

As Introduced

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H. B. No. 211

Representatives Humphrey, Williams

**Cosponsors: Representatives Brewer, Isaacsohn, Piccolantonio, Upchurch,
Russo, Brennan, White, E., Brownlee, Synenberg, Mohamed, Cockley, Fischer**

A BILL

To amend sections 2929.19, 2951.03, and 2951.041 of
the Revised Code to require a court to consider
an offender's status as a primary caretaker of a
child in determining whether the offender is
amenable to a community control sanction or to
intervention in lieu of conviction.

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

Section 1. That sections 2929.19, 2951.03, and 2951.041 of
the Revised Code be amended to read as follows:

Sec. 2929.19. (A) The court shall hold a sentencing
hearing before imposing a sentence under this chapter upon an
offender who was convicted of or pleaded guilty to a felony and
before resentencing an offender who was convicted of or pleaded
guilty to a felony and whose case was remanded pursuant to
section 2953.07 or 2953.08 of the Revised Code. At the hearing,
the offender, the prosecuting attorney, the victim or the
victim's representative in accordance with section 2930.14 of
the Revised Code, and, with the approval of the court, any other
person may present information relevant to the imposition of

sentence in the case. The court shall inform the offender of the 19
verdict of the jury or finding of the court and ask the offender 20
whether the offender has anything to say as to why sentence 21
should not be imposed upon the offender. 22

(B) (1) At the sentencing hearing, the court, before 23
imposing sentence, shall do all of the following: 24

(a) Consider the following: 25

(i) The record,~~any~~; 26

(ii) Any information presented at the hearing by any 27
person pursuant to division (A) of this section,~~and, if~~; 28

(iii) If one was prepared, the presentence investigation 29
report made pursuant to section 2951.03 of the Revised Code or 30
Criminal Rule 32.2, ~~and any~~ including the offender's status as 31
the primary caretaker of a child, if applicable; 32

(iv) Any victim impact statement made pursuant to section 33
2947.051 of the Revised Code,~~—~~. 34

(b) If the offense was committed when the offender was 35
under eighteen years of age, in addition to other factors 36
considered, consider youth and its characteristics as mitigating 37
factors, including: 38

(i) The chronological age of the offender at the time of 39
the offense and that age's hallmark features, including 40
intellectual capacity, immaturity, impetuosity, and a failure to 41
appreciate risks and consequences; 42

(ii) The family and home environment of the offender at 43
the time of the offense, the offender's inability to control the 44
offender's surroundings, a history of trauma regarding the 45
offender, and the offender's school and special education 46

history;	47
(iii) The circumstances of the offense, including the extent of the offender's participation in the conduct and the way familial and peer pressures may have impacted the offender's conduct;	48 49 50 51
(iv) Whether the offender might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth, such as the offender's inability to deal with police officers and prosecutors during the offender's interrogation or possible plea agreement or the offender's inability to assist the offender's own attorney;	52 53 54 55 56 57
(v) Examples of the offender's rehabilitation, including any subsequent growth or increase in maturity during confinement.	58 59 60
(2) Subject to division (B) (3) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:	61 62 63 64
(a) Impose a stated prison term and, if the court imposes a mandatory prison term, notify the offender that the prison term is a mandatory prison term;	65 66 67
(b) In addition to any other information, include in the sentencing entry the name and section reference to the offense or offenses, the sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms, if sentences are imposed for multiple counts whether the sentences are to be served concurrently or consecutively, and the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed	68 69 70 71 72 73 74 75

for the specification or specifications; 76

(c) If the prison term is a non-life felony indefinite 77
prison term, notify the offender of all of the following: 78

(i) That it is rebuttably presumed that the offender will 79
be released from service of the sentence on the expiration of 80
the minimum prison term imposed as part of the sentence or on 81
the offender's presumptive earned early release date, as defined 82
in section 2967.271 of the Revised Code, whichever is earlier; 83

(ii) That the department of rehabilitation and correction 84
may rebut the presumption described in division (B) (2) (c) (i) of 85
this section if, at a hearing held under section 2967.271 of the 86
Revised Code, the department makes specified determinations 87
regarding the offender's conduct while confined, the offender's 88
rehabilitation, the offender's threat to society, the offender's 89
restrictive housing, if any, while confined, and the offender's 90
security classification; 91

(iii) That if, as described in division (B) (2) (c) (ii) of 92
this section, the department at the hearing makes the specified 93
determinations and rebuts the presumption, the department may 94
maintain the offender's incarceration after the expiration of 95
that minimum term or after that presumptive earned early release 96
date for the length of time the department determines to be 97
reasonable, subject to the limitation specified in section 98
2967.271 of the Revised Code; 99

