

AN ACT

To amend sections 2925.32, 2929.13, and 2929.18 and to enact section 2925.07 of the Revised Code to prohibit the preparation of drugs for sale and to delay, from July 1, 1998, to July 1, 1999, the date on which persons who dispense or distribute nitrous oxide will be required to record on a separate card each transaction involving such a dispensation or distribution.

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

SECTION 1. That sections 2925.32, 2929.13, and 2929.18 be amended and section 2925.07 of the Revised Code be enacted to read as follows:

Sec. 2925.07. (A) No person shall knowingly prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance when the person intends to sell or resell the controlled substance or when the person knows or has reasonable cause to believe that another person intends to sell or resell the controlled substance.

(B) This section does not apply to any person listed in division (B) of section 2925.03 of the Revised Code to the extent and under the circumstances described in that division.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, whoever violates division (A) of this section is guilty of aggravated preparation of drugs for sale. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division(C)(1)(b) of this section, aggravated preparation of drugs for sale is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated preparation of drugs for sale is a felony of

the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, schedule IV, or schedule V, whoever violates division (A) of this section is guilty of preparation of drugs for sale. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in divisions (C)(2)(b) and (c) of this section, preparation of drugs for sale is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(2)(c) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparation of drugs for sale is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved exceeds the bulk amount, preparation of drugs for sale is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved exceeds the bulk amount and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparation of drugs for sale is a felony of the third degree, and there is a presumption for a prison term for the offense.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of preparation of marihuana for sale. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in divisions (C)(3)(b) and (c) of this section, preparation of marihuana for sale is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(2)(c) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparation of marihuana for sale is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term upon the offender.

(c) If the amount of the drug involved exceeds two hundred grams, preparing marihuana for sale is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved

exceeds that amount and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparing marihuana for sale is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term upon the offender.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of preparation of cocaine for sale. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in divisions (C)(4)(b) and (c) of this section, preparation of cocaine for sale is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(4)(c) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparation of cocaine for sale is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term upon the offender.

(c) If the amount of the drug involved exceeds five grams of cocaine that is not crack cocaine or exceeds one gram of crack cocaine, preparation of cocaine for sale is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved exceeds one of those amounts and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparation of cocaine for sale is a felony of the third degree, and there is a presumption for a prison term for the offense.

(5) If the drug involved in the violation is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., whoever violates division (A) of this section is guilty of preparation of L.S.D. for sale. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in divisions (C)(5)(b) and (c) OF THIS SECTION, preparation of L.S.D. for sale is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(5)(c) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparation of L.S.D. for sale is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term upon the offender.

(c) Except as otherwise provided in this division, if the amount of the

drug involved exceeds ten unit doses of L.S.D. in a solid form or exceeds one gram of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, preparation of L.S.D. for sale is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved exceeds one of those amounts and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparation of L.S.D. for sale is a felony of the third degree, and there is a presumption for a prison term for the offense.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of preparation of heroin for sale. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b) and (c) of this section, preparation of heroin for sale is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(6)(c) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparation of heroin for sale is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term upon the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved exceeds one gram, preparation of heroin for sale is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved exceeds that amount and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparation of heroin for sale is a felony of the third degree, and there is a presumption for a prison term for the offense.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of preparation of hashish for sale. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b) and (c) of this section, preparation of hashish for sale is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparation of hashish for sale is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term upon the offender.

(c) If the amount of the drug involved exceeds ten grams of hashish in a solid form or exceeds two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, preparation of hashish for sale is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved exceeds one of those amounts and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, preparation of hashish for sale is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term upon the offender.

(D) In addition to any prison term or other sanction authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) If the violation is a felony of the third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. The clerk of the court shall pay a mandatory fine imposed under division (D)(1) of this section in the manner specified for the payment of a mandatory fine in division (F) of section 2925.03 of the Revised Code. If a person is charged with a violation of this section that is a felony of the third degree, posts bail, and forfeits the bail, the clerk of the court shall pay the forfeited bail, pursuant to division (F) of section 2925.03 of the Revised Code, as if the forfeited bail was a fine imposed for a violation of this section.

