

## 1. THE SENTENCING COMMISSION

**Q.** What year was the commission established? Has the commission essentially retained its original form or has it changed substantially or been abolished?

The Ohio General Assembly initially created the Ohio Criminal Sentencing Commission<sup>1</sup> in 1990 as part of the state's Office of Criminal Justice Services.<sup>2</sup> The commission originally included 17 members,<sup>3</sup> but was expanded to 24 members in 1994,<sup>4</sup> and to 31 members in 1997.<sup>5</sup> In 1993, the commission was incorporated "within the Supreme Court" of Ohio.<sup>6</sup> The Commission's responsibilities were expanded to include examination of juvenile dispositions in 1997.<sup>7</sup>

The Ohio General Assembly also created a Criminal Sentencing Advisory Committee, which assists the Commission in its mission.<sup>8</sup> The Advisory Committee was created in 1990<sup>9</sup> to "serve as an advisory body to the state criminal sentencing commission and to the commission's standing juvenile committee."<sup>10</sup>

**Q.** Membership: who appoints them, for what terms, with what required qualifications?

The Commission consists of 31 total members. One member is the Chief Justice of the Supreme Court of Ohio, who acts as the Commission's chairperson. Ten members are appointed by the Chief Justice, no more than six of whom can be members of the same political party. Of the ten:

- one must be a judge of a state court of appeals;
- three must be judges of courts of common pleas who are not juvenile court judges;
- three must be judges of juvenile courts; and
- three must be judges of municipal or county courts.

An additional twelve members are appointed by the governor "after consulting with the appropriate state associations." These twelve members consist of:

- one sheriff;
- two county prosecuting attorneys, at least one of whom shall be experienced in the prosecution of cases in juvenile court involving alleged delinquent children, unruly children, and juvenile traffic offenders;

- two peace officers of a municipal corporation or township, at least one of whom shall be experienced in the investigation of cases involving juveniles;
- one former victim of a violation of Title XXIX [29]<sup>11</sup> of the Revised Code;
- one attorney whose practice of law primarily involves the representation of criminal defendants;
- one member of the Ohio State Bar Association;
- one attorney whose practice of law primarily involves the representation in juvenile court of alleged delinquent children, unruly children, and juvenile traffic offenders;
- one full-time city prosecuting attorney;
- one county commissioner; and
- one mayor, city manager, or member of a legislative authority of a municipal corporation.

Two members are members of the Senate, one appointed by the President of the Senate and one appointed by the Minority Leader of the Senate. Two members are members of the House of Representatives, one appointed by the Speaker of the House of Representatives and one appointed by the Minority Leader of the House of Representatives. The remaining four members consist of:

- The superintendent of the state highway patrol;
- The state public defender;
- The director of youth services; and
- The director of the department of rehabilitation and correction;

The Chief Justice serves on the Commission for the duration of his or her term in office. Likewise, the superintendent of the state highway patrol, the state public defender, the director of youth services, and the director of rehabilitation and correction, or their individual designees each serve for as long as they hold their respective offices. All of the members of the Commission who are elected officials, including prosecuting attorneys, serve the lesser of four years or until the expiration of their term of office. The remaining members who are not elected officials each serve four-year terms. Any vacancy on the Commission is filled in the same manner as the original appointment.<sup>12</sup>

The governor or the Chief Justice must consider adequate diversity of race and gender when making appointments to the commission.<sup>13</sup>

The Criminal Sentencing Advisory Committee is composed of the following members:

- The chairperson of the parole board;
- A staff representative of the correctional institution inspection committee (assigned by members of that committee);
- A juvenile detention facility operator;
- A provider of juvenile probation or community control services;
- A provider of juvenile parole or aftercare services;
- A superintendent of a state institution operated by the department of youth services;
- A community-based juvenile services provider;
- A person who is a member of a youth advocacy organization;
- A victim of a violation of Title XXIX [29] of the revised code that was committed by a juvenile offender;
- A representative of community corrections programming (appointed by the governor); and
- Any other members appointed by the chairperson of the state Criminal Sentencing Commission upon the advice of the commission.<sup>14</sup>

**Q.** Is the commission an independent agency, or is it located in or hosted by some other state agency?

The commission is considered an affiliated office “within the Supreme Court” of Ohio by statute,<sup>15</sup> and meets at the Thomas J. Moyer Judicial Center, the same building that houses the Supreme Court of Ohio. While the Commission is chaired by the Chief Justice of the Supreme Court of Ohio, it is considered a “state agency” and has a director that oversees its day-to-day operations.<sup>16</sup>