(iv) That the department may make the specified 100
determinations and maintain the offender's incarceration under 101
the provisions described in divisions (B) (2) (c) (i) and (ii) of 102
this section more than one time, subject to the limitation 103
specified in section 2967.271 of the Revised Code; 104

(v) That if the offender has not been released prior to 105
the expiration of the offender's maximum prison term imposed as 106
part of the sentence, the offender must be released upon the 107
expiration of that term. 108

(d) Notify the offender that the offender will be 109
supervised under section 2967.28 of the Revised Code after the 110
offender leaves prison if the offender is being sentenced, other 111
than to a sentence of life imprisonment, for a felony of the 112
first degree or second degree, for a felony sex offense, or for 113
a felony of the third degree that is an offense of violence and 114
is not a felony sex offense. This division applies with respect 115
to all prison terms imposed for an offense of a type described 116
in this division, including a non-life felony indefinite prison 117
term and including a term imposed for any offense of a type 118
described in this division that is a risk reduction sentence, as 119
defined in section 2967.28 of the Revised Code. If a court 120
imposes a sentence including a prison term of a type described 121
in division (B) (2) (d) of this section on or after July 11, 2006, 122
the failure of a court to notify the offender pursuant to 123
division (B) (2) (d) of this section that the offender will be 124
supervised under section 2967.28 of the Revised Code after the 125
offender leaves prison or to include in the judgment of 126
conviction entered on the journal a statement to that effect 127
does not negate, limit, or otherwise affect the mandatory period 128
of supervision that is required for the offender under division 129
(B) of section 2967.28 of the Revised Code. Section 2929.191 of 130
the Revised Code applies if, prior to July 11, 2006, a court 131
imposed a sentence including a prison term of a type described 132
in division (B) (2) (d) of this section and failed to notify the 133
offender pursuant to division (B) (2) (d) of this section 134
regarding post-release control or to include in the judgment of 135

conviction entered on the journal or in the sentence a statement 136
regarding post-release control. 137

(e) Notify the offender that the offender may be 138
supervised under section 2967.28 of the Revised Code after the 139
offender leaves prison if the offender is being sentenced for a 140
felony of the third, fourth, or fifth degree that is not subject 141
to division (B) (2) (d) of this section. This division applies 142
with respect to all prison terms imposed for an offense of a 143
type described in this division, including a term imposed for 144
any such offense that is a risk reduction sentence, as defined 145
in section 2967.28 of the Revised Code. Section 2929.191 of the 146
Revised Code applies if, prior to July 11, 2006, a court imposed 147
a sentence including a prison term of a type described in 148
division (B) (2) (e) of this section and failed to notify the 149
offender pursuant to division (B) (2) (e) of this section 150
regarding post-release control or to include in the judgment of 151
conviction entered on the journal or in the sentence a statement 152
regarding post-release control. 153

(f) Notify the offender that, if a period of supervision 154
is imposed following the offender's release from prison, as 155
described in division (B) (2) (d) or (e) of this section, and if 156
the offender violates that supervision or a condition of post- 157
release control imposed under division (B) of section 2967.131 158
of the Revised Code, the parole board may impose a prison term, 159
as part of the sentence, of up to one-half of the definite 160
prison term originally imposed upon the offender as the 161
offender's stated prison term or up to one-half of the minimum 162
prison term originally imposed upon the offender as part of the 163
offender's stated non-life felony indefinite prison term. If a 164
court imposes a sentence including a prison term on or after 165
July 11, 2006, the failure of a court to notify the offender 166

pursuant to division (B) (2) (f) of this section that the parole board may impose a prison term as described in division (B) (2) (f) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of section 2967.131 of the Revised Code or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D) (1) of section 2967.28 of the Revised Code, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B) (2) (f) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(g) (i) Determine, notify the offender of, and include in the sentencing entry the total number of days, including the sentencing date but excluding conveyance time, that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which the department of rehabilitation and correction must reduce the definite prison term imposed on the offender as the offender's stated prison term or, if the offense is an offense for which a non-life felony indefinite prison term is imposed under division (A) (1) (a) or (2) (a) of section 2929.14 of the Revised Code, the minimum and maximum prison terms imposed on the offender as part of that non-life felony indefinite prison term, under section 2967.191 of the Revised Code. The court's calculation shall not

include the number of days, if any, that the offender served in 198
the custody of the department of rehabilitation and correction 199
arising out of any prior offense for which the prisoner was 200
convicted and sentenced. 201

(ii) In making a determination under division (B) (2) (g) (i) 202
of this section, the court shall consider the arguments of the 203
parties and conduct a hearing if one is requested. 204