(2) The court shall suspend the driver's or commercial driver's license or permit of the offender in accordance with division (G) of section 2925.03 of the Revised Code.

(3) If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, the court forthwith shall comply with section 2925.38 of the Revised Code.

(E) The court that sentences an offender for a violation of division (A) of this section may impose upon the offender an additional fine specified for the offense in division (B)(4) of section 2929.18 of the Revised Code. A fine imposed under division (E) of this section shall be used solely for the support of one or more eligible alcohol and drug addiction programs as

specified in divisions (H)(2) and (3) of section 2925.03 of the Revised Code. The court shall impose the fine in the manner specified in division (H)(2) of that section, and the clerk of the court shall pay the fine in the manner specified in division (H)(3) of that section.

(F) When a person is charged with a violation of this section that involves a bulk amount or a multiple of a bulk amount of a controlled substance, division (E) of section 2925.03 of the Revised Code applies regarding the determination of the amount of the controlled substance involved at the time of the offense.

Sec. 2925.32. (A) Divisions (A)(1) and (2) of this section do not apply to the dispensing or distributing of nitrous oxide.

(1) No person shall knowingly dispense or distribute a harmful intoxicant to a person age eighteen or older if the person who dispenses or distributes it knows or has reason to believe that the harmful intoxicant will be used in violation of section 2925.31 of the Revised Code.

(2) No person shall knowingly dispense or distribute a harmful intoxicant to a person under age eighteen if the person who dispenses or distributes it knows or has reason to believe that the harmful intoxicant will be used in violation of section 2925.31 of the Revised Code. Division (A)(2) of this section does not prohibit either of the following:

(a) Dispensing or distributing a harmful intoxicant to a person under age eighteen if a written order from the juvenile's parent or guardian is provided to the dispenser or distributor;

(b) Dispensing or distributing gasoline or diesel fuel to a person under age eighteen if the dispenser or distributor does not know or have reason to believe the product will be used in violation of section 2925.31 of the Revised Code. Division (A)(2)(a) of this section does not require a person to obtain a written order from the parent or guardian of a person under age eighteen in order to distribute or dispense gasoline or diesel fuel to the person.

(B)(1) No person shall knowingly dispense or distribute nitrous oxide to a person age twenty-one or older if the person who dispenses or distributes it knows or has reason to believe the nitrous oxide will be used in violation of section 2925.31 of the Revised Code.

(2) Except for lawful medical, dental, or clinical purposes, no person shall knowingly dispense or distribute nitrous oxide to a person under age twenty-one.

(3) No person, at the time a cartridge of nitrous oxide is sold to another person, shall sell a device that allows the purchaser to inhale nitrous oxide from cartridges or to hold nitrous oxide released from cartridges for

ses of inhalation. The sale of any such device constitutes a rebuttable presumption that the person knew or had reason to believe that the purchaser intended to abuse the nitrous oxide.

(4) No person who dispenses or distributes nitrous oxide in cartridges shall fail to comply with either of the following:

(a) The record-keeping requirements established under division (F) of this section;

(b) The labeling and transaction identification requirements established under division (G) of this section.

(C) This section does not apply to products used in making, fabricating, assembling, transporting, or constructing a product or structure by manual labor or machinery for sale or lease to another person, or to the mining, refining, or processing of natural deposits.

(D)(1) Whoever violates division (A)(1) or (2) or division (B)(1), (2), or (3) of this section is guilty of trafficking in harmful intoxicants, a felony of the fifth degree. If the offender previously has been convicted of a drug abuse offense, trafficking in harmful intoxicants is a felony of the fourth degree. In addition to any other sanction imposed for trafficking in harmful intoxicants, the court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to trafficking in harmful intoxicants. If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other sanction imposed for trafficking in harmful intoxicants, the court forthwith shall comply with section 2925.38 of the Revised Code.

(2) Whoever violates division (B)(4)(a) or (b) of this section is guilty of improperly dispensing or distributing nitrous oxide, a misdemeanor of the fourth degree.

