the first degree.

(2) If the offense in question is a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the court shall impose upon the offender the mandatory fine described in division (B) of section 2929.18 of the Revised Code, and, in addition, may impose a fine under division (A)(1) of this section, provided that the total of the mandatory fine and the fine imposed under division (A)(1) of this section shall not exceed one million dollars. The mandatory fine shall be paid as described in division (D) of section 2929.18 of the Revised Code, and the fine imposed under division (A)(1) of this section shall be deposited pursuant to division (B) of this section.

(B) If a sentencing court imposes a fine upon an offender pursuant to division (A)(1) of this section, all moneys paid in satisfaction of the fine or collected pursuant to division (C)(1) of this section in satisfaction of the fine shall be deposited into the crime victims recovery fund created by division (D) of this section and shall be distributed as described in that division.

(C)(1) Subject to division (C)(2) of this section, notwithstanding any contrary provision of any section of the Revised Code, if a sentencing court imposes a fine upon an offender pursuant to division (A)(1) of this section or pursuant to another section of the Revised Code, the fine shall be a judgment against the offender in favor of the state, and both of the following apply to that judgment:

(a) The state may collect the judgment by garnishing, attaching, or otherwise executing against any income, profits, or other real or personal property in which the offender has any right, title, or interest, including property acquired after the imposition of the fine, in the same manner as if the judgment had been rendered against the offender and in favor of the state in a civil action. If the fine is imposed pursuant to division (A)(1) of this section, the moneys collected as a result of the garnishment, attachment, or other execution shall be deposited and distributed as described in divisions (B) and (D) of this section. If the fine is not imposed pursuant to division (A)(1) of this section, the moneys collected as a result of the garnishment, attachment, or other execution shall be distributed as otherwise provided by law for the distribution of money paid in satisfaction of a fine.

(b) The provisions of Chapter 2329. of the Revised Code relative to the establishment of court judgments and decrees as liens and to the enforcement of those liens apply to the judgment.

(2) Division (C)(1) of this section does not apply to any financial sanction imposed pursuant to section 2929.18 of the Revised Code upon a person who is convicted of or pleads guilty to a felony.

(D) There is hereby created in the state treasury the crime victims recovery fund. If a sentencing court imposes a fine upon an offender pursuant to division (A)(1) of this section, all moneys paid in satisfaction of the fine and all moneys collected in satisfaction of the fine pursuant to division (C)(1) of this section shall be deposited into the fund. The fund shall be administered and the moneys in it shall be distributed in accordance with sections 2969.11 to 2969.14 of the Revised Code.

OHIO REVISED CODE
INSTITUTIONS

2929.34 Where imprisonment to be served.

(A) A person who is convicted of or pleads guilty to aggravated murder, murder, or an offense punishable by life imprisonment and who is sentenced to a term of life imprisonment or a prison term pursuant to that conviction shall serve that term in an institution under the control of the department of rehabilitation and correction.

(B)(1) A person who is convicted of or pleads guilty to a felony other than aggravated murder, murder, or an offense punishable by life imprisonment and who is sentenced to a term of imprisonment or a prison term pursuant to that conviction shall serve that term as follows:

(a) Subject to divisions (B)(1)(b) and (B)(2) of this section, in an institution under the control of the department of rehabilitation and correction if the term is a prison term or as otherwise determined by the sentencing court pursuant to section 2929.16 of the Revised Code if the term is not a prison term;

(b) In a facility of a type described in division (G)(1) of section 2929.13 of the Revised Code, if the offender is sentenced pursuant to that division.

(2) If the term is a prison term, the person may be imprisoned in a jail that is not a minimum security jail pursuant to agreement under section 5120.161 of the Revised Code between the department of rehabilitation and correction and the local authority that operates the jail.

(C) A person who is convicted of or pleads guilty to one or more misdemeanors and who is sentenced to a jail term or term of imprisonment pursuant to the conviction or convictions shall serve that term in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse; in a community alternative sentencing center or district community alternative sentencing center when authorized by section 307.932 of the Revised Code; or, if the misdemeanor or misdemeanors are not offenses of violence, in a minimum security jail.

(D) Nothing in this section prohibits the commitment, referral, or sentencing of a person who is convicted of or pleads guilty to a felony to a community-based correctional facility.

Many jurisdictions will charge the defendant for the time of incarceration or “jail time” served.

2929.37 Confinement cost policy.

(A) A board of county commissioners, in an agreement with the sheriff, a legislative authority of a municipal corporation, a corrections commission, a facility governing board, or any other public or private entity that operates a local detention facility at which a prisoner who is convicted of an offense and who is confined in the facility under a sanction or term of imprisonment imposed under section 2929.16, sections 2929.21 to 2929.28, or any other provision of the Revised Code may adopt, pursuant to section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16,2301.56, or 2947.19 of the Revised Code, a policy that requires the prisoner to pay all or part of the costs of confinement in that facility. If a board of county commissioners, legislative authority, corrections commission, facility governing board, or other entity adopts a policy for a facility pursuant to one of those sections, the person in charge of that facility shall appoint a reimbursement coordinator to administer the facility's policy.

