

I\_132\_0252-1

132nd General Assembly  
Regular Session  
2017-2018

Sub. H. B. No. 68

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**A BILL**

To amend sections 2907.08, 2907.321, 2907.322, 1  
2907.323, and 2929.13 of the Revised Code to 2  
include an impaired person as a victim of 3  
voyeurism and to include conduct involving an 4  
impaired person within the offenses of pandering 5  
obscenity involving a minor, pandering sexually 6  
oriented matter involving a minor, and illegal 7  
use of a minor in a nudity-oriented material or 8  
performance. 9

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

**Section 1.** That sections 2907.08, 2907.321, 2907.322, 10  
2907.323, and 2929.13 of the Revised Code be amended to read as 11  
follows: 12

**Sec. 2907.08.** (A) No person, for the purpose of sexually 13  
arousing or gratifying the person's self, shall commit trespass 14  
or otherwise surreptitiously invade the privacy of another, to 15  
spy or eavesdrop upon another. 16

(B) No person, for the purpose of sexually arousing or 17  
gratifying the person's self, shall commit trespass or otherwise 18  
surreptitiously invade the privacy of another to videotape, 19



film, photograph, or otherwise record the other person in a 20  
state of nudity. 21

(C) No person, for the purpose of sexually arousing or 22  
gratifying the person's self, shall commit trespass or otherwise 23  
surreptitiously invade the privacy of another to videotape, 24  
film, photograph, otherwise record, or spy or eavesdrop upon the 25  
other person in a state of nudity if the other person is a minor 26  
or an impaired person. 27

(D) No person shall secretly or surreptitiously videotape, 28  
film, photograph, or otherwise record another person under or 29  
through the clothing being worn by that other person for the 30  
purpose of viewing the body of, or the undergarments worn by, 31  
that other person. 32

(E) (1) Whoever violates this section is guilty of 33  
voyeurism. 34

(2) A violation of division (A) of this section is a 35  
misdemeanor of the third degree. 36

(3) A violation of division (B) of this section is a 37  
misdemeanor of the second degree. 38

(4) A violation of division (D) of this section is a 39  
misdemeanor of the first degree. 40

(5) A violation of division (C) of this section is a 41  
felony of the fifth degree. 42

(G) As used in this section, "impaired person" has the 43  
same meaning as in section 2907.321 of the Revised Code. 44

**Sec. 2907.321.** (A) No person, with knowledge of the 45  
character of the material or performance involved, shall do any 46  
of the following: 47

(1) Create, reproduce, or publish any obscene material 48  
that has a minor or impaired person as one of its participants 49  
or portrayed observers; 50

(2) Promote or advertise for sale or dissemination; sell, 51  
deliver, disseminate, display, exhibit, present, rent, or 52  
provide; or offer or agree to sell, deliver, disseminate, 53  
display, exhibit, present, rent, or provide, any obscene 54  
material that has a minor or impaired person as one of its 55  
participants or portrayed observers; 56

(3) Create, direct, or produce an obscene performance that 57  
has a minor or impaired person as one of its participants; 58

(4) Advertise or promote for presentation, present, or 59  
participate in presenting an obscene performance that has a 60  
minor or impaired person as one of its participants; 61

(5) Buy, procure, possess, or control any obscene 62  
material, that has a minor or impaired person as one of its 63  
participants; 64

(6) Bring or cause to be brought into this state any 65  
obscene material that has a minor or impaired person as one of 66  
its participants or portrayed observers. 67

(B) (1) This section does not apply to any material or 68  
performance that is sold, disseminated, displayed, possessed, 69  
controlled, brought or caused to be brought into this state, or 70  
presented for a bona fide medical, scientific, educational, 71  
religious, governmental, judicial, or other proper purpose, by 72  
or to a physician, psychologist, sociologist, scientist, 73  
teacher, person pursuing bona fide studies or research, 74  
librarian, ~~clergyman~~ member of the clergy, prosecutor, judge, or 75  
other person having a proper interest in the material or 76

performance. 77

(2) Mistake of age is not a defense to a charge under this 78  
section. 79

(3) In a prosecution under this section, the trier of fact 80  
may infer that a person in the material or performance involved 81  
is a minor or impaired person if the material or performance, 82  
through its title, text, visual representation, or otherwise, 83  
represents or depicts the person as a minor or impaired person. 84

(C) Whoever violates this section is guilty of pandering 85  
obscenity involving a minor or impaired person. Violation of 86  
division (A)(1), (2), (3), (4), or (6) of this section is a 87  
felony of the second degree. Violation of division (A)(5) of 88  
this section is a felony of the fourth degree. If the offender 89  
previously has been convicted of or pleaded guilty to a 90  
violation of this section or section 2907.322 or 2907.323 of the 91  
Revised Code, pandering obscenity involving a minor or impaired 92  
person in violation of division (A)(5) of this section is a 93  
felony of the third degree. 94

