

As Introduced

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Representative Anielski

**Cosponsors: Representatives Becker, Vitale, Riedel, Greenspan, Scherer,
Blessing, Dean, Lipps, Ashford, Sprague, Boccieri, Fedor, Leland, Rogers,
Sweeney**

A BILL

To amend sections 2903.33, 2903.34, 2907.08, 1
2907.321, 2907.322, 2907.323, and 2929.13 of the 2
Revised Code to include an impaired person as a 3
potential victim of voyeurism, to include 4
conduct involving an impaired person within the 5
offenses of pandering obscenity involving a 6
minor, pandering sexually oriented matter 7
involving a minor, and illegal use of a minor in 8
a nudity-oriented material or performance, and 9
to prohibit an owner, operator, administrator, 10
or employee of a care facility from creating, 11
sharing, reproducing, or publishing any image of 12
a care facility resident without a proper 13
purpose and without prior written consent from 14
the resident. 15

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

Section 1. That sections 2903.33, 2903.34, 2907.08, 16
2907.321, 2907.322, 2907.323, and 2929.13 of the Revised Code be 17

amended to read as follows: 18

Sec. 2903.33. As used in sections 2903.33 to 2903.36 of 19
the Revised Code: 20

(A) "Care facility" means any of the following: 21

(1) Any "home" as defined in section 3721.10 of the 22
Revised Code; 23

(2) Any "residential facility" as defined in section 24
5123.19 of the Revised Code; 25

(3) Any institution or facility operated or provided by 26
the department of mental health and addiction services or by the 27
department of developmental disabilities pursuant to sections 28
5119.14 and 5123.03 of the Revised Code; 29

(4) Any "residential facility" as defined in section 30
5119.34 of the Revised Code; 31

(5) Any unit of any hospital, as defined in section 32
3701.01 of the Revised Code, that provides the same services as 33
a nursing home, as defined in section 3721.01 of the Revised 34
Code; 35

(6) Any institution, residence, or facility that provides, 36
for a period of more than twenty-four hours, whether for a 37
consideration or not, accommodations to one individual or two 38
unrelated individuals who are dependent upon the services of 39
others. 40

(B) "Abuse" means knowingly causing physical harm or 41
recklessly causing serious physical harm to a person by physical 42
contact with the person or by the inappropriate use of a 43
physical or chemical restraint, medication, or isolation on the 44
person. 45

(C) (1) "Gross neglect" means knowingly failing to provide a person with any treatment, care, goods, or service that is necessary to maintain the health or safety of the person when the failure results in physical harm or serious physical harm to the person.

(2) "Neglect" means recklessly failing to provide a person with any treatment, care, goods, or service that is necessary to maintain the health or safety of the person when the failure results in serious physical harm to the person.

(D) "Inappropriate use of a physical or chemical restraint, medication, or isolation" means the use of physical or chemical restraint, medication, or isolation as punishment, for staff convenience, excessively, as a substitute for treatment, or in quantities that preclude habilitation and treatment.

(E) "Exploitation" means recklessly creating, sharing, reproducing, or publishing any image of a person for any purpose other than identification, treatment, or investigation, without the prior written consent of the person or the person's legal guardian.

(F) "Gross exploitation" means negligently creating, sharing, reproducing, or publishing any image of a person containing nudity for any purpose other than identification, treatment, or investigation, without the prior written consent of the person or the person's legal guardian.

(G) "Nudity" has the same meaning as in section 2907.01 of the Revised Code.

Sec. 2903.34. (A) No person who owns, operates, or administers, or who is an agent or employee of, a care facility

shall do any of the following:	75
(1) Commit abuse against a resident or patient of the facility;	76 77
(2) Commit gross neglect against a resident or patient of the facility;	78 79
(3) Commit neglect against a resident or patient of the facility;	80 81
<u>(4) Commit exploitation against a resident or patient of the facility;</u>	82 83
<u>(5) Commit gross exploitation against a resident or patient of the facility.</u>	84 85
(B) (1) A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered neglected under division (A) (3) of this section for that reason alone.	86 87 88 89 90
(2) It is an affirmative defense to a charge of gross neglect or neglect under this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person with supervisory authority over the actor.	91 92 93 94 95
(C) Whoever violates division (A) (1) of this section is guilty of patient abuse, a felony of the fourth degree. If the offender previously has been convicted of, or pleaded guilty to, any violation of this section, patient abuse is a felony of the third degree.	96 97 98 99 100
(D) Whoever violates division (A) (2) of this section is guilty of gross patient neglect, a misdemeanor of the first	101 102

degree. If the offender previously has been convicted of, or 103
pleaded guilty to, any violation of this section, gross patient 104
neglect is a felony of the fifth degree. 105

(E) Whoever violates division (A)(3) of this section is 106
guilty of patient neglect, a misdemeanor of the second degree. 107
If the offender previously has been convicted of or pleaded 108
guilty to any violation of this section, patient neglect is a 109
felony of the fifth degree. 110

(F) Whoever violates division (A)(4) of this section is 111
guilty of patient exploitation, a misdemeanor of the first 112
degree. If the offender previously has been convicted of or 113
pleaded guilty to any violation of this section, patient 114
exploitation is a felony of the fifth degree. 115

(G) Whoever violates division (A)(5) of this section is 116
guilty of gross patient exploitation, a felony of the fourth 117
degree. If the offender previously has been convicted of or 118
pleaded guilty to any violation of this section, gross patient 119
exploitation is a felony of the third degree. 120