(iii) The sentencing court retains continuing jurisdiction 205
to correct any error not previously raised at sentencing in 206
making a determination under division (B) (2) (g) (i) of this 207
section. The offender may, at any time after sentencing, file a 208
motion in the sentencing court to correct any error made in 209
making a determination under division (B) (2) (g) (i) of this 210
section, and the court may in its discretion grant or deny that 211
motion. If the court changes the number of days in its 212
determination or redetermination, the court shall cause the 213
entry granting that change to be delivered to the department of 214
rehabilitation and correction without delay. Sections 2931.15 215
and 2953.21 of the Revised Code do not apply to a motion made 216
under this section. 217

(iv) An inaccurate determination under division (B) (2) (g) 218
(i) of this section is not grounds for setting aside the 219
offender's conviction or sentence and does not otherwise render 220
the sentence void or voidable. 221

(v) The department of rehabilitation and correction shall 222
rely upon the latest journal entry of the court in determining 223
the total days of local confinement for purposes of division (B) 224
(2) (g) (i) to (iii) of this section and section 2967.191 of the 225
Revised Code. 226

(3) (a) The court shall include in the offender's sentence	227
a statement that the offender is a tier III sex offender/child-	228
victim offender, and the court shall comply with the	229
requirements of section 2950.03 of the Revised Code if any of	230
the following apply:	231
(i) The offender is being sentenced for a violent sex	232
offense or designated homicide, assault, or kidnapping offense	233
that the offender committed on or after January 1, 1997, and the	234
offender is adjudicated a sexually violent predator in relation	235
to that offense.	236
(ii) The offender is being sentenced for a sexually	237
oriented offense that the offender committed on or after January	238
1, 1997, and the offender is a tier III sex offender/child-	239
victim offender relative to that offense.	240
(iii) The offender is being sentenced on or after July 31,	241
2003, for a child-victim oriented offense, and the offender is a	242
tier III sex offender/child-victim offender relative to that	243
offense.	244
(iv) The offender is being sentenced under section 2971.03	245
of the Revised Code for a violation of division (A) (1) (b) of	246
section 2907.02 of the Revised Code committed on or after	247
January 2, 2007.	248
(v) The offender is sentenced to a term of life without	249
parole under division (B) of section 2907.02 of the Revised	250
Code.	251
(vi) The offender is being sentenced for attempted rape	252
committed on or after January 2, 2007, and a specification of	253
the type described in section 2941.1418, 2941.1419, or 2941.1420	254
of the Revised Code.	255

(vii) The offender is being sentenced under division (B) 256
(3) (a), (b), (c), or (d) of section 2971.03 of the Revised Code 257
for an offense described in those divisions committed on or 258
after January 1, 2008. 259

(b) Additionally, if any criterion set forth in divisions 260
(B) (3) (a) (i) to (vii) of this section is satisfied, in the 261
circumstances described in division (E) of section 2929.14 of 262
the Revised Code, the court shall impose sentence on the 263
offender as described in that division. 264

(4) If the sentencing court determines at the sentencing 265
hearing that a community control sanction should be imposed and 266
the court is not prohibited from imposing a community control 267
sanction, the court shall impose a community control sanction. 268
The court shall notify the offender that, if the conditions of 269
the sanction are violated, if the offender commits a violation 270
of any law, or if the offender leaves this state without the 271
permission of the court or the offender's probation officer, the 272
court may impose a longer time under the same sanction, may 273
impose a more restrictive sanction, or may impose a prison term 274
on the offender and shall indicate the range from which the 275
prison term may be imposed as a sanction for the violation, 276
which shall be the range of prison terms for the offense that is 277
specified pursuant to section 2929.14 of the Revised Code and as 278
described in section 2929.15 of the Revised Code." 279

(5) Before imposing a financial sanction under section 280
2929.18 of the Revised Code or a fine under section 2929.32 of 281
the Revised Code, the court shall consider the offender's 282
present and future ability to pay the amount of the sanction or 283
fine. 284

(6) If the sentencing court sentences the offender to a 285

sanction of confinement pursuant to section 2929.14 or 2929.16 286
of the Revised Code that is to be served in a local detention 287
facility, as defined in section 2929.36 of the Revised Code, and 288
if the local detention facility is covered by a policy adopted 289
pursuant to section 307.93, 341.14, 341.19, 341.21, 341.23, 290
753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code 291
and section 2929.37 of the Revised Code, both of the following 292
apply: 293

(a) The court shall specify both of the following as part 294
of the sentence: 295

(i) If the offender is presented with an itemized bill 296
pursuant to section 2929.37 of the Revised Code for payment of 297
the costs of confinement, the offender is required to pay the 298
bill in accordance with that section. 299

(ii) If the offender does not dispute the bill described 300
in division (B) (6) (a) (i) of this section and does not pay the 301
bill by the times specified in section 2929.37 of the Revised 302
Code, the clerk of the court may issue a certificate of judgment 303
against the offender as described in that section. 304