(D) As used in this section and sections 2907.322 and 95  
2907.323 of the Revised Code, "impaired person" means a person 96  
whose ability to resist or consent is substantially impaired 97  
because of a mental or physical condition or because of advanced 98  
age, and the offender knows or has reasonable cause to believe 99  
that the other person's ability to resist or consent is 100  
substantially impaired because of a mental or physical condition 101  
or because of advanced age. 102

**Sec. 2907.322.** (A) No person, with knowledge of the 103  
character of the material or performance involved, shall do any 104  
of the following: 105

- (1) Create, record, photograph, film, develop, reproduce, 106  
or publish any material that shows a minor or impaired person 107  
participating or engaging in sexual activity, masturbation, or 108  
bestiality; 109
- (2) Advertise for sale or dissemination, sell, distribute, 110  
transport, disseminate, exhibit, or display any material that 111  
shows a minor or impaired person participating or engaging in 112  
sexual activity, masturbation, or bestiality; 113
- (3) Create, direct, or produce a performance that shows a 114  
minor or impaired person participating or engaging in sexual 115  
activity, masturbation, or bestiality; 116
- (4) Advertise for presentation, present, or participate in 117  
presenting a performance that shows a minor or impaired person 118  
participating or engaging in sexual activity, masturbation, or 119  
bestiality; 120
- (5) Knowingly solicit, receive, purchase, exchange, 121  
possess, or control any material that shows a minor or impaired 122  
person participating or engaging in sexual activity, 123  
masturbation, or bestiality; 124
- (6) Bring or cause to be brought into this state any 125  
material that shows a minor or impaired person participating or 126  
engaging in sexual activity, masturbation, or bestiality, ~~or~~ 127  
~~bring~~; 128
- (7) Bring, cause to be brought, or finance the bringing of 129  
any minor into or across this state with the intent that the 130  
minor engage in sexual activity, masturbation, or bestiality in 131  
a performance or for the purpose of producing material 132  
containing a visual representation depicting the minor engaged 133  
in sexual activity, masturbation, or bestiality. 134

(B) (1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, ~~clergyman~~ member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor or impaired person if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor or impaired person.

(C) Whoever violates this section is guilty of pandering sexually oriented matter involving a minor or impaired person. Violation of division (A) (1), (2), (3), (4), ~~or (6)~~, or (7) of this section is a felony of the second degree. Violation of division (A) (5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.321 or 2907.323 of the Revised Code, pandering sexually oriented matter involving a minor or impaired person in violation of division (A) (5) of this section is a felony of the third degree.

**Sec. 2907.323.** (A) No person shall do any of the following:

(1) Photograph any minor or impaired person who is not the person's child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor or impaired person in a state of nudity, unless both of the following apply:

(a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;

(b) The minor's or impaired person's parents, guardian, or custodian consents in writing to the photographing of the minor or impaired person, to the use of the minor or impaired person in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

(2) Consent to the photographing of the person's ~~minor~~ child or ward who is a minor or impaired person, or photograph the person's ~~minor~~ child or ward who is a minor or impaired person, in a state of nudity or consent to the use of the person's ~~minor~~ child or ward who is a minor or impaired person in a state of nudity in any material or performance, or use or transfer a material or performance of that nature, unless the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical,

scientific, educational, religious, governmental, judicial, or 195  
other proper purpose, by or to a physician, psychologist, 196  
sociologist, scientist, teacher, person pursuing bona fide 197  
studies or research, librarian, member of the clergy, 198  
prosecutor, judge, or other person having a proper interest in 199  
the material or performance; 200

(3) Possess or view any material or performance that shows 201  
a minor or impaired person who is not the person's child or ward 202  
in a state of nudity, unless one of the following applies: 203

(a) The material or performance is sold, disseminated, 204  
displayed, possessed, controlled, brought or caused to be 205  
brought into this state, or presented for a bona fide artistic, 206  
medical, scientific, educational, religious, governmental, 207  
judicial, or other proper purpose, by or to a physician, 208  
psychologist, sociologist, scientist, teacher, person pursuing 209  
bona fide studies or research, librarian, member of the clergy, 210  
prosecutor, judge, or other person having a proper interest in 211  
the material or performance. 212

(b) The person knows that the minor's or impaired person's 213  
parents, guardian, or custodian has consented in writing to the 214  
photographing or use of the minor or impaired person in a state 215  
of nudity and to the manner in which the material or performance 216  
is used or transferred. 217