The costs of confinement may include, but are not limited to, the costs of repairing property damaged by the prisoner while confined, a per diem fee for room and board, medical and dental treatment costs, the fee for a random drug test assessed under division (E) of section 341.26 and division (E) of section 753.33 of the Revised Code, and a one-time reception fee for the costs of processing the prisoner into the facility at the time of the prisoner's initial entry into the facility under the confinement in question, minus any fees deducted under section 2929.38 of the Revised Code. Any policy adopted under this section shall be used when a court does not order reimbursement of confinement costs under section 2929.18or 2929.28 of the Revised Code. The amount assessed under this section shall not exceed the total amount that the prisoner is able to pay.

(B)(1) Each prisoner covered by a repayment policy adopted as described in division (A) of this section shall receive at the end of the prisoner's confinement an itemized bill of the expenses to be reimbursed. The policy shall allow periodic payments on a schedule to be implemented upon a prisoner's release. The bill also shall state that payment shall be made to the person identified in the bill as the reimbursement coordinator and include a notice that specifies that the prisoner has thirty days in which to dispute the bill by filing a written objection with the reimbursement coordinator and that if the prisoner does not dispute the bill in that manner within that period, the prisoner is required to pay the bill and a certificate of judgment may be obtained against the prisoner for the amount of the unpaid expenses. The prisoner shall sign a copy of the bill, and the reimbursement coordinator shall retain that copy. If the prisoner disputes an item on the bill within thirty days after receiving the bill, the reimbursement coordinator may either concede the disputed item or proceed to a hearing under division (B)(2) of this section.

(2) If the prisoner disputes an item on an itemized bill presented to the prisoner under division (B)(1) of this section and the reimbursement coordinator does not concede the item, the reimbursement coordinator shall submit the bill to the court, and the court shall hold a hearing on the disputed items in the bill. At the end of the hearing, the court shall determine how much of the disputed expenses the prisoner shall reimburse the legislative authority or managing authority and shall issue a judgment in favor of the legislative authority or managing authority for any undisputed expenses and the amount of the disputed expenses for which the prisoner must

reimburse the legislative authority or managing authority. The reimbursement coordinator shall not seek to enforce the judgment until at least ninety days after the court issues the judgment.

(C) If a prisoner does not dispute the itemized bill presented to the prisoner under division (B) of this section and does not pay the bill within ninety days, the reimbursement coordinator shall send by mail a notice to the prisoner requesting payment of the expenses as stated in the bill. If the prisoner does not respond to the notice by paying the expenses in full within thirty days of the date the notice was mailed, the reimbursement coordinator shall send by mail a second notice to the prisoner requesting payment of the expenses. If one hundred eighty days elapse from the date that the reimbursement coordinator provides the bill and if the prisoner has not paid the full amount of the expenses pursuant to the bill and the notices, the reimbursement coordinator may notify the clerk of the appropriate court of those facts, and the clerk may issue a certificate of judgment against the prisoner for the balance of the expenses remaining unpaid.

(D) The reimbursement coordinator may collect any amounts remaining unpaid on an itemized bill and any costs associated with the enforcement of the judgment and may enter into a contract with one or more public agencies or private vendors to collect any amounts remaining unpaid. For enforcing a judgment issued under this section, the reimbursement coordinator may assess an additional poundage fee of two per cent of the amount remaining unpaid and may collect costs associated with the enforcement of the judgment.

(E) Neither the reimbursement coordinator nor the legislative authority or the managing authority shall enforce any judgment obtained under this section by means of execution against the prisoner's homestead. Any reimbursement received under this section shall be credited to the general fund of the treasury of the political subdivision that incurred the expense, to be used for general fund purposes.

OHIO REVISED CODE
MULTIPLE SENTENCES & PEACE OFFICER CRIMES

Sometimes individuals receive more than one sentence for multiple crimes they commit! There is also a sad situation when individuals who have sworn to "protect and uphold" the law end up as offenders of the law. The State of Ohio is no different than any other state in this regard.

2929.41 Concurrent and consecutive sentences.

(A) Except as provided in division (B) of this section, division (E) of section 2929.14, or division (D) or (E) of section 2971.03 of the Revised Code, a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States. Except as provided in division (B)(3) of this section, a jail term or sentence of imprisonment for misdemeanor shall be served concurrently with a prison term or sentence of imprisonment for felony served in a state or federal correctional institution.

(B)(1) A jail term or sentence of imprisonment for a misdemeanor shall be served consecutively to any other prison term, jail term, or sentence of imprisonment when the trial court specifies that

it is to be served consecutively or when it is imposed for a misdemeanor violation of section 2907.322, 2921.34, or 2923.131 of the Revised Code.

When consecutive sentences are imposed for misdemeanor under this division, the term to be served is the aggregate of the consecutive terms imposed, except that the aggregate term to be served shall not exceed eighteen months.

(2) If a court of this state imposes a prison term upon the offender for the commission of a felony and a court of another state or the United States also has imposed a prison term upon the offender for the commission of a felony, the court of this state may order that the offender serve the prison term it imposes consecutively to any prison term imposed upon the offender by the court of another state or the United States.