(b) The sentence automatically includes any certificate of 305
judgment issued as described in division (B) (6) (a) (ii) of this 306
section. 307

(7) The failure of the court to notify the offender that a 308
prison term is a mandatory prison term pursuant to division (B) 309
(2) (a) of this section or to include in the sentencing entry any 310
information required by division (B) (2) (b) of this section does 311
not affect the validity of the imposed sentence or sentences. If 312
the sentencing court notifies the offender at the sentencing 313
hearing that a prison term is mandatory but the sentencing entry 314

does not specify that the prison term is mandatory, the court 315
may complete a corrected journal entry and send copies of the 316
corrected entry to the offender and the department of 317
rehabilitation and correction, or, at the request of the state, 318
the court shall complete a corrected journal entry and send 319
copies of the corrected entry to the offender and department of 320
rehabilitation and correction. 321

(C) (1) If the offender is being sentenced for a fourth 322
degree felony OVI offense under division (G) (1) of section 323
2929.13 of the Revised Code, the court shall impose the 324
mandatory term of local incarceration in accordance with that 325
division, shall impose a mandatory fine in accordance with 326
division (B) (3) of section 2929.18 of the Revised Code, and, in 327
addition, may impose additional sanctions as specified in 328
sections 2929.15, 2929.16, 2929.17, and 2929.18 of the Revised 329
Code. The court shall not impose a prison term on the offender 330
except that the court may impose a prison term upon the offender 331
as provided in division (A) (1) of section 2929.13 of the Revised 332
Code. 333

(2) If the offender is being sentenced for a third or 334
fourth degree felony OVI offense under division (G) (2) of 335
section 2929.13 of the Revised Code, the court shall impose the 336
mandatory prison term in accordance with that division, shall 337
impose a mandatory fine in accordance with division (B) (3) of 338
section 2929.18 of the Revised Code, and, in addition, may 339
impose an additional prison term as specified in section 2929.14 340
of the Revised Code. In addition to the mandatory prison term or 341
mandatory prison term and additional prison term the court 342
imposes, the court also may impose a community control sanction 343
on the offender, but the offender shall serve all of the prison 344
terms so imposed prior to serving the community control 345

sanction. 346

(D) The sentencing court, pursuant to division (I)(1) of 347
section 2929.14 of the Revised Code, may recommend placement of 348
the offender in a program of shock incarceration under section 349
5120.031 of the Revised Code or an intensive program prison 350
under section 5120.032 of the Revised Code, disapprove placement 351
of the offender in a program or prison of that nature, or make 352
no recommendation. If the court recommends or disapproves 353
placement, it shall make a finding that gives its reasons for 354
its recommendation or disapproval. 355

Sec. 2951.03. (A)(1) Unless the defendant and the 356
prosecutor who is handling the case against the defendant agree 357
to waive the presentence investigation report, no person who has 358
been convicted of or pleaded guilty to a felony shall be placed 359
under a community control sanction until a written presentence 360
investigation report has been considered by the court. The court 361
may order a presentence investigation report notwithstanding an 362
agreement to waive the report. If a court orders the preparation 363
of a presentence investigation report pursuant to this section, 364
section 2947.06 of the Revised Code, or Criminal Rule 32.2, the 365
officer making the report shall inquire into the circumstances 366
of the offense and the criminal record, social history, and 367
present condition of the defendant, all information available 368
regarding any prior adjudications of the defendant as a 369
delinquent child and regarding the dispositions made relative to 370
those adjudications, and any other matters specified in Criminal 371
Rule 32.2. Whenever the officer considers it advisable, the 372
officer's investigation may include a physical and mental 373
examination of the defendant. A physical examination of the 374
defendant may include a drug test consisting of a chemical 375
analysis of a blood or urine specimen of the defendant to 376

determine whether the defendant ingested or was injected with a 377
drug of abuse. If, pursuant to section 2930.13 of the Revised 378
Code, the victim of the offense of which the defendant has been 379
convicted wishes to make a statement regarding the impact of the 380
offense for the officer's use in preparing the presentence 381
investigation report, the officer shall comply with the 382
requirements of that section. If the defendant files a motion 383
that includes evidence of the defendant's status as primary 384
caretaker of a child, the officer shall investigate the 385
defendant's status as primary caretaker of a child and include 386
any findings in the report. 387