(H) Every care facility shall include both of the 121
following in an employee handbook or other document distributed 122
to every employee of the care facility: 123

(1) A copy of this section and section 2903.33 of the 124
Revised Code; 125

(2) A brief explanation of the actions prohibited by this 126
section. 127

Sec. 2907.08. (A) No person, for the purpose of sexually 128
arousing or gratifying the person's self, shall commit trespass 129
or otherwise surreptitiously invade the privacy of another, to 130
spy or eavesdrop upon another. 131

(B) No person, for the purpose of sexually arousing or 132
gratifying the person's self, shall commit trespass or otherwise 133
surreptitiously invade the privacy of another to videotape, 134
film, photograph, or otherwise record the other person in a 135
state of nudity. 136

(C) No person, for the purpose of sexually arousing or 137
gratifying the person's self, shall commit trespass or otherwise 138
surreptitiously invade the privacy of another to videotape, 139
film, photograph, otherwise record, or spy or eavesdrop upon the 140
other person in a state of nudity if the other person is a minor 141
or an impaired person. 142

(D) No person shall secretly or surreptitiously videotape, 143
film, photograph, or otherwise record another person under or 144
through the clothing being worn by that other person for the 145
purpose of viewing the body of, or the undergarments worn by, 146
that other person. 147

(E) (1) Whoever violates this section is guilty of 148
voyeurism. 149

(2) A violation of division (A) of this section is a 150
misdemeanor of the third degree. 151

(3) A violation of division (B) of this section is a 152
misdemeanor of the second degree. 153

(4) A violation of division (D) of this section is a 154
misdemeanor of the first degree. 155

(5) A violation of division (C) of this section is a 156
felony of the fifth degree. 157

(G) As used in this section, "impaired person" has the 158
same meaning as in section 2907.321 of the Revised Code. 159

Sec. 2907.321. (A) No person, with knowledge of the 160
character of the material or performance involved, shall do any 161
of the following: 162

(1) Create, reproduce, or publish any obscene material 163
that has a minor or impaired person as one of its participants 164
or portrayed observers; 165

(2) Promote or advertise for sale or dissemination; sell, 166
deliver, disseminate, display, exhibit, present, rent, or 167
provide; or offer or agree to sell, deliver, disseminate, 168
display, exhibit, present, rent, or provide, any obscene 169
material that has a minor or impaired person as one of its 170
participants or portrayed observers; 171

(3) Create, direct, or produce an obscene performance that 172
has a minor or impaired person as one of its participants; 173

(4) Advertise or promote for presentation, present, or 174
participate in presenting an obscene performance that has a 175
minor or impaired person as one of its participants; 176

(5) Buy, procure, possess, or control any obscene 177
material, that has a minor or impaired person as one of its 178
participants; 179

(6) Bring or cause to be brought into this state any 180
obscene material that has a minor or impaired person as one of 181
its participants or portrayed observers. 182

(B) (1) This section does not apply to any material or 183
performance that is sold, disseminated, displayed, possessed, 184
controlled, brought or caused to be brought into this state, or 185
presented for a bona fide medical, scientific, educational, 186
religious, governmental, judicial, or other proper purpose, by 187
or to a physician, psychologist, sociologist, scientist, 188

teacher, person pursuing bona fide studies or research, 189
librarian, ~~clergyman~~ member of the clergy, prosecutor, judge, or 190
other person having a proper interest in the material or 191
performance. 192

(2) Mistake of age is not a defense to a charge under this 193
section. 194

(3) In a prosecution under this section, the trier of fact 195
may infer that a person in the material or performance involved 196
is a minor or impaired person if the material or performance, 197
through its title, text, visual representation, or otherwise, 198
represents or depicts the person as a minor or impaired person. 199

(C) Whoever violates this section is guilty of pandering 200
obscenity involving a minor or impaired person. Violation of 201
division (A)(1), (2), (3), (4), or (6) of this section is a 202
felony of the second degree. Violation of division (A)(5) of 203
this section is a felony of the fourth degree. If the offender 204
previously has been convicted of or pleaded guilty to a 205
violation of this section or section 2907.322 or 2907.323 of the 206
Revised Code, pandering obscenity involving a minor or impaired 207
person in violation of division (A)(5) of this section is a 208
felony of the third degree. 209

(D) As used in this section and sections 2907.322 and 210
2907.323 of the Revised Code, "impaired person" means a person 211
whose ability to resist or consent is substantially impaired 212
because of a mental or physical condition or because of advanced 213
age, and the offender knows or has reasonable cause to believe 214
that the other person's ability to resist or consent is 215
substantially impaired because of a mental or physical condition 216
or because of advanced age. 217

Sec. 2907.322. (A) No person, with knowledge of the 218
character of the material or performance involved, shall do any 219
of the following: 220

(1) Create, record, photograph, film, develop, reproduce, 221
or publish any material that shows a minor or impaired person 222
participating or engaging in sexual activity, masturbation, or 223
bestiality; 224

(2) Advertise for sale or dissemination, sell, distribute, 225
transport, disseminate, exhibit, or display any material that 226
shows a minor or impaired person participating or engaging in 227
sexual activity, masturbation, or bestiality; 228

(3) Create, direct, or produce a performance that shows a 229
minor or impaired person participating or engaging in sexual 230
activity, masturbation, or bestiality; 231

(4) Advertise for presentation, present, or participate in 232
presenting a performance that shows a minor or impaired person 233
participating or engaging in sexual activity, masturbation, or 234
bestiality; 235