(3) A jail term or sentence of imprisonment imposed for a misdemeanor violation of section 4510.11, 4510.14, 4510.16, 4510.21, or 4511.19 of the Revised Code shall be served consecutively to a prison term that is imposed for a felony violation of section 2903.06, 2903.07, 2903.08, or 4511.19 of the Revised Code or a felony violation of section 2903.04 of the Revised Code involving the operation of a motor vehicle by the offender and that is served in a state correctional institution when the trial court specifies that it is to be served consecutively.

When consecutive jail terms or sentences of imprisonment and prison terms are imposed for one or more misdemeanors and one or more felonies under this division, the term to be served is the aggregate of the consecutive terms imposed, and the offender shall serve all terms imposed for a felony before serving any term imposed for a misdemeanor.

2929.42 Notice of conviction sent to licensing board.

(A) The prosecutor in any case against any person licensed, certified, registered, or otherwise authorized to practice under Chapter 3719., 4715., 4723., 4729., 4730., 4731., 4734., or 4741. of the Revised Code shall notify the appropriate licensing board, on forms provided by the board, of any of the following regarding the person:

(1) A plea of guilty to, or a conviction of, a felony, or a court order dismissing a felony charge on technical or procedural grounds;

(2) A plea of guilty to, or a conviction of, a misdemeanor committed in the course of practice or in the course of business, or a court order dismissing such a misdemeanor charge on technical or procedural grounds;

(3) A plea of guilty to, or a conviction of, a misdemeanor involving moral turpitude, or a court order dismissing such a charge on technical or procedural grounds.

(B) The report required by division (A) of this section shall include the name and address of the person, the nature of the offense, and certified copies of court entries in the action.

2929.43 Procedure for accepting peace officer's guilty plea to felony or after conviction; negotiated misdemeanor pleas.

(A) As used in this section:

(1) "Peace officer" has the same meaning as in section 109.71 of the Revised Code.

(2) "Felony" has the same meaning as in section 109.511 of the Revised Code.

(B)(1) Prior to accepting a plea of guilty to an indictment, information, or complaint charging a felony, the court shall determine whether the defendant is a peace officer. If the court determines that the defendant is a peace officer, it shall address the defendant personally and provide the following advisement to the defendant that shall be entered in the record of the court.

"You are hereby advised that conviction of the felony offense to which you are pleading guilty will result in the termination of your employment as a peace officer and in your decertification as a peace officer pursuant to the laws of Ohio."

Upon the request of the defendant, the court shall allow the defendant additional time to consider the appropriateness of the plea of guilty in light of the advisement described in division (B)(1) of this section.

The court shall not accept a plea of guilty of a defendant who is a peace officer unless, in addition to any other procedures required under the Rules of Criminal Procedure, the court determines that the defendant voluntarily and intelligently enters that plea after being given the advisement described in division (B)(1) of this section.

(2) After accepting under division (B)(1) of this section a plea of guilty to an indictment, information, or complaint charging a felony, the court shall provide to the clerk of the court of common pleas a written notice of the plea of guilty of the defendant peace officer, the name and address of the peace officer, the law enforcement agency or other governmental entity that employs the peace officer and its address, the date of the plea, the nature of the felony offense, and certified copies of court entries in the action. Upon receiving the written notice required by division (B)(2) of this section, the clerk of the court of common pleas shall transmit to the employer of the peace officer and to the Ohio peace officer training council a report that includes the information contained in the written notice and the certified copies of the court entries in the action.

(C)(1) Upon the conviction of a defendant, after trial, of a felony, the trial judge shall determine whether the defendant is a peace officer. If the judge determines that the defendant is a peace officer or if the defendant states on the record that the defendant is a peace officer, the judge shall provide to the clerk of the court of common pleas a written notice of the conviction of the defendant peace officer, the name and address of the peace officer, the law enforcement agency or other governmental entity that employs the peace officer and its address, the date of the conviction, the nature of the felony offense, and certified copies of court entries in the action. Upon receiving the written notice required by division (C)(1) of this section, the clerk of the

court of common pleas shall transmit to the employer of the peace officer and to the Ohio peace officer training council a report that includes the information contained in the written notice and the certified copies of the court entries in the action.

(2) Upon the conclusion of the final appeal of a defendant who is a peace officer and who has been convicted of a felony, upon expiration of the time period within which that peace officer may appeal the conviction if no appeal is taken, or otherwise upon the final disposition of the criminal action against that peace officer, the trial judge shall provide to the clerk of the court of common pleas a written notice of the final disposition of the action that shall include, as appropriate, notice of the final conviction of the peace officer of the felony, the acquittal of the peace officer of the felony, the conviction of the peace officer of a misdemeanor, or the dismissal of the felony charge against the peace officer. The judge also shall provide to the clerk of the court of common pleas certified copies of the court entries in the action. Upon receiving the written notice required by division (C)(2) of this section, the clerk of the court of common pleas shall transmit to the employer of the peace officer and to the Ohio peace officer training council a report that includes the information contained in the written notice and the certified copies of the court entries in the action.