(E) It is an affirmative defense to a charge of a violation of division (A)(2) or (B)(2) of this section that:

(1) An individual exhibited to the defendant or an officer or employee of the defendant, for purposes of establishing the individual's age, a driver's license or permit issued by this state, a commercial driver's license or permit issued by this state, an identification card issued pursuant to section 4507.50 of the Revised Code, for another document that purports to be a license, permit, or identification card described in this division;

(2) The document exhibited appeared to be a genuine, unaltered document, to pertain to the individual, and to establish the individual's age;

(3) The defendant or the officer or employee of the defendant otherwise

did not have reasonable cause to believe that the individual was under the age represented.

(F) Beginning July 1, ~~1998~~ 1999, a person who dispenses or distributes nitrous oxide shall record each transaction involving the dispensing or distributing of the nitrous oxide on a separate card. The person shall require the purchaser to sign the card and provide a complete residence address. The person dispensing or distributing the nitrous oxide shall sign and date the card. The person shall retain the card recording a transaction for one year from the date of the transaction. The person shall maintain the cards at the person's business address and make them available during normal business hours for inspection and copying by officers or employees of the state board of pharmacy or of other law enforcement agencies of this state or the United States that are authorized to investigate violations of Chapter 2925., 3719., or 4729. of the Revised Code or the federal drug abuse control laws.

The cards used to record each transaction shall inform the purchaser of the following:

(1) That nitrous oxide cartridges are to be used only for purposes of preparing food;

(2) That inhalation of nitrous oxide can have dangerous health effects;

(3) That it is a violation of state law to distribute or dispense cartridges of nitrous oxide to any person under age twenty-one, punishable as a felony of the fifth degree.

(G)(1) Each cartridge of nitrous oxide dispensed or distributed in this state shall bear the following printed warning:

"Nitrous oxide cartridges are to be used only for purposes of preparing food. Nitrous oxide cartridges may not be sold to persons under age twenty-one. Do not inhale contents. Misuse can be dangerous to your health."

(2) Each time a person dispenses or distributes one or more cartridges of nitrous oxide, the person shall mark the packaging containing the cartridges with a label or other device that identifies the person who dispensed or distributed the nitrous oxide and the person's business address.

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

If the offender is eligible to be sentenced to community control

sanctions, the court shall consider the appropriateness of imposing a financial sanction pursuant to section 2929.18 of the Revised Code or a sanction of community service pursuant to section 2929.17 of the Revised Code as the sole sanction for the offense. Except as otherwise provided in this division, if the court is required to impose a mandatory prison term for the offense for which sentence is being imposed, the court also may impose a financial sanction pursuant to section 2929.18 of the Revised Code but may not impose any additional sanction or combination of sanctions under section 2929.16 or 2929.17 of the Revised Code.

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

(1) If division (G)(1) of this section requires that the offender be sentenced to a mandatory term of local incarceration, an additional community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code;

(2) If division (G)(2) of this section requires that the offender be sentenced to a mandatory prison term, an additional prison term as described in division (D)(4) of section 2929.14 of the Revised Code.

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

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

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

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

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

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

(f) The offense is a sex offense that is a fourth or fifth degree felony

violation of section 2907.03, 2907.04, 2907.05, 2907.22, 2907.31, 2907.321, 2907.322, 2907.323, or 2907.34 of the Revised Code.

(g) The offender previously served a prison term.

(h) The offender previously was subject to a community control sanction, and the offender committed another offense while under the sanction.

(2)(a) If the court makes a finding described in division (B)(1)(a), (b), (c), (d), (e), (f), (g), or (h) of this section and if the court, after considering the factors set forth in section 2929.12 of the Revised Code, finds that a prison term is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code and finds that the offender is not amenable to an available community control sanction, the court shall impose a prison term upon the offender.