(B) Whoever violates this section is guilty of illegal use 218  
of a minor or impaired person in a nudity-oriented material or 219  
performance. Whoever violates division (A) (1) or (2) of this 220  
section is guilty of a felony of the second degree. Except as 221  
otherwise provided in this division, whoever violates division 222  
(A) (3) of this section is guilty of a felony of the fifth 223  
degree. If the offender previously has been convicted of or 224

pleaded guilty to a violation of this section or section 225  
2907.321 or 2907.322 of the Revised Code, illegal use of a minor 226  
or impaired person in a nudity-oriented material or performance 227  
in violation of division (A) (3) of this section is a felony of 228  
the fourth degree. If the offender who violates division (A) (1) 229  
or (2) of this section also is convicted of or pleads guilty to 230  
a specification as described in section 2941.1422 of the Revised 231  
Code that was included in the indictment, count in the 232  
indictment, or information charging the offense, the court shall 233  
sentence the offender to a mandatory prison term as provided in 234  
division (B) (7) of section 2929.14 of the Revised Code and shall 235  
order the offender to make restitution as provided in division 236  
(B) (8) of section 2929.18 of the Revised Code. 237

**Sec. 2929.13.** (A) Except as provided in division (E), (F), 238  
or (G) of this section and unless a specific sanction is 239  
required to be imposed or is precluded from being imposed 240  
pursuant to law, a court that imposes a sentence upon an 241  
offender for a felony may impose any sanction or combination of 242  
sanctions on the offender that are provided in sections 2929.14 243  
to 2929.18 of the Revised Code. 244

If the offender is eligible to be sentenced to community 245  
control sanctions, the court shall consider the appropriateness 246  
of imposing a financial sanction pursuant to section 2929.18 of 247  
the Revised Code or a sanction of community service pursuant to 248  
section 2929.17 of the Revised Code as the sole sanction for the 249  
offense. Except as otherwise provided in this division, if the 250  
court is required to impose a mandatory prison term for the 251  
offense for which sentence is being imposed, the court also 252  
shall impose any financial sanction pursuant to section 2929.18 253  
of the Revised Code that is required for the offense and may 254  
impose any other financial sanction pursuant to that section but 255

may not impose any additional sanction or combination of 256  
sanctions under section 2929.16 or 2929.17 of the Revised Code. 257

If the offender is being sentenced for a fourth degree 258  
felony OVI offense or for a third degree felony OVI offense, in 259  
addition to the mandatory term of local incarceration or the 260  
mandatory prison term required for the offense by division (G) 261  
(1) or (2) of this section, the court shall impose upon the 262  
offender a mandatory fine in accordance with division (B) (3) of 263  
section 2929.18 of the Revised Code and may impose whichever of 264  
the following is applicable: 265

(1) For a fourth degree felony OVI offense for which 266  
sentence is imposed under division (G) (1) of this section, an 267  
additional community control sanction or combination of 268  
community control sanctions under section 2929.16 or 2929.17 of 269  
the Revised Code. If the court imposes upon the offender a 270  
community control sanction and the offender violates any 271  
condition of the community control sanction, the court may take 272  
any action prescribed in division (B) of section 2929.15 of the 273  
Revised Code relative to the offender, including imposing a 274  
prison term on the offender pursuant to that division. 275

(2) For a third or fourth degree felony OVI offense for 276  
which sentence is imposed under division (G) (2) of this section, 277  
an additional prison term as described in division (B) (4) of 278  
section 2929.14 of the Revised Code or a community control 279  
sanction as described in division (G) (2) of this section. 280

(B) (1) (a) Except as provided in division (B) (1) (b) of this 281  
section, if an offender is convicted of or pleads guilty to a 282  
felony of the fourth or fifth degree that is not an offense of 283  
violence or that is a qualifying assault offense, the court 284  
shall sentence the offender to a community control sanction of 285

at least one year's duration if all of the following apply:	286
(i) The offender previously has not been convicted of or pleaded guilty to a felony offense.	287 288
(ii) The most serious charge against the offender at the time of sentencing is a felony of the fourth or fifth degree.	289 290
(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.	291 292 293 294 295 296 297
(iv) The offender previously has not been convicted of or pleaded guilty to a misdemeanor offense of violence that the offender committed within two years prior to the offense for which sentence is being imposed.	298 299 300 301
(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 or that is a qualifying assault offense if any of the following apply:	302 303 304 305 306
(i) The offender committed the offense while having a firearm on or about the offender's person or under the offender's control.	307 308 309
(ii) If the offense is a qualifying assault offense, the offender caused serious physical harm to another person while committing the offense, and, if the offense is not a qualifying assault offense, the offender caused physical harm to another person while committing the offense.	310 311 312 313 314