(D) If pursuant to a negotiated plea agreement between a prosecuting attorney and a defendant who is a peace officer and who is charged with a felony, in which the defendant agrees to enter a plea of guilty to a misdemeanor and to surrender the certificate awarded to the defendant under section 109.77 of the Revised Code, the trial judge issues an order to the defendant to surrender that certificate, the trial judge shall provide to the clerk of the court a written notice of the order, the name and address of the peace officer, the law enforcement agency or other governmental entity that employs the peace officer and its address, the date of the plea, the nature of the misdemeanor to which the peace officer pleaded guilty, and certified copies of court entries in the action. Upon receiving the written notice required by this division, the clerk of the court shall transmit to the employer of the peace officer and to the executive director of the Ohio peace officer training council a report that includes the information contained in the written notice and the certified copies of the court entries in the action.

§ 2929.61. Offense committed prior to January 1, 1974; third or fourth degree felony committed between that date and July 1, 1983.

(A) Persons charged with a capital offense committed prior to January 1, 1974, shall be prosecuted under the law as it existed at the time the offense was committed, and, if convicted, shall be imprisoned for life, except that whenever the statute under which any such person is prosecuted provides for a lesser penalty under the circumstances of the particular case, such lesser penalty shall be imposed.

(B) Persons charged with an offense, other than a capital offense, committed prior to January 1, 1974, shall be prosecuted under the law as it existed at the time the offense was committed. Persons convicted or sentenced on or after January 1, 1974, for an offense committed prior to January 1, 1974, shall be sentenced according to the penalty for commission of the substantially equivalent offense under Amended Substitute House Bill 511 of the 109th General Assembly. If

the offense for which sentence is being imposed does not have a substantial equivalent under that act, or if that act provides a more severe penalty than that originally prescribed for the offense of which the person is convicted, then sentence shall be imposed under the law as it existed prior to January 1, 1974.

(C) Persons charged with an offense that is a felony of the third or fourth degree and that was committed on or after January 1, 1974, and before July 1, 1983, shall be prosecuted under the law as it existed at the time the offense was committed. Persons convicted or sentenced on or after July 1, 1983, for an offense that is a felony of the third or fourth degree and that was committed on or after January 1, 1974, and before July 1, 1983, shall be notified by the court sufficiently in advance of sentencing that they may choose to be sentenced pursuant to either the law in effect at the time of the commission of the offense or the law in effect at the time of sentencing. This notice shall be written and shall include the differences between and possible effects of the alternative sentence forms and the effect of the person's refusal to choose. The person to be sentenced shall then inform the court in writing of his choice, and shall be sentenced accordingly. Any person choosing to be sentenced pursuant to the law in effect at the time of the commission of an offense that is a felony of the third or fourth degree shall then be eligible for parole, and this person cannot at a later date have his sentence converted to a definite sentence. If the person refuses to choose between the two possible sentences, the person shall be sentenced pursuant to the law in effect at the time of the commission of the offense.

(D) Persons charged with an offense that was a felony of the first or second degree at the time it was committed, that was committed on or after January 1, 1974, and that was committed prior to July 1, 1983, shall be prosecuted for that offense and, if convicted, shall be sentenced under the law as it existed at the time the offense was committed.

2929.71 Reimbursement of investigative costs of arson.

(A) As used in this section:

(1) “Agency” means any law enforcement agency, other public agency, or public official involved in the investigation or prosecution of the offender or in the investigation of the fire or explosion in an aggravated arson, arson, or criminal damaging or endangering case. An “agency” includes, but is not limited to, a sheriff’s office, a municipal corporation, township, or township or joint police district police department, the office of a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation, the fire marshal’s office, a municipal corporation, township, or township fire district fire department, the office of a fire prevention officer, and any state, county, or municipal corporation crime laboratory.

(2) “Assets” includes all forms of real or personal property.

(3) “Itemized statement” means the statement of costs described in division (B) of this section.

(4) “Offender” means the person who has been convicted of or pleaded guilty to committing, attempting to commit, or complicity in committing a violation of section 2909.02 or 2909.03 of

the Revised Code, or, when the means used are fire or explosion, division (A)(2) of section 2909.06 of the Revised Code.

(5) "Costs" means the reasonable value of the time spent by an officer or employee of an agency on the aggravated arson, arson, or criminal damaging or endangering case, any moneys spent by the agency on that case, and the reasonable fair market value of resources used or expended by the agency on that case.

(B) Prior to the sentencing of an offender, the court shall enter an order that directs agencies that wish to be reimbursed by the offender for the costs they incurred in the investigation or prosecution of the offender or in the investigation of the fire or explosion involved in the case, to file with the court within a specified time an itemized statement of those costs. The order also shall require that a copy of the itemized statement be given to the offender or offender's attorney within the specified time. Only itemized statements so filed and given shall be considered at the hearing described in division (C) of this section.