**Q.** How many staff does the commission have? Are they dedicated to the commission, or shared with another agency?

The Commission is statutorily authorized to establish an office and appoint and fix the compensation of a project director and “any other employees necessary to assist the Commission in the execution of its authority . . . .” These employees may include a research coordinator with experience and training in policy-oriented research; professional staff employees with backgrounds in criminal law, criminal justice, political science, or related fields of expertise; administrative assistants; and secretaries. The Commission also may

appoint and fix the compensation of part-time data collectors, clerical employees, and other temporary employees “as needed to enable the commission to execute its authority . . . .”<sup>17</sup> The Commission currently has a staff of four: a Director, a Research Specialist, a Researcher and a staff attorney/Criminal Justice Counsel.

**Q.** What is the commission’s current statutory mandate?

The Commission is tasked with studying Ohio’s criminal statutes, sentencing patterns, and available correctional resources. The Commission’s duties include:

- (1) Evaluate the effectiveness of the sentencing structure of the state;
- (2) Systematically review each criminal statute to determine if the penalty provided is proportional to the seriousness of the offense committed and to penalties provided for other offenses;
- (3) Review any existing sentencing guidelines;
- (4) Determine the number, capacity, and quality of all available correctional facilities and resources;
- (5) Collect a profile of the populations of state, regional, and local correctional facilities, services, and programs;
- (6) Coordinate available correctional facilities, services, and programs with the criminal sentencing goals of the state, including, but not limited to, punishment, deterrence, fairness, rehabilitation, and treatment; and
- (7) Identify any additional correctional resources that are necessary to balance the needs of criminal sentencing and the available correctional resources.<sup>18</sup>

The Commission’s mandate is to use the results of its studies to develop and recommend to the general assembly a comprehensive criminal sentencing structure, as well as a sentencing policy “designed to enhance public safety by achieving certainty in sentencing, deterrence, and a reasonable use of correctional facilities, programs, and services and shall be designed to achieve fairness in sentencing.”<sup>19</sup>

**Q.** Do statutes and/or guidelines identify management of prison and jail resources as a goal?

The Sentencing Commission's enabling statute explicitly mentions the identification and management of available resources as one of its primary goals. Among the Commission's duties, for example, is to study and report the capacity of the state's correctional facilities and identify necessary resources "to balance the needs of criminal sentencing and the available correctional resources."<sup>20</sup>

It should be noted that the courts are also uniquely tasked to some degree with considering correctional resources. The state's statutory sentencing scheme prohibits courts from issuing a sentence for a misdemeanor conviction that "imposes an unnecessary burden on local government resources."<sup>21</sup> And for felony sentencing, the courts must be guided by the overriding purposes of felony sentencing, which are to protect public safety from future crime by the offender and others and "to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources."<sup>22</sup>

**Q.** Are sentencing practices studied by means of annual or other regular data sets? If so, are those data sets made available to outside researchers?

While the Sentencing Commission has compiled and used data to conduct a number of different research studies pertaining to Ohio's sentencing practices, it has not consistently published reports or recommendations on an annual basis, nor has it routinely made the data sets available to outside researchers. However, some of the data that it uses to conduct its research for these reports can often be found within the reports themselves, which are available to the public on the Commission's web site.<sup>23</sup> Ohio is not a unified court state and does not have a unified data system or centralized (criminal justice/sentencing) data repository.

## 2. THE GUIDELINES

**Q.** When were the guidelines first implemented?

The Ohio guidelines were implemented as statutes, which first became effective on July 1, 1996.<sup>24</sup>

**Q.** In recent years, have they been modified at least once a year?

In the years since the sentencing scheme was established, the provisions relating to the overall structure of the guidelines scheme have remained largely unaltered, but some provisions relating to specific sentences have been revised. For example, in 2000<sup>25</sup> and again in 2002<sup>26</sup> the Commission recommended, and the Ohio General Assembly adopted, refinements to the general factors judges should consider in felony sentencing, but since then there have only been occasional adjustments to the wording of these factors, with limited functional effects on the scheme as a whole. On the other hand, the sections of the Code specifying under what conditions fourth and fifth degree felonies may receive certain types of punishment (prison time, community control, monetary fines, etc.), have been updated more frequently and substantially.<sup>27</sup>

**Q.** Do the commission's recommended initial or modified guidelines require affirmative legislative approval, or do they take effect subject to legislative override?