- (iii) The offender violated a term of the conditions of bond as set by the court. 315  
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- (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. 317  
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- (v) The offense is a sex offense that is a fourth or fifth degree felony violation of any provision of Chapter 2907. of the Revised Code. 324  
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- (vi) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon. 327  
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- (vii) 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. 330  
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- (viii) 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. 334  
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- (ix) The offender committed the offense for hire or as part of an organized criminal activity. 340  
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- (x) The offender at the time of the offense was serving, or the offender previously had served, a prison term. 342  
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(xi) The offender committed the offense while under a 344  
community control sanction, while on probation, or while 345  
released from custody on a bond or personal recognizance. 346

(c) If a court that is sentencing an offender who is 347  
convicted of or pleads guilty to a felony of the fourth or fifth 348  
degree that is not an offense of violence or that is a 349  
qualifying assault offense believes that no community control 350  
sanctions are available for its use that, if imposed on the 351  
offender, will adequately fulfill the overriding principles and 352  
purposes of sentencing, the court shall contact the department 353  
of rehabilitation and correction and ask the department to 354  
provide the court with the names of, contact information for, 355  
and program details of one or more community control sanctions 356  
of at least one year's duration that are available for persons 357  
sentenced by the court. Not later than forty-five days after 358  
receipt of a request from a court under this division, the 359  
department shall provide the court with the names of, contact 360  
information for, and program details of one or more community 361  
control sanctions of at least one year's duration that are 362  
available for persons sentenced by the court, if any. Upon 363  
making a request under this division that relates to a 364  
particular offender, a court shall defer sentencing of that 365  
offender until it receives from the department the names of, 366  
contact information for, and program details of one or more 367  
community control sanctions of at least one year's duration that 368  
are available for persons sentenced by the court or for forty- 369  
five days, whichever is the earlier. 370

If the department provides the court with the names of, 371  
contact information for, and program details of one or more 372  
community control sanctions of at least one year's duration that 373  
are available for persons sentenced by the court within the 374

forty-five-day period specified in this division, the court 375  
shall impose upon the offender a community control sanction 376  
under division (B) (1) (a) of this section, except that the court 377  
may impose a prison term under division (B) (1) (b) of this 378  
section if a factor described in division (B) (1) (b) (i) or (ii) 379  
of this section applies. If the department does not provide the 380  
court with the names of, contact information for, and program 381  
details of one or more community control sanctions of at least 382  
one year's duration that are available for persons sentenced by 383  
the court within the forty-five-day period specified in this 384  
division, the court may impose upon the offender a prison term 385  
under division (B) (1) (b) (iv) of this section. 386

(d) A sentencing court may impose an additional penalty 387  
under division (B) of section 2929.15 of the Revised Code upon 388  
an offender sentenced to a community control sanction under 389  
division (B) (1) (a) of this section if the offender violates the 390  
conditions of the community control sanction, violates a law, or 391  
leaves the state without the permission of the court or the 392  
offender's probation officer. 393

(2) If division (B) (1) of this section does not apply, 394  
except as provided in division (E), (F), or (G) of this section, 395  
in determining whether to impose a prison term as a sanction for 396  
a felony of the fourth or fifth degree, the sentencing court 397  
shall comply with the purposes and principles of sentencing 398  
under section 2929.11 of the Revised Code and with section 399  
2929.12 of the Revised Code. 400

(C) Except as provided in division (D), (E), (F), or (G) 401  
of this section, in determining whether to impose a prison term 402  
as a sanction for a felony of the third degree or a felony drug 403  
offense that is a violation of a provision of Chapter 2925. of 404

the Revised Code and that is specified as being subject to this 405  
division for purposes of sentencing, the sentencing court shall 406  
comply with the purposes and principles of sentencing under 407  
section 2929.11 of the Revised Code and with section 2929.12 of 408  
the Revised Code. 409

(D) (1) Except as provided in division (E) or (F) of this 410  
section, for a felony of the first or second degree, for a 411  
felony drug offense that is a violation of any provision of 412  
Chapter 2925., 3719., or 4729. of the Revised Code for which a 413  
presumption in favor of a prison term is specified as being 414  
applicable, and for a violation of division (A) (4) or (B) of 415  
section 2907.05 of the Revised Code for which a presumption in 416  
favor of a prison term is specified as being applicable, it is 417  
presumed that a prison term is necessary in order to comply with 418  
the purposes and principles of sentencing under section 2929.11 419  
of the Revised Code. Division (D) (2) of this section does not 420  
apply to a presumption established under this division for a 421  
violation of division (A) (4) of section 2907.05 of the Revised 422  
Code. 423