(C) The court shall set a date for a hearing on all the itemized statements filed with it and given to the offender or the offender's attorney in accordance with division (B) of this section. The hearing shall be held prior to the sentencing of the offender, but may be held on the same day as the sentencing. Notice of the hearing date shall be given to the offender or the offender's attorney and to the agencies whose itemized statements are involved. At the hearing, each agency has the burden of establishing by a preponderance of the evidence that the costs set forth in its itemized statement were incurred in the investigation or prosecution of the offender or in the investigation of the fire or explosion involved in the case, and of establishing by a preponderance of the evidence that the offender has assets available for the reimbursement of all or a portion of the costs.

The offender may cross-examine all witnesses and examine all documentation presented by the agencies at the hearing, and the offender may present at the hearing witnesses and documentation the offender has obtained without a subpoena or a subpoena duces tecum or, in the case of documentation, that belongs to the offender. The offender also may issue subpoenas and subpoenas duces tecum for, and present and examine at the hearing, witnesses and documentation, subject to the following applying to the witnesses or documentation subpoenaed:

(1) The testimony of witnesses subpoenaed or documentation subpoenaed is material to the preparation or presentation by the offender of the offender's defense to the claims of the agencies for a reimbursement of costs;

(2) If witnesses to be subpoenaed are personnel of an agency or documentation to be subpoenaed belongs to an agency, the personnel or documentation may be subpoenaed only if the agency involved has indicated, pursuant to this division, that it intends to present the personnel as witnesses or use the documentation at the hearing. The offender shall submit, in writing, a request to an agency as described in this division to ascertain whether the agency intends to present various personnel as witnesses or to use particular documentation. The request shall indicate that the offender is considering issuing subpoenas to personnel of the agency who are specifically named or identified by title or position, or for documentation of the agency that is

specifically described or generally identified, and shall request the agency to indicate, in writing, whether it intends to present such personnel as witnesses or to use such documentation at the hearing. The agency shall promptly reply to the request of the offender. An agency is prohibited from presenting personnel as witnesses or from using documentation at the hearing if it indicates to the offender it does not intend to do so in response to a request of the offender under this division, or if it fails to reply or promptly reply to such a request.

(D) Following the hearing, the court shall determine which of the agencies established by a preponderance of the evidence that costs set forth in their itemized statements were incurred as described in division (C) of this section and that the offender has assets available for reimbursement purposes. The court also shall determine whether the offender has assets available to reimburse all such agencies, in whole or in part, for their established costs, and if it determines that the assets are available, it shall order the offender, as part of the offender's sentence, to reimburse the agencies from the offender's assets for all or a specified portion of their established costs.

OUR FINAL WORD
WHAT'S SO GREAT ABOUT AMERICA?

Every Licensed Surety Bail Bond Agent…and, every citizen…should ask: What lies behind an abundance unprecedented in history, and freedoms which are the envy of the world?

We must never forget that half the world goes to bed hungry. And, half the world lies under Communist rule, where freedoms, as we Americans know it, simply does not exist. Homemakers in much of the world might never see in a lifetime the quantity of food which the American housewife can choose in just one trip to the supermarket. Is this abundance and this freedom ours merely by chance? Is it wholly due to what Americans like to perceive as U.S. energy and know-how? It God has indeed "blessed America," as the familiar song goes, why?

The Greatness of America's Land.

Some people say the land itself has made America great. One of our most moving patriotic hymns cites the beauty of America – a beauty that all who have traveled across the continent surely recognize. Katherine Lee Bates stood atop Pike's Peak and scanned the sweep of the land, then wrote of the "purple mountain majesties," and the "amber waves of grain." She concluded that God had shed His grace on this land – a vast unexplored wilderness that, in an astonishingly short period, grew into a great nation.

It would be foolish to deny that the rich natural resources of the land itself have not helped to make America. The oil, the ore, the timber, the water, the soil and climate, all have combined to nourish a civilization that would eventually spread from "sea to shining sea." Other nations too, though, have been blessed with fine resources: yet somehow these have not risen to such greatness as America has.

The Greatness of America's People.

Others have said that America's people have made her great. Lyman Abbot once said: "A nation is made great, not by its fruitful acres, but by the men who cultivate them; not by its mines, but by the men who build and run them. America was a great land when Columbus discovered it: Americans have made of it a great nation."

And, so they have! For they have pioneered a continent, subdued the elements that at first worked against them, molded a society of peoples from all over the world. America's initiative and ingenuity are known across the earth. Other nations have looked on in awe at her ability over the decades to produce not only her own needs, but much more.

The Greatness of America's System.

America's free enterprise system and the spirit of her people, it would seem, have combined to deliver a flood of mass-produced goods to the consumer at a relatively low cost. At the same time, American economic genius has also helped to produce millions of jobs – from the factories to the professions – including the Bail Bond profession – which give Americans the income to buy the goods they produce.

The Greatness of America's Generosity.

Thus far, America has escaped the spectre of widescale hunger at home, and she has been able to feed at least some of the hungry abroad. Through the decades she has opened her heart to the poor of the world. She has given generously to every nation, even her enemies, in time of emergency.

The Greatness of America's Freedoms.

In spite of certain social ills – and, we as Surety Bail Bond Agent see them all – the U.S. has passed more social legislation and enacted more laws providing individual liberty than any other nation in world history. And, because of her belief in freedom of speech she has not hidden her scars – they are there for the world to see – while those totalitarian regimes that run a controlled press look on amazed.