(5) Knowingly solicit, receive, purchase, exchange, 236
possess, or control any material that shows a minor or impaired 237
person participating or engaging in sexual activity, 238
masturbation, or bestiality; 239

(6) Bring or cause to be brought into this state any 240
material that shows a minor or impaired person participating or 241
engaging in sexual activity, masturbation, or bestiality, ~~or~~ 242
~~bring;~~ 243

(7) Bring, cause to be brought, or finance the bringing of 244
any minor into or across this state with the intent that the 245
minor engage in sexual activity, masturbation, or bestiality in 246

a performance or for the purpose of producing material 247
containing a visual representation depicting the minor engaged 248
in sexual activity, masturbation, or bestiality. 249

(B) (1) This section does not apply to any material or 250
performance that is sold, disseminated, displayed, possessed, 251
controlled, brought or caused to be brought into this state, or 252
presented for a bona fide medical, scientific, educational, 253
religious, governmental, judicial, or other proper purpose, by 254
or to a physician, psychologist, sociologist, scientist, 255
teacher, person pursuing bona fide studies or research, 256
librarian, ~~clergyman~~ member of the clergy, prosecutor, judge, or 257
other person having a proper interest in the material or 258
performance. 259

(2) Mistake of age is not a defense to a charge under this 260
section. 261

(3) In a prosecution under this section, the trier of fact 262
may infer that a person in the material or performance involved 263
is a minor or impaired person if the material or performance, 264
through its title, text, visual representation, or otherwise, 265
represents or depicts the person as a minor or impaired person. 266

(C) Whoever violates this section is guilty of pandering 267
sexually oriented matter involving a minor or impaired person. 268
Violation of division (A) (1), (2), (3), (4), ~~or (6)~~, or (7) of 269
this section is a felony of the second degree. Violation of 270
division (A) (5) of this section is a felony of the fourth 271
degree. If the offender previously has been convicted of or 272
pleaded guilty to a violation of this section or section 273
2907.321 or 2907.323 of the Revised Code, pandering sexually 274
oriented matter involving a minor or impaired person in 275
violation of division (A) (5) of this section is a felony of the 276

third degree. 277

Sec. 2907.323. (A) No person shall do any of the 278
following: 279

(1) Photograph any minor or impaired person who is not the 280
person's child or ward in a state of nudity, or create, direct, 281
produce, or transfer any material or performance that shows the 282
minor or impaired person in a state of nudity, unless both of 283
the following apply: 284

(a) The material or performance is, or is to be, sold, 285
disseminated, displayed, possessed, controlled, brought or 286
caused to be brought into this state, or presented for a bona 287
fide artistic, medical, scientific, educational, religious, 288
governmental, judicial, or other proper purpose, by or to a 289
physician, psychologist, sociologist, scientist, teacher, person 290
pursuing bona fide studies or research, librarian, member of the 291
clergy, prosecutor, judge, or other person having a proper 292
interest in the material or performance; 293

(b) The minor's or impaired person's parents, guardian, or 294
custodian consents in writing to the photographing of the minor 295
or impaired person, to the use of the minor or impaired person 296
in the material or performance, or to the transfer of the 297
material and to the specific manner in which the material or 298
performance is to be used. 299

(2) Consent to the photographing of the person's ~~minor~~ 300
child or ward who is a minor or impaired person, or photograph 301
the person's ~~minor~~ child or ward who is a minor or impaired 302
person, in a state of nudity or consent to the use of the 303
person's ~~minor~~ child or ward who is a minor or impaired person 304
in a state of nudity in any material or performance, or use or 305

transfer a material or performance of that nature, unless the 306
material or performance is sold, disseminated, displayed, 307
possessed, controlled, brought or caused to be brought into this 308
state, or presented for a bona fide artistic, medical, 309
scientific, educational, religious, governmental, judicial, or 310
other proper purpose, by or to a physician, psychologist, 311
sociologist, scientist, teacher, person pursuing bona fide 312
studies or research, librarian, member of the clergy, 313
prosecutor, judge, or other person having a proper interest in 314
the material or performance; 315

(3) Possess or view any material or performance that shows 316
a minor or impaired person who is not the person's child or ward 317
in a state of nudity, unless one of the following applies: 318

(a) The material or performance is sold, disseminated, 319
displayed, possessed, controlled, brought or caused to be 320
brought into this state, or presented for a bona fide artistic, 321
medical, scientific, educational, religious, governmental, 322
judicial, or other proper purpose, by or to a physician, 323
psychologist, sociologist, scientist, teacher, person pursuing 324
bona fide studies or research, librarian, member of the clergy, 325
prosecutor, judge, or other person having a proper interest in 326
the material or performance. 327

(b) The person knows that the minor's or impaired person's 328
parents, guardian, or custodian has consented in writing to the 329
photographing or use of the minor or impaired person in a state 330
of nudity and to the manner in which the material or performance 331
is used or transferred. 332