(2) Notwithstanding the presumption established under 424  
division (D) (1) of this section for the offenses listed in that 425  
division other than a violation of division (A) (4) or (B) of 426  
section 2907.05 of the Revised Code, the sentencing court may 427  
impose a community control sanction or a combination of 428  
community control sanctions instead of a prison term on an 429  
offender for a felony of the first or second degree or for a 430  
felony drug offense that is a violation of any provision of 431  
Chapter 2925., 3719., or 4729. of the Revised Code for which a 432  
presumption in favor of a prison term is specified as being 433  
applicable if it makes both of the following findings: 434

(a) A community control sanction or a combination of 435  
community control sanctions would adequately punish the offender 436  
and protect the public from future crime, because the applicable 437  
factors under section 2929.12 of the Revised Code indicating a 438  
lesser likelihood of recidivism outweigh the applicable factors 439  
under that section indicating a greater likelihood of 440  
recidivism. 441

(b) A community control sanction or a combination of 442  
community control sanctions would not demean the seriousness of 443  
the offense, because one or more factors under section 2929.12 444  
of the Revised Code that indicate that the offender's conduct 445  
was less serious than conduct normally constituting the offense 446  
are applicable, and they outweigh the applicable factors under 447  
that section that indicate that the offender's conduct was more 448  
serious than conduct normally constituting the offense. 449

(E) (1) Except as provided in division (F) of this section, 450  
for any drug offense that is a violation of any provision of 451  
Chapter 2925. of the Revised Code and that is a felony of the 452  
third, fourth, or fifth degree, the applicability of a 453  
presumption under division (D) of this section in favor of a 454  
prison term or of division (B) or (C) of this section in 455  
determining whether to impose a prison term for the offense 456  
shall be determined as specified in section 2925.02, 2925.03, 457  
2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 458  
2925.36, or 2925.37 of the Revised Code, whichever is applicable 459  
regarding the violation. 460

(2) If an offender who was convicted of or pleaded guilty 461  
to a felony violates the conditions of a community control 462  
sanction imposed for the offense solely by reason of producing 463  
positive results on a drug test or by acting pursuant to 464

division (B) (2) (b) of section 2925.11 of the Revised Code with 465  
respect to a minor drug possession offense, the court, as 466  
punishment for the violation of the sanction, shall not order 467  
that the offender be imprisoned unless the court determines on 468  
the record either of the following: 469

(a) The offender had been ordered as a sanction for the 470  
felony to participate in a drug treatment program, in a drug 471  
education program, or in narcotics anonymous or a similar 472  
program, and the offender continued to use illegal drugs after a 473  
reasonable period of participation in the program. 474

(b) The imprisonment of the offender for the violation is 475  
consistent with the purposes and principles of sentencing set 476  
forth in section 2929.11 of the Revised Code. 477

(3) A court that sentences an offender for a drug abuse 478  
offense that is a felony of the third, fourth, or fifth degree 479  
may require that the offender be assessed by a properly 480  
credentialed professional within a specified period of time. The 481  
court shall require the professional to file a written 482  
assessment of the offender with the court. If the offender is 483  
eligible for a community control sanction and after considering 484  
the written assessment, the court may impose a community control 485  
sanction that includes addiction services and recovery supports 486  
included in a community-based continuum of care established 487  
under section 340.032 of the Revised Code. If the court imposes 488  
addiction services and recovery supports as a community control 489  
sanction, the court shall direct the level and type of addiction 490  
services and recovery supports after considering the assessment 491  
and recommendation of community addiction services providers. 492

(F) Notwithstanding divisions (A) to (E) of this section, 493  
the court shall impose a prison term or terms under sections 494

2929.02 to 2929.06, section 2929.14, section 2929.142, or 495  
section 2971.03 of the Revised Code and except as specifically 496  
provided in section 2929.20, divisions (C) to (I) of section 497  
2967.19, or section 2967.191 of the Revised Code or when parole 498  
is authorized for the offense under section 2967.13 of the 499  
Revised Code shall not reduce the term or terms pursuant to 500  
section 2929.20, section 2967.19, section 2967.193, or any other 501  
provision of Chapter 2967. or Chapter 5120. of the Revised Code 502  
for any of the following offenses: 503

(1) Aggravated murder when death is not imposed or murder; 504

(2) Any rape, regardless of whether force was involved and 505  
regardless of the age of the victim, or an attempt to commit 506  
rape if, had the offender completed the rape that was attempted, 507  
the offender would have been guilty of a violation of division 508  
(A) (1) (b) of section 2907.02 of the Revised Code and would be 509  
sentenced under section 2971.03 of the Revised Code; 510

(3) Gross sexual imposition or sexual battery, if the 511  
victim is less than thirteen years of age and if any of the 512  
following applies: 513

(a) Regarding gross sexual imposition, the offender 514  
previously was convicted of or pleaded guilty to rape, the 515  
former offense of felonious sexual penetration, gross sexual 516  
imposition, or sexual battery, and the victim of the previous 517  
offense was less than thirteen years of age; 518