All of these blessings point back to her foundations and to the providential hand of God. After all, the "purple mountain majesties" and the "fruited plains" originated with God! America's blessings, despite her ills, call forth thanksgiving from all those who enjoy them. The great spiritual heritage that built America unfolded by remarkable design. So also did American democracy, the U.S. Constitution and, along with these, the great freedoms they ensure. Just look at your coins and currency…in no other land will you see the words "In God We Trust!"

No, America, did not just happen by mere chance, as is obvious to a person who truly understands the unfolding saga of events that shaped this nation. There is great evidence of this truth; and, when we look back throughout our history, we better understand where America is today, how she arrived here, and where she must remain during the trials of each day.

For as Thomas Jefferson once asked, "Can the liberties of a nation be secure, when we have removed the conviction that these liberties are the gift of God?"

And, as President Jefferson replied to himself, "My God! How little do my countrymen know what precious blessings they are in possession of, and which no other people on earth enjoy!"

THE EVIDENCE TO CONSIDER

We began this course by stating that "the business of Bail Bonding has been in existence for over four thousand years. Writings found in the Old Testament, in both Jewish and Christian Scriptures!" And, yes, there are many evidences that our great nation was founded on a commitment to God and His Holy Prindiples.

Let us conclude our study by recalling the exactness of our history…let us be proud to serve our fellow men and women as professional Surety Bail Bond Agents in the State of Ohio…

In the summer of 1787, representatives met in Philadelphia to write the *Constitution of the United States.* After they had struggled for several weeks and had made little or no progress, eighty-one year old Benjamin Franklin rose and addressed the troubled and disagreeing convention that was bout to adjourn in confusion.

"In the beginning of the contest with Britain, when we were sensible of danger, we had daily prayers in this room for Divine protection. Our prayers, Sir, were heard and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of superintending Providence in our favor…Have we now forgotten t his powerful Friend? Or, do we imagine we no longer need His assistance?"

"I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth: that God governs in the affairs of man. And if a sparrow cannot fall to the ground without His notice, is it profitable that an empire can rise without His aid? We have been assured, Sir, in the Sacred Writings that except the Lord build the house, they labor in vain that build it. I firmly believe this…"

"I therefore beg leave to move that, henceforth, prayers imploring the assistance of Heaven and its blessings on our deliberation be held I this assembly every morning."
The very purpose of the Pilgrims in 1620 was to establish a government based on Holy Scripture. The New England Charter, signed by King James I, confirmed this goal: "…to advance the enlargement of…religion, to the glory of God Almighty…"

Governor Bradford, in writing of the Prilgrims' landing, describes their first act: "being thus arrived in good harbor and brought safe to land, they fell upon their knees and blessed the God of Heaven…"

Confirmed by the Colonies.

The goal of government based on Holy Scripture was further reaffirmed by individual colonies such as The Rhode Island Charter of 1683 which begins: "We submit our persons, lives and

estates unto our Lord…the King of kings and Lord of lords and to all those perfect and most absolute laws of His given us in His Holy Word."

Those "absolute laws" became the basis of our *Declaration of Independence,* which includes in its first paragraph an appeal to the laws of nature and of nature's God. Our national Constitution established a republic upon the "absolute laws" of the Holy Scripture, not a democracy based on the changing whims of people.

Reaffirmed by the Presidents of the United States.

In his inaugural address to Congress, the first president of our nation stressed God's role in the birth of this republic:

"No people can be bound to acknowledge and adore the invisible hand which conducts the affairs of men more that the people of the United States. Every step by which they have advanced to the character of an independent nation seems to have been distinguished by some token of providential agency…We ought to be no less persuaded that the propitious smiles of heaven cannot be expected on a nation that disregards the eternal rules of order and right, which heaven itself has ordained."

One of President George Washington's early official acts was the first Thanksgiving Proclamation, which reads, "Whereas it is the duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly implore His protection and favor…" It goes on to call the nation to thankfulness to Almighty God.

Continuing through the decades of history, we find in the inaugural addresses of all the Presidents, and in the Constitutions of all fifty of our states, without exception, references to the Almighty God of the Universe, the Author and Sustainer of our liberty!

Observed by Renowned American Historians.

The principles of God's Word guided the decisions on which this nations build its foundation. This was the discovery of Alex DeTocqueville, the noted French political philosopher of the nineteenth century. He visited America in her infancy to find the secret of her greatness. As he traveled from town to town, he talked with people and asked questions. He examined our young national government, our schools and centers of business, but could not find in them the reason for our strength.

Not until he visited the synagogues and churches of America and witnessed the pulpits of this land "aflame with righteousness" did he find the secret of our greatness. Returning to France, he summarized his findings:

"America is great because America is good; and if America ever ceases to be good, America will cease to be great."