(B) Whoever violates this section is guilty of illegal use 333
of a minor or impaired person in a nudity-oriented material or 334
performance. Whoever violates division (A) (1) or (2) of this 335

section is guilty of a felony of the second degree. Except as 336
otherwise provided in this division, whoever violates division 337
(A) (3) of this section is guilty of a felony of the fifth 338
degree. If the offender previously has been convicted of or 339
pleaded guilty to a violation of this section or section 340
2907.321 or 2907.322 of the Revised Code, illegal use of a minor 341
or impaired person in a nudity-oriented material or performance 342
in violation of division (A) (3) of this section is a felony of 343
the fourth degree. If the offender who violates division (A) (1) 344
or (2) of this section also is convicted of or pleads guilty to 345
a specification as described in section 2941.1422 of the Revised 346
Code that was included in the indictment, count in the 347
indictment, or information charging the offense, the court shall 348
sentence the offender to a mandatory prison term as provided in 349
division (B) (7) of section 2929.14 of the Revised Code and shall 350
order the offender to make restitution as provided in division 351
(B) (8) of section 2929.18 of the Revised Code. 352

Sec. 2929.13. (A) Except as provided in division (E), (F), 353
or (G) of this section and unless a specific sanction is 354
required to be imposed or is precluded from being imposed 355
pursuant to law, a court that imposes a sentence upon an 356
offender for a felony may impose any sanction or combination of 357
sanctions on the offender that are provided in sections 2929.14 358
to 2929.18 of the Revised Code. 359

If the offender is eligible to be sentenced to community 360
control sanctions, the court shall consider the appropriateness 361
of imposing a financial sanction pursuant to section 2929.18 of 362
the Revised Code or a sanction of community service pursuant to 363
section 2929.17 of the Revised Code as the sole sanction for the 364
offense. Except as otherwise provided in this division, if the 365
court is required to impose a mandatory prison term for the 366

offense for which sentence is being imposed, the court also 367
shall impose any financial sanction pursuant to section 2929.18 368
of the Revised Code that is required for the offense and may 369
impose any other financial sanction pursuant to that section but 370
may not impose any additional sanction or combination of 371
sanctions under section 2929.16 or 2929.17 of the Revised Code. 372

If the offender is being sentenced for a fourth degree 373
felony OVI offense or for a third degree felony OVI offense, in 374
addition to the mandatory term of local incarceration or the 375
mandatory prison term required for the offense by division (G) 376
(1) or (2) of this section, the court shall impose upon the 377
offender a mandatory fine in accordance with division (B) (3) of 378
section 2929.18 of the Revised Code and may impose whichever of 379
the following is applicable: 380

(1) For a fourth degree felony OVI offense for which 381
sentence is imposed under division (G) (1) of this section, an 382
additional community control sanction or combination of 383
community control sanctions under section 2929.16 or 2929.17 of 384
the Revised Code. If the court imposes upon the offender a 385
community control sanction and the offender violates any 386
condition of the community control sanction, the court may take 387
any action prescribed in division (B) of section 2929.15 of the 388
Revised Code relative to the offender, including imposing a 389
prison term on the offender pursuant to that division. 390

(2) For a third or fourth degree felony OVI offense for 391
which sentence is imposed under division (G) (2) of this section, 392
an additional prison term as described in division (B) (4) of 393
section 2929.14 of the Revised Code or a community control 394
sanction as described in division (G) (2) of this section. 395

(B) (1) (a) Except as provided in division (B) (1) (b) of this 396

section, if an offender is convicted of or pleads guilty to a 397
felony of the fourth or fifth degree that is not an offense of 398
violence or that is a qualifying assault offense, the court 399
shall sentence the offender to a community control sanction of 400
at least one year's duration if all of the following apply: 401

(i) The offender previously has not been convicted of or 402
pleaded guilty to a felony offense. 403

(ii) The most serious charge against the offender at the 404
time of sentencing is a felony of the fourth or fifth degree. 405

(iii) If the court made a request of the department of 406
rehabilitation and correction pursuant to division (B)(1)(c) of 407
this section, the department, within the forty-five-day period 408
specified in that division, provided the court with the names 409
of, contact information for, and program details of one or more 410
community control sanctions of at least one year's duration that 411
are available for persons sentenced by the court. 412

(iv) The offender previously has not been convicted of or 413
pleaded guilty to a misdemeanor offense of violence that the 414
offender committed within two years prior to the offense for 415
which sentence is being imposed. 416

(b) The court has discretion to impose a prison term upon 417
an offender who is convicted of or pleads guilty to a felony of 418
the fourth or fifth degree that is not an offense of violence or 419
that is a qualifying assault offense if any of the following 420
apply: 421

(i) The offender committed the offense while having a 422
firearm on or about the offender's person or under the 423
offender's control. 424

(ii) If the offense is a qualifying assault offense, the 425

offender caused serious physical harm to another person while 426
committing the offense, and, if the offense is not a qualifying 427
assault offense, the offender caused physical harm to another 428
person while committing the offense. 429

(iii) The offender violated a term of the conditions of 430
bond as set by the court. 431

(iv) The court made a request of the department of 432
rehabilitation and correction pursuant to division (B)(1)(c) of 433
this section, and the department, within the forty-five-day 434
period specified in that division, did not provide the court 435
with the name of, contact information for, and program details 436
of any community control sanction of at least one year's 437
duration that is available for persons sentenced by the court. 438

(v) The offense is a sex offense that is a fourth or fifth 439
degree felony violation of any provision of Chapter 2907. of the 440
Revised Code. 441

(vi) In committing the offense, the offender attempted to 442
cause or made an actual threat of physical harm to a person with 443
a deadly weapon. 444

(vii) In committing the offense, the offender attempted to 445
cause or made an actual threat of physical harm to a person, and 446
the offender previously was convicted of an offense that caused 447
physical harm to a person. 448