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

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

(D) Except as provided in division (E) or (F) of this section, for a felony of the first or second degree and for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code. Notwithstanding the presumption established under this division, the sentencing court may impose a community control sanction or a combination of community control sanctions instead of a prison term on an offender for a felony of the first or second degree or for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729.

of the Revised Code for which a presumption in favor of a prison term is specified as being applicable if it makes both of the following findings:

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

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

(E)(1) Except as provided in division (F) of this section, for any drug offense that is a violation of any provision of Chapter 2925. of the Revised Code and that is a felony of the third, fourth, or fifth degree, the applicability of a presumption under division (D) of this section in favor of a prison term or of division (B) or (C) of this section in determining whether to impose a prison term for the offense shall be determined as specified in section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.07, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the Revised Code, whichever is applicable regarding the violation.

(2) If an offender who was convicted of or pleaded guilty to a felony drug offense in violation of a provision of Chapter 2925., 3719., or 4729. of the Revised Code violates the conditions of a community control sanction imposed for the offense solely by ~~possession~~ possessing or using a controlled substance and if the offender has not failed to meet the conditions of any drug treatment program in which the offender was ordered to participate as a sanction for the offense, the court, as punishment for the violation of the sanction, shall order that the offender participate in a drug treatment program or in alcoholics anonymous, narcotics anonymous, or a similar program if the court determines that an order of that nature is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. If the court determines that an order of that nature would not be consistent with those purposes and principles or if the offender violated the conditions of a drug treatment program in which the offender participated as a sanction for the offense, the court may impose on the offender a sanction authorized for the violation of the sanction, including

a prison term.

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

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

(2) Any rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape by force when the victim is under thirteen years of age;

(3) Gross sexual imposition or sexual battery, if the victim is under thirteen years of age, if the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and if the victim of the previous offense was under thirteen years of age;

(4) A felony violation of section 2903.06, 2903.07, or 2903.08 of the Revised Code if the section requires the imposition of a prison term;

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

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

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

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

(9) Any sexually violent offense for which the offender also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging the sexually violent offense;

(10) A violation of division (A)(1) or (2) of section 2921.36 of the Revised Code, or a violation of division (C) of that section involving an item listed in division (A)(1) or (2) of that section, if the offender is an officer or employee of the department of rehabilitation and correction.

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

(1) Except as provided in division (G)(2) of this section, the court shall impose upon the offender a mandatory term of local incarceration of sixty days as specified in division (A)(4) of section 4511.99 of the Revised Code and shall not reduce the term pursuant to section 2929.20, 2967.193, or any other provision of the Revised Code. The court that imposes a mandatory term of local incarceration under this division shall specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender shall serve the term in the type of facility specified by the court. The court shall not sentence the offender to a prison term and shall not specify that the offender is to serve the mandatory term of local incarceration in prison. A mandatory term of local incarceration imposed under division (G)(1) of this section is not subject to extension under section 2967.11 of the Revised Code, to a period of post-release control under section 2967.28 of the Revised Code, or to any other Revised Code provision that pertains to a prison term.

(2) If the offender previously has been sentenced to a mandatory term of local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OMVI offense, the court shall impose upon the offender a mandatory prison term of sixty days as specified in division (A)(4) of section 4511.99 of the Revised Code and shall not reduce the term pursuant to section 2929.20, 2967.193, or any other provision of the Revised Code. In no case shall an offender who once has been sentenced to a mandatory term of local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OMVI offense be sentenced to another mandatory term of local incarceration under that division for a fourth degree felony OMVI offense. The court shall not sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code. The department of rehabilitation and correction may place an offender sentenced

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

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

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

(H) If an offender is being sentenced for a sexually oriented offense committed on or after ~~the effective date of this amendment~~ January 1, 1997, the judge shall require the offender to submit to a DNA specimen collection procedure pursuant to section 2901.07 of the Revised Code if either of the following applies:

(1) The offense was a sexually violent offense, and the offender also was convicted of or pleaded guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging the sexually violent offense.

(2) The judge imposing sentence for the sexually oriented offense determines pursuant to division (B) of section 2950.09 of the Revised Code that the offender is a sexual predator.