Throughout our history, our forefathers have given eloquent testimony of our commitment to God and His principles:

"It is the duly of nations, as well as of men, to own their dependence upon the overruling power of God and to recognize the sublime truth announced in the Holy Scriptures and proven by all history, that those nations only are blessed whose God is the Lord." -- Abraham Lincoln

"The religion which has introduced civil liberty…to this we owe our free constitutions of government. The moral principles and precepts contained in the Scriptures ought to form the basis of all our civil constitutions and laws. All the miseries and evils which men suffer from vice, crime, ambition, injustice, oppression, slavery, and war, proceed from their despising or neglecting the precepts contained in Holy Scripture." -- Noah Webster

Finally…

The concluding words of our National Anthem summarize the fact that the United States of America was born out of a commitment to God and His principles.

"Blessed with victory and peace, may this Heav'n-rescued land; Praise the Power that hath made and preserved us a nation!

The conquer we must, when our cause it is just; And this be our motto: 'In God is our trust!'

And the star-spangled banner in triumph shall wave; O'er the land of the free, and the home of the brave."

CODE OF ETHICS

Relations with the Client:

Article 1.

In justice to those who place their faith, confidence, interests in the Bondsman should endeavor constantly to be informed of current laws, proposed legislation, Governmental orders or regulations, and other significant information and public policies which may affect the interests of the client.

Article 2.

The Bondsman should make a constant practice of full and complete disclosure to all parties, be they principal or indemnitor, of any and all possible liabilities, penalties, or detriments which may arise from their involvement in that particular undertaking which secures the release from custody of a person who is charged with a criminal offense.

Article 3.

The Bondsman should not, prior to forfeiture or breach, arrest or surrender any principal and thereby terminate his release from Governmental custody unless the Agent can materially show good cause for such action. Such good cause should reasonably take the form of judicial action, information concealed, or misrepresented or the renunciation of an indemnitor or the principal any of which may be considered material to the risk assumed by the Bondsman.

Article 4.

The Bondsman, upon receipt of notice of forfeiture or breach where notice is required or personal knowledge of forfeiture or breach, should promptly and formally notify any and all indemnitors and real parties of interest of the forfeiture or breach by the principal. The Bondsman should concisely state the liability thereby incurred or pending at that time.

Article 5.

The Bondsman should supply all indemnitors to an undertaking with a true copy of any document representing a binding legal contract to which he or she is to be or is being committed.

Article 6.

When an examination of the material factors of a potential undertaking reasonably convinces a Bondsman that he or she will be unable to undertake that particular bail relationship, the Bondsman should immediately inform all involved parties that he or she will not be able to secure the release of the defendant so that the defendant or his or her affiliates may promptly seek his or her release by another means.

Article 7.

Every Bondsman should comply in full with the laws and regulations governing the transaction of bail in his or her state. Such compliance must necessarily include those matters dealing with the trust and fiduciary relationship as it relates to monies and properties which may secure an undertaking. The highest moral and ethical practice should be maintained when entering into a trust or fiduciary relationship.

Relations with the General Public:

Article 8.

The Bondsman should keep themselves informed as to movements affecting the criminal justice system in his or her community, state, and the nation so that he or she may be able to constructively contribute to public thinking in matters of legislation, expenditures, public safety, and other questions dealing with the welfare of the general public. The Bondsman shall strive to find more effective means of fighting crime.

Article 9.

It is the paramount duty of the Bondsman to protect the general public against misrepresentations or unethical business practices in the bail industry. He or she should endeavor to eliminate in their community any practices which could be damaging to the public or to the dignity and integrity of the bail industry. The Bondsman should assist any regulatory agency or business practices review board charged with regulating the practices of the members of the bail industry.

Article 10.

The Bondsman should not, except as provided by law, engage in activities that constitute the practice of law and should refrain from making comments and representations which may lead the public to believe that the Bondsman is practicing law.

Relations with the Courts and Legal System:

Article 11.

The Bondsman, with due regard for the special position of responsibility and trust that this profession places an Agent in, should assist and cooperate with the judiciary, law enforcement agencies, and public prosecutors in the orderly administration of justice, so long as such assistance or cooperation does not compromise the honesty and integrity of the Bondsman or of the public officer.

Article 12.

Unless compelled to do so by law or by court order, the Bondsman should not divulge or disclose to any person or agency personal information regarding the principal or indemnitor of any undertaking which has not been forfeited or breached. The inherent right to privacy of the individual and the position of trust of the Bondsman demand compliance with this concept.

Article 13.

The Bondsman should make great efforts to verify and confirm any information which he or she may give to a court, law enforcement agency or any other public agency. Failure to do so, or an intentional misrepresentation of a fact to any one of the entities, must be construed as a breach of the fundamental relationship of trust between the Bondsman and the Governmental system.

Relations with Fellow Surety Bail Bond Agents:

Article 14.

The Bondsman shall not conspire with other Bondsmen to regulate rates or restrict trade within the Bonding Profession.

Article 15.

The Bondsman should so conduct his or her business as to avoid controversies and conflicts with his or her fellow Bondsmen and should not voluntarily disparage the business practice of a competitor or volunteer an opinion of a competitor's transaction. If his or her opinion is sought, it should be rendered with strict professional integrity and courtesy.

Article 16.