(b) Regarding gross sexual imposition, the offense was 519  
committed on or after August 3, 2006, and evidence other than 520  
the testimony of the victim was admitted in the case 521  
corroborating the violation. 522

(c) Regarding sexual battery, either of the following 523

applies: 524

(i) The offense was committed prior to August 3, 2006, the 525  
offender previously was convicted of or pleaded guilty to rape, 526  
the former offense of felonious sexual penetration, or sexual 527  
battery, and the victim of the previous offense was less than 528  
thirteen years of age. 529

(ii) The offense was committed on or after August 3, 2006. 530

(4) A felony violation of section 2903.04, 2903.06, 531  
2903.08, 2903.11, 2903.12, 2903.13, 2905.32, 2907.07, 2921.321, 532  
or 2923.132 of the Revised Code if the section requires the 533  
imposition of a prison term; 534

(5) A first, second, or third degree felony drug offense 535  
for which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 536  
2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, 537  
or 4729.99 of the Revised Code, whichever is applicable 538  
regarding the violation, requires the imposition of a mandatory 539  
prison term; 540

(6) Any offense that is a first or second degree felony 541  
and that is not set forth in division (F)(1), (2), (3), or (4) 542  
of this section, if the offender previously was convicted of or 543  
pleaded guilty to aggravated murder, murder, any first or second 544  
degree felony, or an offense under an existing or former law of 545  
this state, another state, or the United States that is or was 546  
substantially equivalent to one of those offenses; 547

(7) Any offense that is a third degree felony and either 548  
is a violation of section 2903.04 of the Revised Code or an 549  
attempt to commit a felony of the second degree that is an 550  
offense of violence and involved an attempt to cause serious 551  
physical harm to a person or that resulted in serious physical 552

harm to a person if the offender previously was convicted of or 553  
pleaded guilty to any of the following offenses: 554

(a) Aggravated murder, murder, involuntary manslaughter, 555  
rape, felonious sexual penetration as it existed under section 556  
2907.12 of the Revised Code prior to September 3, 1996, a felony 557  
of the first or second degree that resulted in the death of a 558  
person or in physical harm to a person, or complicity in or an 559  
attempt to commit any of those offenses; 560

(b) An offense under an existing or former law of this 561  
state, another state, or the United States that is or was 562  
substantially equivalent to an offense listed in division (F) (7) 563  
(a) of this section that resulted in the death of a person or in 564  
physical harm to a person. 565

(8) Any offense, other than a violation of section 2923.12 566  
of the Revised Code, that is a felony, if the offender had a 567  
firearm on or about the offender's person or under the 568  
offender's control while committing the felony, with respect to 569  
a portion of the sentence imposed pursuant to division (B) (1) (a) 570  
of section 2929.14 of the Revised Code for having the firearm; 571

(9) Any offense of violence that is a felony, if the 572  
offender wore or carried body armor while committing the felony 573  
offense of violence, with respect to the portion of the sentence 574  
imposed pursuant to division (B) (1) (d) of section 2929.14 of the 575  
Revised Code for wearing or carrying the body armor; 576

(10) Corrupt activity in violation of section 2923.32 of 577  
the Revised Code when the most serious offense in the pattern of 578  
corrupt activity that is the basis of the offense is a felony of 579  
the first degree; 580

(11) Any violent sex offense or designated homicide, 581

assault, or kidnapping offense if, in relation to that offense, 582  
the offender is adjudicated a sexually violent predator; 583

(12) A violation of division (A) (1) or (2) of section 584  
2921.36 of the Revised Code, or a violation of division (C) of 585  
that section involving an item listed in division (A) (1) or (2) 586  
of that section, if the offender is an officer or employee of 587  
the department of rehabilitation and correction; 588

(13) A violation of division (A) (1) or (2) of section 589  
2903.06 of the Revised Code if the victim of the offense is a 590  
peace officer, as defined in section 2935.01 of the Revised 591  
Code, or an investigator of the bureau of criminal 592  
identification and investigation, as defined in section 2903.11 593  
of the Revised Code, with respect to the portion of the sentence 594  
imposed pursuant to division (B) (5) of section 2929.14 of the 595  
Revised Code; 596

(14) A violation of division (A) (1) or (2) of section 597  
2903.06 of the Revised Code if the offender has been convicted 598  
of or pleaded guilty to three or more violations of division (A) 599  
or (B) of section 4511.19 of the Revised Code or an equivalent 600  
offense, as defined in section 2941.1415 of the Revised Code, or 601  
three or more violations of any combination of those divisions 602  
and offenses, with respect to the portion of the sentence 603  
imposed pursuant to division (B) (6) of section 2929.14 of the 604  
Revised Code; 605