(I) If an offender is being sentenced for a sexually oriented offense committed on or after ~~the effective date of this amendment~~ January 1, 1997, the judge shall include in the sentence a summary of the offender's duty to register pursuant to section 2950.04 of the Revised Code, the offender's duty to provide notice of a change in residence address and register the new residence address pursuant to section 2950.05 of the Revised Code, the offender's duty to periodically verify the offender's current residence address pursuant to section 2950.06 of the Revised Code, and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of

those duties and of their duration and, if required under division (A)(2) of section 2950.03 of the Revised Code, shall perform the duties specified in that section.

Sec. 2929.18. (A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in section 2929.25 of the Revised Code, may impose upon the offender a fine in accordance with that section. If the offender is sentenced to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another governmental entity, the court imposing sentence upon an offender for a felony shall comply with division (A)(4)(b) of this section in determining whether to sentence the offender to a financial sanction described in division (A)(4)(a) of this section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. The court shall order that the restitution be made to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court, except that it may include a requirement that reimbursement be made to third parties for amounts paid to or on behalf of the victim or any survivor of the victim for economic loss resulting from the offense. If reimbursement to third parties is required, the reimbursement shall be made to any governmental agency to repay any amounts paid by the agency to or on behalf of the victim or any survivor of the victim for economic loss resulting from the offense before any reimbursement is made to any person other than a governmental agency. If no governmental agency incurred expenses for economic loss of the victim or any survivor of the victim resulting from the offense, the reimbursement shall be made to any person other than a governmental agency to repay amounts paid by that person to or on behalf of the victim or any survivor of the victim for economic loss of the victim resulting from the offense. The court shall not require an offender to repay an insurance company for any amounts the company paid on behalf of the offender pursuant to a policy of insurance. At sentencing, the court shall determine the amount of restitution to be made by the offender. All restitution payments shall be credited against any recovery of economic loss in a civil

action brought by the victim or any survivor of the victim against the offender.

(2) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision, or as described in division (B)(2) of this section to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense. A fine ordered under this division shall not exceed the statutory fine amount authorized for the level of the offense under division (A)(3) of this section.

(3) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or as described in division (B)(2) of this section to one or more law enforcement agencies, in the following amount:

(a) For a felony of the first degree, not more than twenty thousand dollars;

(b) For a felony of the second degree, not more than fifteen thousand dollars;

(c) For a felony of the third degree, not more than ten thousand dollars;

(d) For a felony of the fourth degree, not more than five thousand dollars;

(e) For a felony of the fifth degree, not more than two thousand five hundred dollars.

(4)(a) Subject to division (A)(4)(b) of this section, reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:

(i) All or part of the costs of implementing any community control sanction;

(ii) All or part of the costs of confinement under a sanction imposed pursuant to section 2929.14 or 2929.16 of the Revised Code, provided that the amount of reimbursement ordered under this division shall not exceed ten thousand dollars or the total amount of reimbursement the offender is able to pay as determined at a hearing, whichever amount is greater;

(b) If the offender is sentenced to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another local governmental entity, one of the following applies:

(i) If, pursuant to section 307.93, 341.14, 341.19, 341.23, 753.02, 753.04, 753.16, ~~or~~ 2301.56, or 2947.19 of the Revised Code, the board,

lative authority, or other local governmental entity requires prisoners convicted of an offense other than a minor misdemeanor to reimburse the county, municipal corporation, or other entity for its expenses incurred by reason of the prisoner's confinement, the court shall impose a financial sanction under division (A)(4)(a) of this section that requires the offender to reimburse the county, municipal corporation, or other local governmental entity for the cost of the confinement. In addition, the court may impose any other financial sanction under this section.

(ii) If, pursuant to any section identified in division (A)(4)(b)(i) of this section, the board, legislative authority, or other local governmental entity has adopted a resolution or ordinance specifying that prisoners convicted of felonies are not required to reimburse the county, municipal corporation, or other local governmental entity for its expenses incurred by reason of the prisoner's confinement, the court shall not impose a financial sanction under division (A)(4)(a) of this section that requires the offender to reimburse the county, municipal corporation, or other local governmental entity for the cost of the confinement, but the court may impose any other financial sanction under this section.