The Bondsman should seek no unfair advantage over his or her fellow Bondsmen, and should willingly share with them the lessons of his or her experience and study. The Bondsman should also inform his or her fellow Bondsmen of established hazards involving a prospective client if such hazards exist. (NOTE: Among Bondsmen within his/her own agency)

Article 17.

If a Bondsman is charged with unethical business practices by a Government regulatory agency or by a grievance committee comprised of his or her peers, the Agent should place all pertinent facts and rebuttal before the accusatory body promptly and voluntarily for investigation and judgment.

Article 18.

The Bondsman should constantly strive for the highest degree of attainable professionalism. This should be expected and demanded from all Bondsmen and by all those persons involved in the bonding industry, regardless of position.

Article 19.

The Bondsman should make extensive effort to support, contribute to, and participate in local, statewide, and national Bondsman associations whose goals are to preserve and enhance the integrity, quality, and honor of the bonding industry.

Concluding Sanction:

The Articles of the Code of Ethics are combined to guarantee high integrity and dignified professionalism from those who adhere to the principles of business and moral conduct outlined within. No inducement of profit and no instructions from clients or outside parties can ever justify departure from these principles or from the injunction of this Code of Ethics.

(Please See the Attached Addendums Below)

24 OCTOBER 2012

ADDENDUMS ALL BAIL BOND AGENTS SHOULD BE AWARE OF

* * *

FOR YOUR INFORMATION…

FROM THE 2010 "OHIO DEPARTMENT OF INSURANCE TRANSITION MANUAL"

SECTION 9 – ACCOMPLISHMENTS DURING STRICKLAND ADMINISTRATION

9.3 Creating and Retaining Jobs, Preparing Workers & Accelerating the Economy

9.3.6 Bail Bond Agents

"Over the past four years, the Department has outreached to the Ohio bail industry. We began holding joint meetings between the Department and the Ohio Bail Agent Association (OBAA) two times per year to discuss industry issues and concerns. The Department added a link to the OBAA website to our website. The Department also sought input from the OBAA and other bail industry entities when drafting proposed rules for the Ohio Administrative Code and changes to the Ohio Revised Code sections dealing with the bail bond industry"

"The Department **facilitated a partnership between the OBAA** and the Common Pleas and Municipal Courts systems of Ohio to change the Bail Court registration requirement statute so that all stake holders agreed on a proper process. Staff members of the Department spoke with members of the bail industry, the Courts, and the Ohio Clerks throughout the state on bail issues on several occasions. The Department purchased undercover equipment for use in courthouses to view bail bond activity and we have increased our penalties on all bail bond infractions including

solicitation. **The Department also created posters and distributed them to Common Pleas and**

Municipal Court buildings to warn of illegal bond activities and how to report illegal activity. The Department is now reviewing all major market courts in an effort to prevent abuse of the bail

system. Hearings and prosecutions have increased in this area with the full support of the industry."

"The Department issued a rule designed to clarify appropriate surety bail bond agent conduct in Ohio in order to improve the integrity of this insurance market. The rule, 3901-1-66, was written **in collaboration with the Ohio Bail Agents Association (OBAA)**, with input being received from the Ohio Association of Municipal Court Clerks, the Ohio Clerk of Courts Association, and the Ohio Association for Court Administration. The rule clears up confusion that bail bond agents may have when it comes to selling their products to Ohioans and assure that such sales are conducted fairly and in accordance with Ohio Law."

(Important note regarding Rules and possible Rule revision: the OBAA IS NOT the OSBBA, Ohio State Bail Bond Association, who provides this Continuing Education Course for you!)

DRAFT OF UPCOMING RULE REVISIONS

PROMULGATED PURSUANT TO THE AUTHORITY VESTED IN THE SUPERINTENDENT UNDER SECTIONS 3901.041 AND 3905.95 OF THE O.R.C.

*** * * NOT YET FILED * * ***

Ohio Revised Code
§ 3901-1-66

(J) Prohibited Acts

(1) A surety bail bond agent shall not post any type of court bond on behalf of a person without using a bail instrument representing and insurer; except for a cash, property court bond, or ten per cent court bond requiring a payment of ten per cent of the face amount of the bond to the court if the surety bail bond agent:

(a) Discloses in writing that this is signed and dated by the client that the bail bond agent is posting the bond amount directly with the court, that the client could post the bond directly with the court themselves, and the amount that will be returned by the court after the completion of the hearing and that further defines the dollar amount the bail bond agent will receive to post the bond as a posting fee which is compliant with section 3905.55 of the Revised Code; and

(b) Returns all funds received back from the court to the client which is acknowledged by a signed receipt from the client.

(2) If less than one-hundred per cent of the charged filed rate of premium is collected on a surety bail bond at the time the bond is posted, the surety bail bond agent must document all collection efforts and further provide documentation to the underwriting company of all amounts that remain uncollected one-hundred-eighty days after the bond is posted with the court.

(3) All surety bail bond agents shall maintain the disclosures, receipts, bond paperwork, and notifications required by paragraph (J) of this rule pursuant to section 3905.90 of the Revised Code.

(K) Severability

If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.

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