Because the sentencing scheme in Ohio is statutory, any proposed changes by the Sentencing Commission must be enacted into law in order to take effect.<sup>28</sup>

**Q.** Do the sentencing guidelines only apply to felonies, or are some misdemeanors and other lesser offenses also covered? Are some felonies excluded (e.g., those subject to life and/or death penalty)?

Ohio's statutory sentencing scheme primarily applies to felonies, although a very limited set of sentencing standards applies to misdemeanors committed after January 1, 2004.<sup>29</sup> While murder and aggravated murder are not excluded, they are treated separately by the guidelines from other felonies because of the possible imposition of the death penalty in Ohio.<sup>30</sup>

**Q. Is a grid used? Are there multiple grids? How many severity levels does the grid contain?**

Ohio does not officially use a grid for the purposes of sentencing.<sup>31</sup> Felonies in Ohio are categorized into five degrees, with the first degree designated as the most severe and the fifth degree designated as the least severe; for each felony degree, state law sets forth a range of determinate sentences that may be given. Murder and aggravated murder are considered “special felonies” and are not included in this classification system.<sup>32</sup> Courts are then required to consider numerous mitigating and/or aggravated factors for each case, including specified aspects of an offender’s criminal history, the harm caused to the victim, and the likelihood of the offender committing a crime in the future. These factors help determine the appropriate sentence for the defined offense, but no specific formula or guidance is given as to how much weight to give to these considerations.<sup>33</sup>

**Q. How is the presumptive sentence determined?**

When sentencing a felony, the court must first bear in mind that the overarching purposes and principles of sentencing are “to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.”<sup>34</sup> The court must also consider various statutory factors to reach the sentence that will help achieve this purpose, including the severity of the offense, the likelihood of recidivism, attributes of the victim, and other relevant factors. Though these factors are listed in statute in extensive detail, the court has discretion to determine the degree to which the factors impact the court’s sentencing decision.<sup>35</sup>

Turning to the specific offense, the court must first determine whether the offense is one of the many Ohio crimes that carries a mandatory prison sentence, and if so, impose a prison term in accord with the applicable statutory mandate.<sup>36</sup> If the offense is not one that carries a mandatory prison term, then the court must determine if it is one that carries a *presumption* of prison or of a community-control (commonly known as probation) sanction (including fines or other out-of-prison penalties). If so, then the court may be guided by additional statutory factors that bolster or rebut the

prison or community-control presumption.<sup>37</sup> The general presumptions among classes of felonies are as follows:

- First- and second-degree felonies that do not carry mandatory prison terms, some third-degree felonies including theft of a weapon,<sup>38</sup> and other low-level drug crimes that include certain aggravating factors (including acts of violence) carry a presumption of the prison sentence specified for each crime. However, the presumption for most of these offenses can be overcome on a showing that (1) a community control sanction or combination of punishments not involving prison would adequately punish the offender, and (2) a lesser punishment would not “demean the seriousness of the offense.”<sup>39</sup>
- Most third-degree felonies, as well as low-level drug offenses that do *not* include an aggravating factor, carry no presumption in favor of either prison or community control, and judges are given wide discretion to determine the appropriate sentence and whether prison or community-control sanctions should be imposed.<sup>40</sup>
- Fourth- and fifth-degree felonies, if not an offense of violence (unless it is a qualifying assault crime), are subject to mandatory one-year community-control sanctions so long as the offender has no prior felony convictions and no prior convictions for a misdemeanor offense of violence within two years, and provided further that none of eleven specified circumstances applies. The latter include violating the conditions of any bonds, and committing the current offense with any of the following aggravating factors: abuse of public office or position of trust; crime for hire or part of organized criminal activity; possession of a firearm while committing the offense; causing serious physical harm; attempts or threats of physical harm while armed (or after having previously been convicted of causing physical harm); and being in prison or under community control.<sup>41</sup> Otherwise, the court has discretion to impose either a prison term or community control sanctions for such offenses, after considering the code’s general sentencing purposes and principles.<sup>42</sup>

When a prison term is ordered, the court must ordinarily choose a definite term of whole years or months within the specified range required for that degree of felony; for example, conviction of a first-degree felony

generally requires imposition of a prison term of “three, four, five, six, seven, eight, nine, ten, or eleven years.”<sup>43</sup> However, a higher sentencing range may be authorized or required, or an additional (consecutive) prison term may be permitted or required, if certain sentencing enhancements apply.<sup>44</sup>