(iii) If neither division (A)(4)(b)(i) nor (A)(4)(b)(ii) of this section applies, the court may impose, but is not required to impose, any financial sanction under this section.

(c) Reimbursement by the offender for costs pursuant to section 2929.28 of the Revised Code.

(B)(1) For a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to division (A)(3) of this section. If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.

(2) Any mandatory fine imposed upon an offender under division (B)(1) of this section and any fine imposed upon an offender under division (A)(2) or (3) of this section for any fourth or fifth degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code shall be paid to law enforcement agencies pursuant to division (F) of section 2925.03 of the Revised Code.

(3) For a fourth degree felony OMVI offense, the sentencing court shall

impose upon the offender a mandatory fine in the amount specified in division (A)(4) of section 4511.99 of the Revised Code. The mandatory fine so imposed shall be disbursed as provided in division (A)(4) of section 4511.99 of the Revised Code.

(4) Notwithstanding any fine otherwise authorized or required to be imposed under division (A)(2) or (3) or (B)(1) of this section or section 2929.31 of the Revised Code for a violation of section 2925.03 or 2925.07 of the Revised Code, in addition to any penalty or sanction imposed for that offense under section 2925.03 or 2925.07 or sections 2929.11 to 2929.18 of the Revised Code and in addition to the forfeiture of property in connection with the offense as prescribed in sections 2925.42 to 2925.45 of the Revised Code, the court that sentences an offender for a violation of section 2925.03 or 2925.07 of the Revised Code may impose upon the offender a fine in addition to any fine imposed under division (A)(2) or (3) of this section and in addition to any mandatory fine imposed under division (B)(1) of this section. The fine imposed under division (B)(4) of this section shall be used as provided in division (H) of section 2925.03 of the Revised Code. A fine imposed under division (B)(4) of this section shall not exceed whichever of the following is applicable:

(a) The total value of any personal or real property in which the offender has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 2925.03 or 2925.07 of the Revised Code, including any property that constitutes proceeds derived from that offense;

(b) If the offender has no interest in any property of the type described in division (B)(4)(a) of this section or if it is not possible to ascertain whether the offender has an interest in any property of that type in which the offender may have an interest, the amount of the mandatory fine for the offense imposed under division (B)(1) of this section or, if no mandatory fine is imposed under division (B)(1) of this section, the amount of the fine authorized for the level of the offense imposed under division (A)(3) of this section.

(5) Prior to imposing a fine under division (B)(4) of this section, the court shall determine whether the offender has an interest in any property of the type described in division (B)(4)(a) of this section. Except as provided in division (B)(6) or (7) of this section, a fine that is authorized and imposed under division (B)(4) of this section does not limit or affect the imposition of the penalties and sanctions for a violation of section 2925.03 or 2925.07 Of the Revised Code prescribed under ~~that section~~ those sections or sections 2929.11 to 2929.18 of the Revised Code and does not limit or affect a

forfeiture of property in connection with the offense as prescribed in sections 2925.42 to 2925.45 of the Revised Code.

(6) If the sum total of a mandatory fine amount imposed for a first, second, or third degree felony violation of section 2925.03 or a third degree felony violation of section 2925.07 of the Revised Code under division (B)(1) of this section plus the amount of any fine imposed under division (B)(4) of this section does not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code, the court may impose a fine for the offense in addition to the mandatory fine and the fine imposed under division (B)(4) of this section. The sum total of the amounts of the mandatory fine, the fine imposed under division (B)(4) of this section, and the additional fine imposed under division (B)(6) of this section shall not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code. The clerk of the court shall pay any fine that is imposed under division (B)(6) of this section to the county, township, municipal corporation, park district as created pursuant to section 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender pursuant to division (F) of section 2925.03 of the Revised Code.

(7) If the sum total of the amount of a mandatory fine imposed for a first, second, or third degree felony violation of section 2925.03 or a third degree felony violation of section 2925.07 of the Revised Code plus the amount of any fine imposed under division (B)(4) of this section exceeds the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code, the court shall not impose a fine under division (B)(6) of this section.