(2) If a defendant is committed to any institution, the 388
presentence investigation report shall be sent to the 389
institution with the entry of commitment. If a defendant is 390
committed to any institution and a presentence investigation 391
report is not prepared regarding that defendant pursuant to this 392
section, section 2947.06 of the Revised Code, or Criminal Rule 393
32.2, the director of the department of rehabilitation and 394
correction or the director's designee may order that an offender 395
background investigation and report be conducted and prepared 396
regarding the defendant pursuant to section 5120.16 of the 397
Revised Code. An offender background investigation report 398
prepared pursuant to this section shall be considered 399
confidential information and is not a public record under 400
section 149.43 of the Revised Code. 401

(3) The department of rehabilitation and correction may 402
use any presentence investigation report and any offender 403
background investigation report prepared pursuant to this 404
section for penological and rehabilitative purposes. The 405
department may disclose any presentence investigation report and 406
any offender background investigation report to courts, law 407

enforcement agencies, community-based correctional facilities, 408
halfway houses, and medical, mental health, and substance abuse 409
treatment providers. The department shall make the disclosure in 410
a manner calculated to maintain the report's confidentiality. 411
Any presentence investigation report or offender background 412
investigation report that the department discloses to a 413
community-based correctional facility, a halfway house, or a 414
medical, mental health, or substance abuse treatment provider 415
shall not include a victim impact section or information 416
identifying a witness. 417

(B) (1) If a presentence investigation report is prepared 418
pursuant to this section, section 2947.06 of the Revised Code, 419
or Criminal Rule 32.2, the court, at a reasonable time before 420
imposing sentence, shall permit the defendant or the defendant's 421
counsel to read the report, except that the court shall not 422
permit the defendant or the defendant's counsel to read any of 423
the following: 424

(a) Any recommendation as to sentence; 425

(b) Any diagnostic opinions that, if disclosed, the court 426
believes might seriously disrupt a program of rehabilitation for 427
the defendant; 428

(c) Any sources of information obtained upon a promise of 429
confidentiality; 430

(d) Any other information that, if disclosed, the court 431
believes might result in physical harm or some other type of 432
harm to the defendant or to any other person. 433

(2) Prior to sentencing, the court shall permit the 434
defendant and the defendant's counsel to comment on the 435
presentence investigation report and, in its discretion, may 436

permit the defendant and the defendant's counsel to introduce 437
testimony or other information that relates to any alleged 438
factual inaccuracy contained in the report. 439

(3) If the court believes that any information in the 440
presentence investigation report should not be disclosed 441
pursuant to division (B)(1) of this section, the court, in lieu 442
of making the report or any part of the report available, shall 443
state orally or in writing a summary of the factual information 444
contained in the report that will be relied upon in determining 445
the defendant's sentence. The court shall permit the defendant 446
and the defendant's counsel to comment upon the oral or written 447
summary of the report. 448

(4) Any material that is disclosed to the defendant or the 449
defendant's counsel pursuant to this section shall be disclosed 450
to the prosecutor who is handling the prosecution of the case 451
against the defendant. 452

(5) If the comments of the defendant or the defendant's 453
counsel, the testimony they introduce, or any of the other 454
information they introduce alleges any factual inaccuracy in the 455
presentence investigation report or the summary of the report, 456
the court shall do either of the following with respect to each 457
alleged factual inaccuracy: 458

(a) Make a finding as to the allegation; 459

(b) Make a determination that no finding is necessary with 460
respect to the allegation, because the factual matter will not 461
be taken into account in the sentencing of the defendant. 462

(C) A court's decision as to the content of a summary 463
under division (B)(3) of this section or as to the withholding 464
of information under division (B)(1)(a), (b), (c), or (d) of 465

this section shall be considered to be within the discretion of 466
the court. No appeal can be taken from either of those 467
decisions, and neither of those decisions shall be the basis for 468
a reversal of the sentence imposed. 469

(D) (1) The contents of a presentence investigation report 470
prepared pursuant to this section, section 2947.06 of the 471
Revised Code, or Criminal Rule 32.2 and the contents of any 472
written or oral summary of a presentence investigation report or 473
of a part of a presentence investigation report described in 474
division (B) (3) of this section are confidential information and 475
are not a public record. The contents of a presentence 476
investigation report or of a part of a presentence investigation 477
report described in division (B) (3) of this section may be 478
shared between courts. Any court, any appellate court, 479
authorized probation officers, investigators, and any authorized 480
court personnel, the defendant, the defendant's counsel, the 481
prosecutor who is handling the prosecution of the case against 482
the defendant, and authorized personnel of an institution to 483
which the defendant is committed may inspect, receive copies of, 484
retain copies of, and use a presentence investigation report or 485
a written or oral summary of a presentence investigation only 486
for the purposes of or only as authorized by Criminal Rule 32.2 487
or this section, division (F) (1) of section 2953.08, section 488
2947.06, or another section of the Revised Code. 489