If the court is not required to impose a prison term, it may sentence the offender to any combination of community control sanctions (financial, probation supervision, drug testing, electronic monitoring, local confinement, etc.) that the court believes will achieve the purposes and goals of the sentencing scheme.<sup>45</sup> For certain felony drunk driving offenses subject to mandatory jail or prison terms, the court may also add community control sanctions.<sup>46</sup>

Whenever a prison term is imposed, the court must also determine whether the sentence will include a period of “post-release control” (supervision), following release from prison. Post-release control is mandated for all first- and second-degree felonies, as well as all violent or sexual offenses.<sup>47</sup> For third-, fourth-, and fifth-degree offenses (other than violent and sex offenses), the court must order that a period of post-release control will be served if the parole board deems it necessary.<sup>48</sup>

**Q.** Is the choice among types of sentences regulated by a “disposition” or other prison in/out line? Are “out” sentences accompanied by suspended execution of prison or suspended imposition of sentence? By definitive preclusion or prison for those cases?

Because no grids are utilized in Ohio, there is no disposition line *per se*. However, the choice of prison versus community sanctions is built into Ohio’s felony sentencing scheme. As noted in the previous section, for certain offenses a prison term is mandated;<sup>49</sup> for others, prison is presumed to be appropriate, but that presumption can be overcome if certain factors are present.<sup>50</sup> In some cases a community control sanction is mandatory unless certain requirements are not met, or certain aggravating factors are present.<sup>51</sup> For all other offenses, the court has discretion to impose any sentence from prison to community control sanctions so long as the sentence is in accord with the state’s principles of sentencing.<sup>52</sup>

Under the section of the sentencing scheme that provides for community control sanctions, the court is allowed to impose any conditions it deems appropriate on that sentence; if those conditions are violated, the court is allowed to impose penalties, including a prison sentence.<sup>53</sup> That sentence must, however, fall within the range allowed for the conviction offense in the statutory scheme; in addition, it may not exceed any prison term that the offender, at the time of sentencing, was told would be available as a sanction for violations of sentence conditions (in which case that prison term was, in effect, imposed but then suspended).<sup>54</sup> The court further has the discretion to reduce the upper limit of the length of the violation penalty by the amount of “out” time successfully completed before the violation.<sup>55</sup>

**Q.** Are there border boxes or other categories permitting multiple sentence types?

Because sentencing grids are not used in an official capacity in Ohio, there are no border boxes in the traditional sense. However, the concept of multiple available sentence types is incorporated into the sentencing scheme. In many cases of fourth- or fifth-degree felony, and for most third-degree felonies, courts have discretion to select either a community-control sentence or a prison term.<sup>56</sup>

**Q.** Are the guidelines purely advisory, or are they legally binding?

Ohio’s sentencing guidelines are legally binding in some respects and advisory in other respects. Most first- and second-degree felonies have presumptive prison sentences that judges may avoid only by making certain findings that mitigate the requirement; otherwise the guidelines are binding with respect to whether a prison sentence must be imposed.<sup>57</sup>

Lesser offenses generally grant wider discretion, so the guidelines play a more “advisory” role. Under some circumstances fourth- and fifth-degree felonies are not prison eligible,<sup>58</sup> but in most other fourth- and fifth-degree cases, as well as most third-degree cases, judges have discretion to choose either prison or one or more community-control sanctions.<sup>59</sup> In so doing, the court need only apply sentencing goals and principles that are worded so broadly that they are effectively advisory.<sup>60</sup> Whenever a prison term is imposed it must

be for one of the several specific durations (years or months) prescribed by statute for that degree of felony (or a higher range triggered by specified aggravating circumstances), but judges have discretion to decide which of those durations to impose.<sup>61</sup>

### 3. DEPARTURES AND SIMILAR ADJUSTMENTS TO GENERALLY-RECOMMENDED SENTENCES

**Q.** What is the overall/general standard for departure?

Ohio law does not provide a single standard for departing from a statutorily mandated or recommended sentence; instead, each kind of departure has its own governing standards. When an offense carries a presumption that prison time will be imposed, one or a combination of community control sanctions may be imposed instead, provided the judge makes a finding that (1) a community control sanction would adequately punish the offender and protect the public, based on a balancing of statutory factors pointing to the conclusion that the offender is not likely to commit further crimes, and (2) a community control sanction would not demean the seriousness of the offense, based on a balancing of statutory factors indicating that the offense is less serious than typical crimes of that nature.<sup>62</sup> Such a mitigated sentence is, in effect, a downward “dispositional” departure (although that terminology does not appear to be used in this jurisdiction).