(viii) The offender held a public office or position of 449
trust, and the offense related to that office or position; the 450
offender's position obliged the offender to prevent the offense 451
or to bring those committing it to justice; or the offender's 452
professional reputation or position facilitated the offense or 453
was likely to influence the future conduct of others. 454

(ix) The offender committed the offense for hire or as 455
part of an organized criminal activity. 456

(x) The offender at the time of the offense was serving, 457
or the offender previously had served, a prison term. 458

(xi) The offender committed the offense while under a 459
community control sanction, while on probation, or while 460
released from custody on a bond or personal recognizance. 461

(c) If a court that is sentencing an offender who is 462
convicted of or pleads guilty to a felony of the fourth or fifth 463
degree that is not an offense of violence or that is a 464
qualifying assault offense believes that no community control 465
sanctions are available for its use that, if imposed on the 466
offender, will adequately fulfill the overriding principles and 467
purposes of sentencing, the court shall contact the department 468
of rehabilitation and correction and ask the department to 469
provide the court with the names of, contact information for, 470
and program details of one or more community control sanctions 471
of at least one year's duration that are available for persons 472
sentenced by the court. Not later than forty-five days after 473
receipt of a request from a court under this division, the 474
department shall provide the court with the names of, contact 475
information for, and program details of one or more community 476
control sanctions of at least one year's duration that are 477
available for persons sentenced by the court, if any. Upon 478
making a request under this division that relates to a 479
particular offender, a court shall defer sentencing of that 480
offender until it receives from the department the names of, 481
contact information for, and program details of one or more 482
community control sanctions of at least one year's duration that 483
are available for persons sentenced by the court or for forty- 484

five days, whichever is the earlier. 485

If the department provides the court with the names of, 486
contact information for, and program details of one or more 487
community control sanctions of at least one year's duration that 488
are available for persons sentenced by the court within the 489
forty-five-day period specified in this division, the court 490
shall impose upon the offender a community control sanction 491
under division (B) (1) (a) of this section, except that the court 492
may impose a prison term under division (B) (1) (b) of this 493
section if a factor described in division (B) (1) (b) (i) or (ii) 494
of this section applies. If the department does not provide the 495
court with the names of, contact information for, and program 496
details of one or more community control sanctions of at least 497
one year's duration that are available for persons sentenced by 498
the court within the forty-five-day period specified in this 499
division, the court may impose upon the offender a prison term 500
under division (B) (1) (b) (iv) of this section. 501

(d) A sentencing court may impose an additional penalty 502
under division (B) of section 2929.15 of the Revised Code upon 503
an offender sentenced to a community control sanction under 504
division (B) (1) (a) of this section if the offender violates the 505
conditions of the community control sanction, violates a law, or 506
leaves the state without the permission of the court or the 507
offender's probation officer. 508

(2) If division (B) (1) of this section does not apply, 509
except as provided in division (E), (F), or (G) of this section, 510
in determining whether to impose a prison term as a sanction for 511
a felony of the fourth or fifth degree, the sentencing court 512
shall comply with the purposes and principles of sentencing 513
under section 2929.11 of the Revised Code and with section 514

2929.12 of the Revised Code. 515

(C) Except as provided in division (D), (E), (F), or (G) 516
of this section, in determining whether to impose a prison term 517
as a sanction for a felony of the third degree or a felony drug 518
offense that is a violation of a provision of Chapter 2925. of 519
the Revised Code and that is specified as being subject to this 520
division for purposes of sentencing, the sentencing court shall 521
comply with the purposes and principles of sentencing under 522
section 2929.11 of the Revised Code and with section 2929.12 of 523
the Revised Code. 524

(D) (1) Except as provided in division (E) or (F) of this 525
section, for a felony of the first or second degree, for a 526
felony drug offense that is a violation of any provision of 527
Chapter 2925., 3719., or 4729. of the Revised Code for which a 528
presumption in favor of a prison term is specified as being 529
applicable, and for a violation of division (A) (4) or (B) of 530
section 2907.05 of the Revised Code for which a presumption in 531
favor of a prison term is specified as being applicable, it is 532
presumed that a prison term is necessary in order to comply with 533
the purposes and principles of sentencing under section 2929.11 534
of the Revised Code. Division (D) (2) of this section does not 535
apply to a presumption established under this division for a 536
violation of division (A) (4) of section 2907.05 of the Revised 537
Code. 538

(2) Notwithstanding the presumption established under 539
division (D) (1) of this section for the offenses listed in that 540
division other than a violation of division (A) (4) or (B) of 541
section 2907.05 of the Revised Code, the sentencing court may 542
impose a community control sanction or a combination of 543
community control sanctions instead of a prison term on an 544

offender for a felony of the first or second degree or for a 545
felony drug offense that is a violation of any provision of 546
Chapter 2925., 3719., or 4729. of the Revised Code for which a 547
presumption in favor of a prison term is specified as being 548
applicable if it makes both of the following findings: 549

(a) A community control sanction or a combination of 550
community control sanctions would adequately punish the offender 551
and protect the public from future crime, because the applicable 552
factors under section 2929.12 of the Revised Code indicating a 553
lesser likelihood of recidivism outweigh the applicable factors 554
under that section indicating a greater likelihood of 555
recidivism. 556

(b) A community control sanction or a combination of 557
community control sanctions would not demean the seriousness of 558
the offense, because one or more factors under section 2929.12 559
of the Revised Code that indicate that the offender's conduct 560
was less serious than conduct normally constituting the offense 561
are applicable, and they outweigh the applicable factors under 562
that section that indicate that the offender's conduct was more 563
serious than conduct normally constituting the offense. 564