(2) Immediately following the imposition of sentence upon 490
the defendant, the defendant or the defendant's counsel and the 491
prosecutor shall return to the court all copies of a presentence 492
investigation report and of any written summary of a presentence 493
investigation report or part of a presentence investigation 494
report that the court made available to the defendant or the 495
defendant's counsel and to the prosecutor pursuant to this 496

section. The defendant or the defendant's counsel and the 497
prosecutor shall not make any copies of the presentence 498
investigation report or of any written summary of a presentence 499
investigation report or part of a presentence investigation 500
report that the court made available to them pursuant to this 501
section. 502

(3) Except when a presentence investigation report or a 503
written or oral summary of a presentence investigation report is 504
being used for the purposes of or as authorized by Criminal Rule 505
32.2 or this section, division (F) (1) of section 2953.08, 506
section 2947.06, or another section of the Revised Code, the 507
court or other authorized holder of the report or summary shall 508
retain the report or summary under seal. 509

(E) In inquiring into the information available regarding 510
any prior adjudications of the defendant as a delinquent child 511
and regarding the dispositions made relative to those 512
adjudications, the officer making the report shall consider all 513
information that is relevant, including, but not limited to, the 514
materials described in division (B) of section 2151.14, division 515
(C) (3) of section 2152.18, division (D) (3) of section 2152.19, 516
and division (E) of section 2152.71 of the Revised Code. 517

(F) As used in this section: 518

(1) "Prosecutor" has the same meaning as in section 519
2935.01 of the Revised Code. 520

(2) "Community control sanction" has the same meaning as 521
in section 2929.01 of the Revised Code. 522

(3) "Public record" has the same meaning as in section 523
149.43 of the Revised Code. 524

Sec. 2951.041. (A) (1) If an offender is charged with a 525

criminal offense, including but not limited to a violation of 526
section 2913.02, 2913.03, 2913.11, 2913.21, 2913.31, or 2919.21 527
of the Revised Code, and the court has reason to believe that 528
drug or alcohol usage by the offender was a factor leading to 529
the criminal offense with which the offender is charged or that, 530
at the time of committing that offense, the offender had a 531
mental illness, was a person with an intellectual disability, or 532
was a victim of a violation of section 2905.32 or 2907.21 of the 533
Revised Code and that the mental illness, status as a person 534
with an intellectual disability, or fact that the offender was a 535
victim of a violation of section 2905.32 or 2907.21 of the 536
Revised Code was a factor leading to the offender's criminal 537
behavior, the court may accept, prior to the entry of a guilty 538
plea, the offender's request for intervention in lieu of 539
conviction. The request shall include a statement from the 540
offender as to whether the offender is alleging that drug or 541
alcohol usage by the offender was a factor leading to the 542
criminal offense with which the offender is charged or is 543
alleging that, at the time of committing that offense, the 544
offender had a mental illness, was a person with an intellectual 545
disability, or was a victim of a violation of section 2905.32 or 546
2907.21 of the Revised Code and that the mental illness, status 547
as a person with an intellectual disability, or fact that the 548
offender was a victim of a violation of section 2905.32 or 549
2907.21 of the Revised Code was a factor leading to the criminal 550
offense with which the offender is charged. The request also 551
shall include a waiver of the defendant's right to a speedy 552
trial, the preliminary hearing, the time period within which the 553
grand jury may consider an indictment against the offender, and 554
arraignment, unless the hearing, indictment, or arraignment has 555
already occurred. Unless an offender alleges that drug or 556
alcohol usage by the offender was a factor leading to the 557

criminal offense with which the offender is charged, the court 558
may reject an offender's request without a hearing. If the court 559
elects to consider an offender's request or the offender alleges 560
that drug or alcohol usage by the offender was a factor leading 561
to the criminal offense with which the offender is charged, the 562
court shall conduct a hearing to determine whether the offender 563
is eligible under this section for intervention in lieu of 564
conviction and shall stay all criminal proceedings pending the 565
outcome of the hearing. If the court schedules a hearing, the 566
court shall order an assessment of the offender for the purpose 567
of determining the offender's program eligibility for 568
intervention in lieu of conviction and recommending an 569
appropriate intervention plan. If the court schedules a hearing, 570
the offender may file a motion with the court that includes 571
evidence that the offender is the primary caretaker of a child. 572
If the court determines that the offender is the primary 573
caretaker of a child, the court shall consider that fact in 574
determining the offender's program eligibility for intervention 575
in lieu of conviction. 576

If the offender alleges that drug or alcohol usage by the 577
offender was a factor leading to the criminal offense with which 578
the offender is charged, the court may order that the offender 579
be assessed by a community addiction services provider or a 580
properly credentialed professional for the purpose of 581
determining the offender's program eligibility for intervention 582
in lieu of conviction and recommending an appropriate 583
intervention plan. The community addiction services provider or 584
the properly credentialed professional shall provide a written 585
assessment of the offender to the court. 586