What amounts to a form of upward dispositional departure is also permitted in some situations. For example, a court has the option of imposing a prison term for a fourth- or fifth- degree felony that would normally require a community control sanction, provided the court determines that at least one of eleven specified aggravating circumstances applies (e.g., possession of a firearm while committing the offense); a prison term may also be imposed for these crimes if, within 45 days of making its request, the court has not received from state corrections officials details of appropriate community control sanctions of at least one year’s duration that are available for this offender.<sup>63</sup> But in the latter case upward departure can still be held invalid in light of available non-prison options and other circumstances.<sup>64</sup>

Once the *type* of punishment has been determined, there is little scope for “departure” with respect to the *duration* of imprisonment, but judges still have considerable discretion as to prison length. For example, imposition of a prison term for a first-degree felony is generally limited to a term of whole years within the specified range of three to eleven years; but judges have complete discretion to pick any of the listed terms—picking one of the highest or lowest terms is not deemed a “departure.”<sup>65</sup> In addition to the basic list of prison terms, the statute contains a long list of higher terms that become available based on proof of certain “specifications” (for example: that the offender possessed an automatic firearm or one equipped with a silencer while committing the instant offense).<sup>66</sup> Some of these enhancements are akin to upward durational departures in that the law authorizes but does not require a sentence above the normal range -- “the court may” (but apparently need not) impose the enhanced term.<sup>67</sup> However, most enhancements provide that the judge “shall” enhance, which makes those provisions more akin to the mandatory sentence enhancements that are often found in non-guidelines systems.

**Q.** Are there lists of aggravating and mitigating circumstances permitting departure? If so, are such lists non-exclusive? Is there a list of prohibited factors?

When considering a dispositional departure, as in cases where the court decides to impose a community control sanction for an offense that carries a presumptive prison term, the courts are required to consider not only the departure standards applicable to that class of felony, but also a list of general factors relating to the offense, the offender, and/or the victim. Aggravating offense factors focus on the harm suffered by the victim, the relationship of the victim to the offender, whether the offender occupied a public office or position of trust, or had an occupational duty to prevent such a crime, whether it was a crime for hire or part of an organized criminal activity, and whether the crime was motivated by racial or other prejudice; mitigating factors include whether the victim facilitated the offense, whether the offender acted under strong provocation or did not intend to cause harm, whether the offender’s military service caused a physical or mental condition that contributed to the offense, or whether other “substantial

grounds” for mitigation exist.<sup>68</sup> A high or low risk of recidivism can serve as an aggravating or a mitigating factor.<sup>69</sup>

With respect to durational departures, the court is largely bound to the prescribed range for the given offense, or any higher range triggered by the finding of specified aggravating factors.<sup>70</sup> When choosing a prison duration from the ordinary or enhanced range, courts are guided by the general aggravating and mitigating factors noted above, and by the general principles and purposes of punishment specified by statute.<sup>71</sup>

**Q.** Do the guidelines expressly address mitigations based on a guilty plea, acceptance of responsibility, and/or providing assistance to law enforcement?

While guilty pleas or other means of accepting responsibility are not expressly addressed as mitigating factors, a guilty plea arguably implies some degree of remorse or acceptance of responsibility. The presence of “genuine remorse” is listed as a statutory factor indicating lower risk to reoffend, and the absence of such remorse is listed as a factor indicating higher risk; judges are required to consider these factors whenever they make a discretionary sentencing decision.<sup>72</sup> (Of course, some offenders plead guilty simply to lower their sentence, with no genuine feelings of remorse.)

**Q.** Are there limits on the degree of durational (length-of-custody) departure?

Although a judge may determine that a departure as to the *type* of punishment is appropriate based on various factors, the *length* of prison terms is dictated by statute within certain ranges for each offense, and therefore relatively fixed.<sup>73</sup> Once the offender is convicted for a certain degree of offense, the sentencing court is given a list of specified terms, in months or years, from which the judge must choose a sentence, keeping in mind the overall goals of punishment and factors to be considered in felony sentencing.<sup>74</sup> The only time the judge’s sentence may exceed the highest of the specified terms is when an enhancement provision applies and the judge makes the required finding(s) to authorize or mandate that enhancement.<sup>75</sup>