(E) (1) Except as provided in division (F) of this section, 565
for any drug offense that is a violation of any provision of 566
Chapter 2925. of the Revised Code and that is a felony of the 567
third, fourth, or fifth degree, the applicability of a 568
presumption under division (D) of this section in favor of a 569
prison term or of division (B) or (C) of this section in 570
determining whether to impose a prison term for the offense 571
shall be determined as specified in section 2925.02, 2925.03, 572
2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 573
2925.36, or 2925.37 of the Revised Code, whichever is applicable 574

regarding the violation. 575

(2) If an offender who was convicted of or pleaded guilty 576
to a felony violates the conditions of a community control 577
sanction imposed for the offense solely by reason of producing 578
positive results on a drug test, the court, as punishment for 579
the violation of the sanction, shall not order that the offender 580
be imprisoned unless the court determines on the record either 581
of the following: 582

(a) The offender had been ordered as a sanction for the 583
felony to participate in a drug treatment program, in a drug 584
education program, or in narcotics anonymous or a similar 585
program, and the offender continued to use illegal drugs after a 586
reasonable period of participation in the program. 587

(b) The imprisonment of the offender for the violation is 588
consistent with the purposes and principles of sentencing set 589
forth in section 2929.11 of the Revised Code. 590

(3) A court that sentences an offender for a drug abuse 591
offense that is a felony of the third, fourth, or fifth degree 592
may require that the offender be assessed by a properly 593
credentialed professional within a specified period of time. The 594
court shall require the professional to file a written 595
assessment of the offender with the court. If the offender is 596
eligible for a community control sanction and after considering 597
the written assessment, the court may impose a community control 598
sanction that includes treatment and recovery support services 599
authorized by division (A) (11) of section 340.03 of the Revised 600
Code. If the court imposes treatment and recovery support 601
services as a community control sanction, the court shall direct 602
the level and type of treatment and recovery support services 603
after considering the assessment and recommendation of community 604

addiction services providers. 605

(F) Notwithstanding divisions (A) to (E) of this section, 606
the court shall impose a prison term or terms under sections 607
2929.02 to 2929.06, section 2929.14, section 2929.142, or 608
section 2971.03 of the Revised Code and except as specifically 609
provided in section 2929.20, divisions (C) to (I) of section 610
2967.19, or section 2967.191 of the Revised Code or when parole 611
is authorized for the offense under section 2967.13 of the 612
Revised Code shall not reduce the term or terms pursuant to 613
section 2929.20, section 2967.19, section 2967.193, or any other 614
provision of Chapter 2967. or Chapter 5120. of the Revised Code 615
for any of the following offenses: 616

(1) Aggravated murder when death is not imposed or murder; 617

(2) Any rape, regardless of whether force was involved and 618
regardless of the age of the victim, or an attempt to commit 619
rape if, had the offender completed the rape that was attempted, 620
the offender would have been guilty of a violation of division 621
(A) (1) (b) of section 2907.02 of the Revised Code and would be 622
sentenced under section 2971.03 of the Revised Code; 623

(3) Gross sexual imposition or sexual battery, if the 624
victim is less than thirteen years of age and if any of the 625
following applies: 626

(a) Regarding gross sexual imposition, the offender 627
previously was convicted of or pleaded guilty to rape, the 628
former offense of felonious sexual penetration, gross sexual 629
imposition, or sexual battery, and the victim of the previous 630
offense was less than thirteen years of age; 631

(b) Regarding gross sexual imposition, the offense was 632
committed on or after August 3, 2006, and evidence other than 633

the testimony of the victim was admitted in the case 634
corroborating the violation. 635

(c) Regarding sexual battery, either of the following 636
applies: 637

(i) The offense was committed prior to August 3, 2006, the 638
offender previously was convicted of or pleaded guilty to rape, 639
the former offense of felonious sexual penetration, or sexual 640
battery, and the victim of the previous offense was less than 641
thirteen years of age. 642

(ii) The offense was committed on or after August 3, 2006. 643

(4) A felony violation of section 2903.04, 2903.06, 644
2903.08, 2903.11, 2903.12, 2903.13, 2905.32, or 2907.07 of the 645
Revised Code if the section requires the imposition of a prison 646
term; 647

(5) A first, second, or third degree felony drug offense 648
for which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 649
2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, 650
or 4729.99 of the Revised Code, whichever is applicable 651
regarding the violation, requires the imposition of a mandatory 652
prison term; 653

(6) Any offense that is a first or second degree felony 654
and that is not set forth in division (F)(1), (2), (3), or (4) 655
of this section, if the offender previously was convicted of or 656
pleaded guilty to aggravated murder, murder, any first or second 657
degree felony, or an offense under an existing or former law of 658
this state, another state, or the United States that is or was 659
substantially equivalent to one of those offenses; 660

(7) Any offense that is a third degree felony and either 661
is a violation of section 2903.04 of the Revised Code or an 662

attempt to commit a felony of the second degree that is an 663
offense of violence and involved an attempt to cause serious 664
physical harm to a person or that resulted in serious physical 665
harm to a person if the offender previously was convicted of or 666
pleaded guilty to any of the following offenses: 667

(a) Aggravated murder, murder, involuntary manslaughter, 668
rape, felonious sexual penetration as it existed under section 669
2907.12 of the Revised Code prior to September 3, 1996, a felony 670
of the first or second degree that resulted in the death of a 671
person or in physical harm to a person, or complicity in or an 672
attempt to commit any of those offenses; 673