(15) Kidnapping, in the circumstances specified in section 606  
2971.03 of the Revised Code and when no other provision of 607  
division (F) of this section applies; 608

(16) Kidnapping, abduction, compelling prostitution, 609  
promoting prostitution, engaging in a pattern of corrupt 610

activity, illegal use of a minor or impaired person in a nudity- 611  
oriented material or performance in violation of division (A) (1) 612  
or (2) of section 2907.323 of the Revised Code, or endangering 613  
children in violation of division (B) (1), (2), (3), (4), or (5) 614  
of section 2919.22 of the Revised Code, if the offender is 615  
convicted of or pleads guilty to a specification as described in 616  
section 2941.1422 of the Revised Code that was included in the 617  
indictment, count in the indictment, or information charging the 618  
offense; 619

(17) A felony violation of division (A) or (B) of section 620  
2919.25 of the Revised Code if division (D) (3), (4), or (5) of 621  
that section, and division (D) (6) of that section, require the 622  
imposition of a prison term; 623

(18) A felony violation of section 2903.11, 2903.12, or 624  
2903.13 of the Revised Code, if the victim of the offense was a 625  
woman that the offender knew was pregnant at the time of the 626  
violation, with respect to a portion of the sentence imposed 627  
pursuant to division (B) (8) of section 2929.14 of the Revised 628  
Code; 629

(19) (a) Any violent felony offense if the offender is a 630  
violent career criminal and had a firearm on or about the 631  
offender's person or under the offender's control during the 632  
commission of the violent felony offense and displayed or 633  
brandished the firearm, indicated that the offender possessed a 634  
firearm, or used the firearm to facilitate the offense, with 635  
respect to the portion of the sentence imposed under division 636  
(K) of section 2929.14 of the Revised Code. 637

(b) As used in division (F) (19) (a) of this section, 638  
"violent career criminal" and "violent felony offense" have the 639  
same meanings as in section 2923.132 of the Revised Code. 640

(G) Notwithstanding divisions (A) to (E) of this section, 641  
if an offender is being sentenced for a fourth degree felony OVI 642  
offense or for a third degree felony OVI offense, the court 643  
shall impose upon the offender a mandatory term of local 644  
incarceration or a mandatory prison term in accordance with the 645  
following: 646

(1) If the offender is being sentenced for a fourth degree 647  
felony OVI offense and if the offender has not been convicted of 648  
and has not pleaded guilty to a specification of the type 649  
described in section 2941.1413 of the Revised Code, the court 650  
may impose upon the offender a mandatory term of local 651  
incarceration of sixty days or one hundred twenty days as 652  
specified in division (G)(1)(d) of section 4511.19 of the 653  
Revised Code. The court shall not reduce the term pursuant to 654  
section 2929.20, 2967.193, or any other provision of the Revised 655  
Code. The court that imposes a mandatory term of local 656  
incarceration under this division shall specify whether the term 657  
is to be served in a jail, a community-based correctional 658  
facility, a halfway house, or an alternative residential 659  
facility, and the offender shall serve the term in the type of 660  
facility specified by the court. A mandatory term of local 661  
incarceration imposed under division (G)(1) of this section is 662  
not subject to any other Revised Code provision that pertains to 663  
a prison term except as provided in division (A)(1) of this 664  
section. 665

(2) If the offender is being sentenced for a third degree 666  
felony OVI offense, or if the offender is being sentenced for a 667  
fourth degree felony OVI offense and the court does not impose a 668  
mandatory term of local incarceration under division (G)(1) of 669  
this section, the court shall impose upon the offender a 670  
mandatory prison term of one, two, three, four, or five years if 671

the offender also is convicted of or also pleads guilty to a 672  
specification of the type described in section 2941.1413 of the 673  
Revised Code or shall impose upon the offender a mandatory 674  
prison term of sixty days or one hundred twenty days as 675  
specified in division (G)(1)(d) or (e) of section 4511.19 of the 676  
Revised Code if the offender has not been convicted of and has 677  
not pleaded guilty to a specification of that type. Subject to 678  
divisions (C) to (I) of section 2967.19 of the Revised Code, the 679  
court shall not reduce the term pursuant to section 2929.20, 680  
2967.19, 2967.193, or any other provision of the Revised Code. 681  
The offender shall serve the one-, two-, three-, four-, or five- 682  
year mandatory prison term consecutively to and prior to the 683  
prison term imposed for the underlying offense and consecutively 684  
to any other mandatory prison term imposed in relation to the 685  
offense. In no case shall an offender who once has been 686  
sentenced to a mandatory term of local incarceration pursuant to 687  
division (G)(1) of this section for a fourth degree felony OVI 688  
offense be sentenced to another mandatory term of local 689  
incarceration under that division for any violation of division 690  
(A) of section 4511.19 of the Revised Code. In addition to the 691  
mandatory prison term described in division (G)(2) of this 692  
section, the court may sentence the offender to a community 693  
control sanction under section 2929.16 or 2929.17 of the Revised 694  
Code, but the offender shall serve the prison term prior to 695  
serving the community control sanction. The department of 696  
rehabilitation and correction may place an offender sentenced to 697  
a mandatory prison term under this division in an intensive 698  
program prison established pursuant to section 5120.033 of the 699  
Revised Code if the department gave the sentencing judge prior 700  
notice of its intent to place the offender in an intensive 701  
program prison established under that section and if the judge 702  
did not notify the department that the judge disapproved the 703