(2) The victim notification provisions of division (E) of 587
section 2930.06 of the Revised Code apply in relation to any 588

hearing held under division (A) (1) of this section. 589

(B) An offender is eligible for intervention in lieu of 590
conviction if the court finds all of the following: 591

(1) The offender previously has not been convicted of or 592
pleaded guilty to any felony offense of violence. 593

(2) The offense is not a felony of the first, second, or 594
third degree, is not an offense of violence, is not a felony sex 595
offense, is not a violation of division (A) (1) or (2) of section 596
2903.06 of the Revised Code, is not a violation of division (A) 597
(1) of section 2903.08 of the Revised Code, is not a violation 598
of division (A) of section 4511.19 of the Revised Code or a 599
municipal ordinance that is substantially similar to that 600
division, and is not an offense for which a sentencing court is 601
required to impose a mandatory prison term. 602

(3) The offender is not charged with a violation of 603
section 2925.02, 2925.04, or 2925.06 of the Revised Code, is not 604
charged with a violation of section 2925.03 of the Revised Code 605
that is a felony of the first, second, third, or fourth degree, 606
and is not charged with a violation of section 2925.11 of the 607
Revised Code that is a felony of the first or second degree. 608

(4) If an offender alleges that drug or alcohol usage by 609
the offender was a factor leading to the criminal offense with 610
which the offender is charged, the court has ordered that the 611
offender be assessed by a community addiction services provider 612
or a properly credentialed professional for the purpose of 613
determining the offender's program eligibility for intervention 614
in lieu of conviction and recommending an appropriate 615
intervention plan, the offender has been assessed by a community 616
addiction services provider of that nature or a properly 617

credentialed professional in accordance with the court's order, 618
and the community addiction services provider or properly 619
credentialed professional has filed the written assessment of 620
the offender with the court. 621

(5) If an offender alleges that, at the time of committing 622
the criminal offense with which the offender is charged, the 623
offender had a mental illness, was a person with an intellectual 624
disability, or was a victim of a violation of section 2905.32 or 625
2907.21 of the Revised Code and that the mental illness, status 626
as a person with an intellectual disability, or fact that the 627
offender was a victim of a violation of section 2905.32 or 628
2907.21 of the Revised Code was a factor leading to that 629
offense, the offender has been assessed by a psychiatrist, 630
psychologist, independent social worker, licensed professional 631
clinical counselor, or independent marriage and family therapist 632
for the purpose of determining the offender's program 633
eligibility for intervention in lieu of conviction and 634
recommending an appropriate intervention plan. 635

(6) The offender's drug usage, alcohol usage, mental 636
illness, or intellectual disability, or the fact that the 637
offender was a victim of a violation of section 2905.32 or 638
2907.21 of the Revised Code, whichever is applicable, was a 639
factor leading to the criminal offense with which the offender 640
is charged, intervention in lieu of conviction would not demean 641
the seriousness of the offense, and intervention would 642
substantially reduce the likelihood of any future criminal 643
activity. 644

(7) The alleged victim of the offense was not sixty-five 645
years of age or older, permanently and totally disabled, under 646
thirteen years of age, or a peace officer engaged in the 647

officer's official duties at the time of the alleged offense. 648

(8) If the offender is charged with a violation of section 649
2925.24 of the Revised Code, the alleged violation did not 650
result in physical harm to any person. 651

(9) The offender is willing to comply with all terms and 652
conditions imposed by the court pursuant to division (D) of this 653
section. 654

(10) The offender is not charged with an offense that 655
would result in the offender being disqualified under Chapter 656
4506. of the Revised Code from operating a commercial motor 657
vehicle or would subject the offender to any other sanction 658
under that chapter. 659

(C) At the conclusion of a hearing held pursuant to 660
division (A) of this section, the court shall determine whether 661
the offender will be granted intervention in lieu of conviction. 662
In making this determination, the court shall presume that 663
intervention in lieu of conviction is appropriate. If the court 664
finds under this division and division (B) of this section that 665
the offender is eligible for intervention in lieu of conviction, 666
the court shall grant the offender's request unless the court 667
finds specific reasons to believe that the candidate's 668
participation in intervention in lieu of conviction would be 669
inappropriate. 670

If the court denies an eligible offender's request for 671
intervention in lieu of conviction, the court shall state the 672
reasons for the denial, with particularity, in a written entry. 673