(b) An offense under an existing or former law of this 674
state, another state, or the United States that is or was 675
substantially equivalent to an offense listed in division (F) (7) 676
(a) of this section that resulted in the death of a person or in 677
physical harm to a person. 678

(8) Any offense, other than a violation of section 2923.12 679
of the Revised Code, that is a felony, if the offender had a 680
firearm on or about the offender's person or under the 681
offender's control while committing the felony, with respect to 682
a portion of the sentence imposed pursuant to division (B) (1) (a) 683
of section 2929.14 of the Revised Code for having the firearm; 684

(9) Any offense of violence that is a felony, if the 685
offender wore or carried body armor while committing the felony 686
offense of violence, with respect to the portion of the sentence 687
imposed pursuant to division (B) (1) (d) of section 2929.14 of the 688
Revised Code for wearing or carrying the body armor; 689

(10) Corrupt activity in violation of section 2923.32 of 690
the Revised Code when the most serious offense in the pattern of 691

corrupt activity that is the basis of the offense is a felony of 692
the first degree; 693

(11) Any violent sex offense or designated homicide, 694
assault, or kidnapping offense if, in relation to that offense, 695
the offender is adjudicated a sexually violent predator; 696

(12) A violation of division (A) (1) or (2) of section 697
2921.36 of the Revised Code, or a violation of division (C) of 698
that section involving an item listed in division (A) (1) or (2) 699
of that section, if the offender is an officer or employee of 700
the department of rehabilitation and correction; 701

(13) A violation of division (A) (1) or (2) of section 702
2903.06 of the Revised Code if the victim of the offense is a 703
peace officer, as defined in section 2935.01 of the Revised 704
Code, or an investigator of the bureau of criminal 705
identification and investigation, as defined in section 2903.11 706
of the Revised Code, with respect to the portion of the sentence 707
imposed pursuant to division (B) (5) of section 2929.14 of the 708
Revised Code; 709

(14) A violation of division (A) (1) or (2) of section 710
2903.06 of the Revised Code if the offender has been convicted 711
of or pleaded guilty to three or more violations of division (A) 712
or (B) of section 4511.19 of the Revised Code or an equivalent 713
offense, as defined in section 2941.1415 of the Revised Code, or 714
three or more violations of any combination of those divisions 715
and offenses, with respect to the portion of the sentence 716
imposed pursuant to division (B) (6) of section 2929.14 of the 717
Revised Code; 718

(15) Kidnapping, in the circumstances specified in section 719
2971.03 of the Revised Code and when no other provision of 720

division (F) of this section applies; 721

(16) Kidnapping, abduction, compelling prostitution, 722
promoting prostitution, engaging in a pattern of corrupt 723
activity, illegal use of a minor or impaired person in a nudity- 724
oriented material or performance in violation of division (A) (1) 725
or (2) of section 2907.323 of the Revised Code, or endangering 726
children in violation of division (B) (1), (2), (3), (4), or (5) 727
of section 2919.22 of the Revised Code, if the offender is 728
convicted of or pleads guilty to a specification as described in 729
section 2941.1422 of the Revised Code that was included in the 730
indictment, count in the indictment, or information charging the 731
offense; 732

(17) A felony violation of division (A) or (B) of section 733
2919.25 of the Revised Code if division (D) (3), (4), or (5) of 734
that section, and division (D) (6) of that section, require the 735
imposition of a prison term; 736

(18) A felony violation of section 2903.11, 2903.12, or 737
2903.13 of the Revised Code, if the victim of the offense was a 738
woman that the offender knew was pregnant at the time of the 739
violation, with respect to a portion of the sentence imposed 740
pursuant to division (B) (8) of section 2929.14 of the Revised 741
Code. 742

(G) Notwithstanding divisions (A) to (E) of this section, 743
if an offender is being sentenced for a fourth degree felony OVI 744
offense or for a third degree felony OVI offense, the court 745
shall impose upon the offender a mandatory term of local 746
incarceration or a mandatory prison term in accordance with the 747
following: 748

(1) If the offender is being sentenced for a fourth degree 749

felony OVI offense and if the offender has not been convicted of 750
and has not pleaded guilty to a specification of the type 751
described in section 2941.1413 of the Revised Code, the court 752
may impose upon the offender a mandatory term of local 753
incarceration of sixty days or one hundred twenty days as 754
specified in division (G)(1)(d) of section 4511.19 of the 755
Revised Code. The court shall not reduce the term pursuant to 756
section 2929.20, 2967.193, or any other provision of the Revised 757
Code. The court that imposes a mandatory term of local 758
incarceration under this division shall specify whether the term 759
is to be served in a jail, a community-based correctional 760
facility, a halfway house, or an alternative residential 761
facility, and the offender shall serve the term in the type of 762
facility specified by the court. A mandatory term of local 763
incarceration imposed under division (G)(1) of this section is 764
not subject to any other Revised Code provision that pertains to 765
a prison term except as provided in division (A)(1) of this 766
section. 767