**Q.** Are there limits on the availability of dispositional departure (executed-prison vs. stayed sentence)?

Downward dispositional departures are available for offenses that carry a presumption of prison time, if the court makes a finding that: (1) a community control sanction or sanctions would adequately punish the offender due to a lower likelihood of recidivism under the applicable sentencing factors; and (2) a community control sanction or sanctions would not demean the seriousness of the offense after consideration of the applicable sentencing factors.<sup>76</sup> The Ohio Court of Appeals has held that, while a court must generally make a statement that it has considered the applicable sentencing factors in deciding to depart from a presumptive prison term, further explanation by a court for the departure is optional.<sup>77</sup>

To impose an upward dispositional departure (prison sentence, for an offense carrying a mandatory community control sanction), a court must make findings that at least one of the factors triggering such a mandatory sanction is absent (or that one of eleven specified aggravating factors is present), and must also find that a community control sentence would not be an appropriate punishment. In addition, the court can ask the Department of Rehabilitation and Correction to recommend an appropriate and available community control program; if the department has not provided that information within 45 days, the court may go ahead and impose a prison sentence.<sup>78</sup>

## 4. PRISON RELEASE DISCRETION

**Q.** Does the jurisdiction utilize parole release discretion or has it been abolished for all or most offenders?

Since the passage of the revised sentencing scheme in 1996, the duration of most prison sentences is determined by the court at the time of sentencing, and the timing of prison release is not subject to the parole process, but the parole board does impose post release supervision terms.<sup>79</sup> Parole discretion still applies to pre-1996 crimes and to all life sentences; over time, it has also been made applicable to a number of other offenses.<sup>80</sup>

**Q.** Does this jurisdiction have a “truth in sentencing” law, limiting the extent of early release?

One of the goals of the Ohio sentencing scheme when it was enacted was to bring truth in sentencing to the felony sentencing process, so that offenders actually serve the sentence imposed by the court after trial.<sup>81</sup> Offenders sentenced to prison in Ohio must serve a minimum of 92% of their sentence.<sup>82</sup>

**Q.** Do recommended and imposed sentences under the guidelines set the minimum time to serve in prison, the maximum, both the minimum and maximum, a target/recommended/expected prison duration, or some other combination of these parameters?

Ohio’s sentencing scheme generally requires the court to impose a sentence of a fixed number of months or years depending on the offense committed.<sup>83</sup> This represents the maximum term the offender is expected to serve. However, a prisoner may be able to reduce his sentence, at the discretion of the Department of Rehabilitation and Correction, by earning credit toward the sentence through successful program participation, and in many cases earlier release may be ordered by the sentencing court, upon request of the offender or the Department of Rehabilitation and Correction, a process known as judicial release.<sup>84</sup> Some prisoners are eligible for other early release options including Risk Reduction Sentence (Sec. 2929.143), Transitional Control (Sec. 2967.26), Intensive Program Prison (Sec. 5120.032), and Community Substance Abuse Treatment Disorder Program (Sec. 5120.035).

**Q.** Is the period of post-prison supervision independent of any unserved prison term?

Prison terms for any felony may be followed by a period of post-release supervision (“control”) that is pronounced by the court at sentencing. The amount of time that a prisoner spends in post-release control is determined by the degree of the felony, and is specified by statute. The term begins once the prisoner has served the entirety of his or her prison term. The court *must* order a term of post-release control when pronouncing the sentence for first- and second-degree felonies, a felony sex offense, or a third-degree felony

that is not sex offense but involved threats or imposition of physical violence. For all other felony offenses, the court must order that the offender will be subject to a term of discretionary post-release control for up to three years if the parole board determines that it is necessary for that offender.<sup>85</sup>

**Q.** What good-time credits do prisoners earn? Is program participation considered?

The Ohio Administrative Code provides a number of ways for prisoners to earn credit towards reducing their sentence, including good behavior,<sup>86</sup> maintaining minimum security,<sup>87</sup> and productive participation in a rehabilitative program.<sup>88</sup>

Prisoners can earn up to five days of credit for each month of their term during which some combination of the above activities is completed to the satisfaction of the Department of Rehabilitation and Correction. At the end of each month, the department determines how many days will be awarded to the prisoner based on a review of the prisoner’s behavior. However, the aggregate of these “good credit days” may never exceed eight percent of the total number of days a prisoner is serving for that sentence.<sup>89</sup>