If the court grants the offender's request, the court 674
shall accept the offender's plea of guilty and waiver of the 675
defendant's right to a speedy trial, the preliminary hearing, 676

the time period within which the grand jury may consider an 677
indictment against the offender, and arraignment, unless the 678
hearing, indictment, or arraignment has already occurred. In 679
addition, the court then may stay all criminal proceedings and 680
order the offender to comply with all terms and conditions 681
imposed by the court pursuant to division (D) of this section. 682
If the court finds that the offender is not eligible or does not 683
grant the offender's request, the criminal proceedings against 684
the offender shall proceed as if the offender's request for 685
intervention in lieu of conviction had not been made. 686

(D) If the court grants an offender's request for 687
intervention in lieu of conviction, all of the following apply: 688

(1) The court shall place the offender under the general 689
control and supervision of one of the following, as if the 690
offender was subject to a community control sanction imposed 691
under section 2929.15, 2929.18, or 2929.25 of the Revised Code: 692

(a) The county probation department, the adult parole 693
authority, or another appropriate local probation or court 694
services agency, if one exists; 695

(b) If the court grants the request for intervention in 696
lieu of conviction during the period commencing on April 4, 697
2023, and ending on October 15, 2025, a community-based 698
correctional facility. 699

(2) The court shall establish an intervention plan for the 700
offender. 701

(3) The terms and conditions of the intervention plan 702
required under division (D)(2) of this section shall require the 703
offender, for at least one year, but not more than five years, 704
from the date on which the court grants the order of 705

intervention in lieu of conviction, to abstain from the use of 706
illegal drugs and alcohol, to participate in treatment and 707
recovery support services, and to submit to regular random 708
testing for drug and alcohol use and may include any other 709
treatment terms and conditions, or terms and conditions similar 710
to community control sanctions, which may include community 711
service or restitution, that are ordered by the court. 712

(E) If the court grants an offender's request for 713
intervention in lieu of conviction and the court finds that the 714
offender has successfully completed the intervention plan for 715
the offender, including the requirement that the offender 716
abstain from using illegal drugs and alcohol for a period of at 717
least one year, but not more than five years, from the date on 718
which the court granted the order of intervention in lieu of 719
conviction, the requirement that the offender participate in 720
treatment and recovery support services, and all other terms and 721
conditions ordered by the court, the court shall dismiss the 722
proceedings against the offender. Successful completion of the 723
intervention plan and period of abstinence under this section 724
shall be without adjudication of guilt and is not a criminal 725
conviction for purposes of any disqualification or disability 726
imposed by law and upon conviction of a crime, and the court may 727
order the sealing or expungement of records related to the 728
offense in question, as a dismissal of the charges, in the 729
manner provided in sections 2953.31, 2953.33, 2953.37, and 730
2953.521 of the Revised Code and divisions (H), (K), and (L) of 731
section 2953.34 of the Revised Code. 732

(F) If the court grants an offender's request for 733
intervention in lieu of conviction and the offender fails to 734
comply with any term or condition imposed as part of the 735
intervention plan for the offender, the supervising authority 736

for the offender promptly shall advise the court of this 737
failure, and the court shall hold a hearing to determine whether 738
the offender failed to comply with any term or condition imposed 739
as part of the plan. If the court determines that the offender 740
has failed to comply with any of those terms and conditions, it 741
may continue the offender on intervention in lieu of conviction, 742
continue the offender on intervention in lieu of conviction with 743
additional terms, conditions, and sanctions, or enter a finding 744
of guilty and impose an appropriate sanction under Chapter 2929. 745
of the Revised Code. If the court sentences the offender to a 746
prison term, the court, after consulting with the department of 747
rehabilitation and correction regarding the availability of 748
services, may order continued court-supervised activity and 749
treatment of the offender during the prison term and, upon 750
consideration of reports received from the department concerning 751
the offender's progress in the program of activity and 752
treatment, may consider judicial release under section 2929.20 753
of the Revised Code. 754

(G) As used in this section: 755

(1) "Community addiction services provider" has the same 756
meaning as in section 5119.01 of the Revised Code. 757

(2) "Community control sanction" has the same meaning as 758
in section 2929.01 of the Revised Code. 759

(3) "Intervention in lieu of conviction" means any court- 760
supervised activity that complies with this section. 761

(4) "Intellectual disability" has the same meaning as in 762
section 5123.01 of the Revised Code. 763

(5) "Peace officer" has the same meaning as in section 764
2935.01 of the Revised Code. 765

(6) "Mental illness" and "psychiatrist" have the same	766
meanings as in section 5122.01 of the Revised Code.	767
(7) "Psychologist" has the same meaning as in section	768
4732.01 of the Revised Code.	769
(8) "Felony sex offense" means a violation of a section	770
contained in Chapter 2907. of the Revised Code that is a felony.	771
Section 2. That existing sections 2929.19, 2951.03, and	772
2951.041 of the Revised Code are hereby repealed.	773