(C)(1) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(4)(a) of this section to pay the costs incurred by the department of rehabilitation and correction in operating a prison or other facility used to confine offenders pursuant to sanctions imposed under section 2929.14 or 2929.16 of the Revised Code to the treasurer of state. The treasurer of state shall deposit the reimbursements in the confinement cost reimbursement fund that is hereby created in the state treasury. The department of rehabilitation and correction shall use the amounts deposited in the fund to fund the operation of facilities used to confine offenders pursuant to sections 2929.14 and 2929.16 of the Revised Code.

(2) Except as provided in section 2951.021 of the Revised Code, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(4)(a) of this section to pay the costs incurred by a county pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code to the county treasurer. The county treasurer shall deposit the reimbursements in the sanction cost reimbursement fund that each board of county commissioners shall create in its county treasury. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

(3) Except as provided in section 2951.021 of the Revised Code, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(4)(a) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in a special fund that shall be established in the treasury of each municipal corporation. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

(4) Except as provided in section 2951.021 of the Revised Code, the offender shall pay reimbursements imposed pursuant to division (A)(4)(a) of this section for the costs incurred by a private provider pursuant to a sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code to the provider.

(D) A financial sanction imposed pursuant to division (A) or (B) of this section is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the sanction is the judgment debtor, except that a financial sanction of reimbursement imposed pursuant to division (A)(4)(a)(ii) of this section upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal

poration, a financial sanction of reimbursement imposed upon an offender pursuant to this section for costs incurred by a private provider of sanctions is a judgment in favor of the private provider, and a financial sanction of restitution imposed pursuant to this section is a judgment in favor of the victim of the offender's criminal act. Once the financial sanction is imposed as a judgment, the victim, private provider, state, or political subdivision may bring an action to do any of the following:

(1) Obtain execution of the judgment through any available procedure, including:

(a) An execution against the property of the judgment debtor under Chapter 2329. of the Revised Code;

(b) An execution against the person of the judgment debtor under Chapter 2331. of the Revised Code;

(c) A proceeding in aid of execution under Chapter 2333. of the Revised Code, including:

(i) A proceeding for the examination of the judgment debtor under sections 2333.09 to 2333.12 and sections 2333.15 to 2333.27 of the Revised Code;

(ii) A proceeding for attachment of the person of the judgment debtor under section 2333.28 of the Revised Code;

(iii) A creditor's suit under section 2333.01 of the Revised Code.

(d) The attachment of the property of the judgment debtor under Chapter 2715. of the Revised Code;

(e) The garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code.

(2) Obtain an order for the assignment of wages of the judgment debtor under section 1321.33 of the Revised Code.

(E) A court that imposes a financial sanction upon an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it.

(F) Each court imposing a financial sanction upon an offender under this section or under section 2929.25 of the Revised Code may designate a court employee to collect, or may enter into contracts with one or more public agencies or private vendors for the collection of, amounts due under the financial sanction imposed pursuant to this section or section 2929.25 of the Revised Code. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this section or section 2929.25 of the Revised Code, a court shall comply with sections 307.86 to 307.92 of the Revised Code.

(G) If a court that imposes a financial sanction under division (A) or (B)

of this section finds that an offender satisfactorily has completed all other sanctions imposed upon the offender and that all restitution that has been ordered has been paid as ordered, the court may suspend any financial sanctions imposed pursuant to this section or section 2929.25 of the Revised Code that have not been paid.

(H) No financial sanction imposed under this section or section 2929.25 of the Revised Code shall preclude a victim from bringing a civil action against the offender.

SECTION 2. That existing sections 2925.32, 2929.13, and 2929.18 of the Revised Code are hereby repealed.

SECTION 3. Section 2929.18 of the Revised Code is presented in this act as a composite of the section as amended by Sub. H.B. 480, Am. Sub. S.B. 166, and Am. Sub. S.B. 269 of the 121st General Assembly, with the new language of none of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

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

Director, Legislative Service Commission.

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

Secretary of State.

File No. _____ Effective Date _____