placement. Upon the establishment of the initial intensive 704  
program prison pursuant to section 5120.033 of the Revised Code 705  
that is privately operated and managed by a contractor pursuant 706  
to a contract entered into under section 9.06 of the Revised 707  
Code, both of the following apply: 708

(a) The department of rehabilitation and correction shall 709  
make a reasonable effort to ensure that a sufficient number of 710  
offenders sentenced to a mandatory prison term under this 711  
division are placed in the privately operated and managed prison 712  
so that the privately operated and managed prison has full 713  
occupancy. 714

(b) Unless the privately operated and managed prison has 715  
full occupancy, the department of rehabilitation and correction 716  
shall not place any offender sentenced to a mandatory prison 717  
term under this division in any intensive program prison 718  
established pursuant to section 5120.033 of the Revised Code 719  
other than the privately operated and managed prison. 720

(H) If an offender is being sentenced for a sexually 721  
oriented offense or child-victim oriented offense that is a 722  
felony committed on or after January 1, 1997, the judge shall 723  
require the offender to submit to a DNA specimen collection 724  
procedure pursuant to section 2901.07 of the Revised Code. 725

(I) If an offender is being sentenced for a sexually 726  
oriented offense or a child-victim oriented offense committed on 727  
or after January 1, 1997, the judge shall include in the 728  
sentence a summary of the offender's duties imposed under 729  
sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised 730  
Code and the duration of the duties. The judge shall inform the 731  
offender, at the time of sentencing, of those duties and of 732  
their duration. If required under division (A) (2) of section 733

2950.03 of the Revised Code, the judge shall perform the duties 734  
specified in that section, or, if required under division (A) (6) 735  
of section 2950.03 of the Revised Code, the judge shall perform 736  
the duties specified in that division. 737

(J) (1) Except as provided in division (J) (2) of this 738  
section, when considering sentencing factors under this section 739  
in relation to an offender who is convicted of or pleads guilty 740  
to an attempt to commit an offense in violation of section 741  
2923.02 of the Revised Code, the sentencing court shall consider 742  
the factors applicable to the felony category of the violation 743  
of section 2923.02 of the Revised Code instead of the factors 744  
applicable to the felony category of the offense attempted. 745

(2) When considering sentencing factors under this section 746  
in relation to an offender who is convicted of or pleads guilty 747  
to an attempt to commit a drug abuse offense for which the 748  
penalty is determined by the amount or number of unit doses of 749  
the controlled substance involved in the drug abuse offense, the 750  
sentencing court shall consider the factors applicable to the 751  
felony category that the drug abuse offense attempted would be 752  
if that drug abuse offense had been committed and had involved 753  
an amount or number of unit doses of the controlled substance 754  
that is within the next lower range of controlled substance 755  
amounts than was involved in the attempt. 756

(K) As used in this section: 757

(1) "Community addiction services provider" has the same 758  
meaning as in section 5119.01 of the Revised Code. 759

(2) "Drug abuse offense" has the same meaning as in 760  
section 2925.01 of the Revised Code. 761

(3) "Minor drug possession offense" has the same meaning 762

as in section 2925.11 of the Revised Code. 763

(4) "Qualifying assault offense" means a violation of 764  
section 2903.13 of the Revised Code for which the penalty 765  
provision in division (C) (8) (b) or (C) (9) (b) of that section 766  
applies. 767

(L) At the time of sentencing an offender for any sexually 768  
oriented offense, if the offender is a tier III sex 769  
offender/child-victim offender relative to that offense and the 770  
offender does not serve a prison term or jail term, the court 771  
may require that the offender be monitored by means of a global 772  
positioning device. If the court requires such monitoring, the 773  
cost of monitoring shall be borne by the offender. If the 774  
offender is indigent, the cost of compliance shall be paid by 775  
the crime victims reparations fund. 776

**Section 2.** That existing sections 2907.08, 2907.321, 777  
2907.322, 2907.323, and 2929.13 of the Revised Code are hereby 778  
repealed. 779