**Q.** Are prisoners subject to exceptional, “second-look” releasing mechanisms?

There are two primary mechanisms for a “second look” release. The Department of Rehabilitation and Correction may petition the court for early release of offenders sentenced after September 30, 2011 who have served eighty percent of their term, and are not otherwise disqualified due to the severity of their offense(s).<sup>90</sup> The sentencing court may also order judicial release (early release) for most offenders serving a non-mandatory prison term; in such cases the court has broad discretion to determine whether judicial release is appropriate based on the circumstances of the offense, the offender, and the victim.<sup>91</sup> Early release from a prison term less than life may also be granted by the Governor where it is clear that the offender is suffering from a terminal illness, is in imminent danger of death, or is medically incapacitated, through a process initiated by the Department of Rehabilitation and Correction (Sec. 2967.05: Release as if on parole of a dying prisoner).<sup>92</sup>



In addition to these mechanisms, Ohio law provides for the possibility of clemency. The governor may grant either a partial or absolute pardon after a prisoner is convicted, and can base this pardon on conditions met either before or after release.<sup>93</sup>

## 5. RELATIONSHIP TO CRIMINAL LAWS

**Q.** Did the guidelines replace some or all previous statutory maxima?

When Ohio's determinate statutory sentencing scheme went into effect in 1996, it replaced what had previously been an indeterminate scheme in which the General Assembly emphasized flexibility: trial judges selected the minimum prison sentence for each case from a statutory list of four or six durations, depending on the degree of the felony; the maximum term was set by statute for each degree of felony; and the parole board was left to decide how much of the maximum sentence would have to be served beyond the required minimum.<sup>94</sup> So, for example, non-aggravated felonies of the first degree had four listed minimum terms (4, 5, 6, and 7 years), with the maximum automatically set at 25 years; aggravated first-degree felonies had higher minimums of 5, 6, 7, 8, 9, or 10 years.<sup>95</sup>

The 1996 sentencing law eliminated parole release discretion for most crimes, and gave judges a slightly longer list of prison durations from which to choose. For example, as of 2016, judges can choose one of nine authorized prison terms for a first-degree felony (3, 4, 5, 6, 7, 8, 9, 10, or 11 years);<sup>96</sup> various enhancement provisions can yield a longer prison term, but 11 years is otherwise the maximum term. The prisoner will serve almost the entire maximum, subject only to modest good conduct credits.<sup>97</sup>

**Q.** Are guidelines built on top of (i.e., equal to or more severe than) any remaining mandatory minima, or are they set independently and overridden whenever a mandatory applies?

A standard list of available prison sentences is provided for each degree of felony,<sup>98</sup> but certain offenses carry higher minimums, ranges, or add-ons that override the standard ranges.<sup>99</sup> For example, when sentencing a second-degree felony the judge would normally impose a sentence of two, three, four, five, six, seven, or eight years;<sup>100</sup> however, if the crime is a firearm offense a

different statute controls and sets a higher minimum term depending on the type of firearm used (e.g.: an automatic firearm specification carries a mandatory six-year term).<sup>101</sup> Other examples of such overriding terms include certain drug offenses,<sup>102</sup> and offenders classified as Repeat Violent Offenders.<sup>103</sup> These special rules also override considerations of community control; if a non-prison punishment is the recommended sentence under the standard statute, prison is required if the applicable special statute applies.<sup>104</sup>

**Q.** Are some "mandatory" minima subject to case-specific "departure" or other exceptions?

When a mandatory minimum sentence applies the court is not allowed to "depart downward" from that minimum sentence.<sup>105</sup> However, the offender will receive credit, against the minimum term, for time already spent in custody in connection with the offense of conviction.<sup>106</sup>

## 6. CRIMINAL HISTORY SCORING

**Q.** What are the major components of the criminal history score?

While Ohio does not use a "score" to determine the impact of a defendant's criminal history in sentencing decisions, state law does encourage sentencing judges to take criminal history into account when making these decisions. Specifically, when sentencing felony convictions, factors that can indicate an offender is likely to commit future crime include the fact that the offender was under some sort of supervision status when the offense was committed, had previously been unfavorably terminated from post-prison release, has a history of criminal convictions, or was previously adjudicated as a delinquent child.<sup>107</sup> Conversely, the listed factors indicating that the offender is not likely to commit future crimes include the absence of juvenile adjudications, the absence of prior adult convictions, and a recent crime-free period.<sup>108</sup> Ohio also specifies the use of a single validated risk assessment for adult offenders that may be used at the time of sentencing (Sec. 5120.114).

**Q.** Does the jurisdiction utilize “decay”/washout rules, that is, do old convictions count less or drop out? Which older convictions decay, when, and how?

