

AN ACT

To amend sections 2903.11, 2903.12, 2903.13, 2929.13, and 2937.23 of the Revised Code to require the court to impose a mandatory prison term for felonious assault, aggravated assault, and assault if the victim of the offense is a peace officer and suffers serious physical harm as a result of the offense and to explicitly require the judge or a magistrate to set bail in cases involving the felonious assault, aggravated assault, or assault of a peace officer.

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

SECTION 1. That sections 2903.11, 2903.12, 2903.13, 2929.13, and 2937.23 of the Revised Code be amended to read as follows:

Sec. 2903.11. (A) No person shall knowingly:

- (1) Cause serious physical harm to another or to another's unborn;
- (2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code.

(B) Whoever violates this section is guilty of felonious assault, a felony of the second degree. If the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, felonious assault is a felony of the first degree. If the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, and if the victim suffered serious physical harm as a result of the commission of the offense, felonious assault is a felony of the first degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

Sec. 2903.12. (A) No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly:

- (1) Cause serious physical harm to another or to another's unborn;
- (2) Cause or attempt to cause physical harm to another or to another's

unborn by means of a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code.

(B) Whoever violates this section is guilty of aggravated assault, a felony of the fourth degree. If the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, aggravated assault is a felony of the third degree. If the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, and if the victim suffered serious physical harm as a result of the commission of the offense, aggravated assault is a felony of the third degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.

Sec. 2903.13. (A) No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn.

(B) No person shall recklessly cause serious physical harm to another or to another's unborn.

(C) Whoever violates this section is guilty of assault. Except as otherwise provided in division (C)(1), (2), or (3) of this section, assault is a misdemeanor of the first degree.

(1) Except as otherwise provided in this division, if the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, assault is a felony of the fourth degree. If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, if the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2903.11 or 2903.16 of the Revised Code, and if in relation to the previous conviction the offender was a caretaker and the victim was a functionally impaired person under the offender's care, assault is a felony of the third degree.

(2) If the offense is committed in any of the following circumstances, assault is a felony of the fifth degree:

(a) The offense occurs in or on the grounds of a state correctional institution or an institution of the department of youth services, the victim of the offense is an employee of the department of rehabilitation and correction, the department of youth services, or a probation department or is on the premises of the particular institution for business purposes or as a visitor, and the offense is committed by a person incarcerated in the state correctional institution, by a person institutionalized in the department of youth services institution pursuant to a commitment to the department of youth services, by a probationer or parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a

person under post-release control, or by an offender under any other type of supervision by a government agency.

(b) The offense occurs in or on the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility or a probation department or is on the premises of the facility for business purposes or as a visitor, and the offense is committed by a person who is under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person's being charged with or convicted of any crime, or subsequent to the person's being alleged to be or adjudicated a delinquent child.

(c) The offense occurs off the grounds of a state correctional institution and off the grounds of an institution of the department of youth services, the victim of the offense is an employee of the department of rehabilitation and correction, the department of youth services, or a probation department, the offense occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and the offense is committed by a person incarcerated in a state correctional institution or institutionalized in the department of youth services who temporarily is outside of the institution for any purpose, by a probationer or parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

(d) The offense occurs off the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility or a probation department, the offense occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and the offense is committed by a person who is under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person being charged with or convicted of any crime, or subsequent to the person being alleged to be or adjudicated a delinquent child and who temporarily is outside of the facility for any purpose or by a probationer or parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

(e) The victim of the offense is a school teacher or administrator or a school bus operator, and the offense occurs in a school, on school premises, in a school building, on a school bus, or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position as a school teacher or

administrator or a school bus operator, including, but not limited to, driving, accompanying, or chaperoning students at or on class or field trips, athletic events, or other school extracurricular activities or functions outside of school premises.

(3) If the victim of the offense is a peace officer, a firefighter, or a person performing emergency medical service, while in the performance of their official duties, assault is a felony of the fourth degree.

(4) If the victim of the offense is a peace officer and if the victim suffered serious physical harm as a result of the commission of the offense, assault is a felony of the fourth degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least twelve months in duration.

(5) As used in this section:

(a) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(b) "Firefighter" has the same meaning as in section 3937.41 of the Revised Code.

(c) "Emergency medical service" has the same meaning as in section 4765.01 of the Revised Code.

(d) "Local correctional facility" means a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, a minimum security jail established under section 341.23 or 753.21 of the Revised Code, or another county, multicounty, municipal, municipal-county, or multicounty-municipal facility used for the custody of persons arrested for any crime or delinquent act, persons charged with or convicted of any crime, or persons alleged to be or adjudicated a delinquent child.

(e) "Employee of a local correctional facility" means a person who is an employee of the political subdivision or of one or more of the affiliated political subdivisions that operates the local correctional facility and who operates or assists in the operation of the facility.

(f) "School teacher or administrator" means either of the following:

(i) A person who is employed in the public schools of the state under a contract described in section 3319.08 of the Revised Code in a position in which the person is required to have a certificate issued pursuant to sections 3319.22 to 3319.311 of the Revised Code.

(ii) A person who is employed by a nonpublic school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code and who is certificated in accordance with section

3301.071 of the Revised Code.

(g) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(h) "Escorted visit" means an escorted visit granted under section 2967.27 of the Revised Code.

(i) "Post-release control" and "transitional control" have the same meanings as in section 2967.01 of the Revised Code.

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 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~~, 2903.11, 2903.12, or 2903.13 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 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 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. 2937.23. (A)(1) In a case involving a felony or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code when the victim of the offense is a peace officer, the judge or magistrate shall fix the amount of bail. ~~It~~

(2) In a case involving a misdemeanor or a violation of a municipal ordinance and not involving a felony or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code when the victim of the offense is a peace officer, the judge, magistrate, or clerk of the court may fix the amount of bail and may do so in accordance with a schedule previously fixed by the judge or magistrate, ~~or, in a case when~~. ~~If~~ the judge, magistrate, or clerk of the court is not readily available, the sheriff, deputy sheriff, marshal, deputy marshal, police officer, or jailer having custody of the person charged may fix the amount of bail in accordance with a schedule previously fixed by the judge or magistrate and shall take the bail only in the county courthouse, the municipal or township building, or the county or municipal jail. ~~It~~

(3) In all cases, the bail shall be fixed with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of the defendant appearing at the trial of the case.

(B) In any case involving an alleged violation of section 2919.27 of the Revised Code or of a municipal ordinance that is substantially similar to that section and in which the court finds that either of the following criteria applies, the court shall determine whether it will order an evaluation of the

mental condition of the defendant pursuant to section 2919.271 of the Revised Code and, if it decides to so order, shall issue the order requiring that evaluation before it sets bail for the person charged with the violation:

(1) Regarding an alleged violation of a protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of a family or household member covered by the order or agreement or conduct by that defendant that caused a family or household member to believe that the defendant would cause physical harm to that member or that member's property;

(2) Regarding an alleged violation of a protection order issued pursuant to section 2903.213 or 2903.214 of the Revised Code, or a protection order issued by a court of another state, as defined in section 2919.27 of the Revised Code, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of the person covered by the order or conduct by that defendant that caused the person covered by the order to believe that the defendant would cause physical harm to that person or that person's property.

(C) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.

SECTION 2. That existing sections 2903.11, 2903.12, 2903.13, 2929.13, and 2937.23 of the Revised Code are hereby repealed.

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 _____