(2) If the offender is being sentenced for a third degree 768
felony OVI offense, or if the offender is being sentenced for a 769
fourth degree felony OVI offense and the court does not impose a 770
mandatory term of local incarceration under division (G)(1) of 771
this section, the court shall impose upon the offender a 772
mandatory prison term of one, two, three, four, or five years if 773
the offender also is convicted of or also pleads guilty to a 774
specification of the type described in section 2941.1413 of the 775
Revised Code or shall impose upon the offender a mandatory 776
prison term of sixty days or one hundred twenty days as 777
specified in division (G)(1)(d) or (e) of section 4511.19 of the 778
Revised Code if the offender has not been convicted of and has 779
not pleaded guilty to a specification of that type. Subject to 780

divisions (C) to (I) of section 2967.19 of the Revised Code, the 781
court shall not reduce the term pursuant to section 2929.20, 782
2967.19, 2967.193, or any other provision of the Revised Code. 783
The offender shall serve the one-, two-, three-, four-, or five- 784
year mandatory prison term consecutively to and prior to the 785
prison term imposed for the underlying offense and consecutively 786
to any other mandatory prison term imposed in relation to the 787
offense. In no case shall an offender who once has been 788
sentenced to a mandatory term of local incarceration pursuant to 789
division (G)(1) of this section for a fourth degree felony OVI 790
offense be sentenced to another mandatory term of local 791
incarceration under that division for any violation of division 792
(A) of section 4511.19 of the Revised Code. In addition to the 793
mandatory prison term described in division (G)(2) of this 794
section, the court may sentence the offender to a community 795
control sanction under section 2929.16 or 2929.17 of the Revised 796
Code, but the offender shall serve the prison term prior to 797
serving the community control sanction. The department of 798
rehabilitation and correction may place an offender sentenced to 799
a mandatory prison term under this division in an intensive 800
program prison established pursuant to section 5120.033 of the 801
Revised Code if the department gave the sentencing judge prior 802
notice of its intent to place the offender in an intensive 803
program prison established under that section and if the judge 804
did not notify the department that the judge disapproved the 805
placement. Upon the establishment of the initial intensive 806
program prison pursuant to section 5120.033 of the Revised Code 807
that is privately operated and managed by a contractor pursuant 808
to a contract entered into under section 9.06 of the Revised 809
Code, both of the following apply: 810

(a) The department of rehabilitation and correction shall 811

make a reasonable effort to ensure that a sufficient number of 812
offenders sentenced to a mandatory prison term under this 813
division are placed in the privately operated and managed prison 814
so that the privately operated and managed prison has full 815
occupancy. 816

(b) Unless the privately operated and managed prison has 817
full occupancy, the department of rehabilitation and correction 818
shall not place any offender sentenced to a mandatory prison 819
term under this division in any intensive program prison 820
established pursuant to section 5120.033 of the Revised Code 821
other than the privately operated and managed prison. 822

(H) If an offender is being sentenced for a sexually 823
oriented offense or child-victim oriented offense that is a 824
felony committed on or after January 1, 1997, the judge shall 825
require the offender to submit to a DNA specimen collection 826
procedure pursuant to section 2901.07 of the Revised Code. 827

(I) If an offender is being sentenced for a sexually 828
oriented offense or a child-victim oriented offense committed on 829
or after January 1, 1997, the judge shall include in the 830
sentence a summary of the offender's duties imposed under 831
sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised 832
Code and the duration of the duties. The judge shall inform the 833
offender, at the time of sentencing, of those duties and of 834
their duration. If required under division (A)(2) of section 835
2950.03 of the Revised Code, the judge shall perform the duties 836
specified in that section, or, if required under division (A)(6) 837
of section 2950.03 of the Revised Code, the judge shall perform 838
the duties specified in that division. 839

(J)(1) Except as provided in division (J)(2) of this 840
section, when considering sentencing factors under this section 841

in relation to an offender who is convicted of or pleads guilty 842
to an attempt to commit an offense in violation of section 843
2923.02 of the Revised Code, the sentencing court shall consider 844
the factors applicable to the felony category of the violation 845
of section 2923.02 of the Revised Code instead of the factors 846
applicable to the felony category of the offense attempted. 847

(2) When considering sentencing factors under this section 848
in relation to an offender who is convicted of or pleads guilty 849
to an attempt to commit a drug abuse offense for which the 850
penalty is determined by the amount or number of unit doses of 851
the controlled substance involved in the drug abuse offense, the 852
sentencing court shall consider the factors applicable to the 853
felony category that the drug abuse offense attempted would be 854
if that drug abuse offense had been committed and had involved 855
an amount or number of unit doses of the controlled substance 856
that is within the next lower range of controlled substance 857
amounts than was involved in the attempt. 858

(K) As used in this section: 859

(1) "Community addiction services provider" has the same 860
meaning as in section 5119.01 of the Revised Code. 861

(2) "Drug abuse offense" has the same meaning as in 862
section 2925.01 of the Revised Code. 863

(3) "Qualifying assault offense" means a violation of 864
section 2903.13 of the Revised Code for which the penalty 865
provision in division (C) (8) (b) or (C) (9) (b) of that section 866
applies. 867

(L) At the time of sentencing an offender for any sexually 868
oriented offense, if the offender is a tier III sex 869
offender/child-victim offender relative to that offense and the 870

offender does not serve a prison term or jail term, the court 871
may require that the offender be monitored by means of a global 872
positioning device. If the court requires such monitoring, the 873
cost of monitoring shall be borne by the offender. If the 874
offender is indigent, the cost of compliance shall be paid by 875
the crime victims reparations fund. 876

Section 2. That existing sections 2903.33, 2903.34, 877
2907.08, 2907.321, 2907.322, 2907.323, and 2929.13 of the 878
Revised Code are hereby repealed. 879