In sentencing felonies, one of the sentencing factors the court must consider, as an indicator that the offender is not likely to commit future crimes, is whether prior to the offense the offender has “led a law-abiding life for a significant number of years;” however, there is no specific direction as to how this factor should impact the court’s sentencing decision.<sup>109</sup>

**Q.** Do the Guidelines include any other significant limitations on how criminal history can be used (e.g., limits on eligibility for high-history categories; adjustments for older offenders)?

A judge is required to consider criminal history as a factor in determining the sentence that best achieves the statutory purposes and principles of sentencing, but beyond this the statute provides no instruction as to how much weight this consideration should receive.<sup>110</sup>

## 7. MULTIPLE CURRENT OFFENSES

**Q.** Are consecutive sentences limited? If so, how (e.g. prohibited, permissive, or mandatory in certain cases; limits on total duration; use of a multiple-counts enhancement formula)?

Generally, Ohio state law dictates that sentences for multiple crimes must be served concurrently.<sup>111</sup> However, there are statutory exceptions requiring that convictions for certain types of felony offenses (e.g., violent sex crimes) be served consecutively,<sup>112</sup> and that felony sentencing enhancements and the sentence for the underlying offense be served consecutively.<sup>113</sup> For other felony offenses, the court may choose to require that multiple sentences be served consecutively if “the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public.”<sup>114</sup> In order to exercise this discretion, the court must make one of the following three findings: 1) that one or more of the current offenses was committed while the offender was awaiting trial, serving a

community-based sentence, or under post-release control; 2) that the harm caused by the offender’s current offenses “was so great or unusual” that no single sentence for any one of the crimes “adequately reflects the seriousness of the offender’s conduct;” or 3) that the offender’s criminal history indicates consecutive sentences are needed to protect the public from future crime by the defendant.<sup>115</sup>

**Q.** In consecutive sentencing, how is the offender’s criminal history taken into account?

Because Ohio does not have a traditional criminal history “score,” criminal history only factors into a consecutive sentence to the extent that each individual term length is imposed with the offender’s criminal history in mind.<sup>116</sup> For offenses for which consecutive sentencing is discretionary, consideration of an offender’s prior record may support such a sentence when the “offender’s history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.”<sup>117</sup>

## 8. ENFORCEMENT MECHANISMS (LOCATION ON THE “ADVISORY”-TO-“MANDATORY” CONTINUUM)

**Q.** Are recommended sentences enforced by prosecution and defense sentence appeals?

A defendant may appeal his or her sentence of right if any of the following circumstances apply: (1) the maximum ordinary-case sentence was imposed, and the maximum was not required; (2) a prison term was imposed for a fourth- or fifth-degree felony, or for certain drug offenses, and the sentencing court did not state that it found the presence of one of eleven specified aggravating factors; (3) for certain offenses subject to indeterminate prison terms, the minimum sentence of the term imposed was the longest term available for that offense; (4) the sentence is “contrary to law”; or (5) for repeat violent offenders convicted of certain serious felonies, a maximum definite term of ten years was added to the longest prison term normally authorized for that offense.<sup>118</sup> The prosecution may appeal the sentence of right if: (1) the offense carries a presumptive prison sentence and prison time was not

imposed on the offender; (2) the sentence is “contrary to law”; or (3) for a first- or second-degree felony, the original sentence was reduced under the judicial release procedure.<sup>119</sup> For certain crimes, a defendant may also seek leave to appeal his sentence if: 1) consecutive sentences were imposed and the total sentence exceeds the highest sentence authorized for the most serious of the crimes; or 2) a definite sentence was imposed that exceeds five years, in addition to the basic prison term ordinarily applicable.<sup>120</sup>

Neither party may appeal if the sentence is authorized by law and was jointly recommended by the defendant and the prosecution.<sup>121</sup> In addition, several of the authorized grounds for appeal listed above are stated quite narrowly, and the list of appeal grounds entirely excludes a number of circumstances. For example, the appeals statute refers only to first-, second-, fourth-, and fifth-degree felonies, along with certain drug offenses; thus, most third-degree felony sentences are not appealable by either the defendant or the prosecution. There is apparently also no defense appeal of the trial court’s refusal to find grounds for a community control sentence in 1<sup>st</sup>- and 2<sup>nd</sup>-degree cases (that is, refusal to grant a downward dispositional departure). Similarly, the prosecution may not challenge the trial court’s imposition of the community control sanctions prescribed for a fourth- or fifth-degree felony (that is, refusal to grant an upward dispositional departure and impose a prison sentence). Finally, except for a sentence that is the highest-available term, there is generally no appeal of the trial court’s choice of a particular prison term from the list of authorized terms applicable to the case.

**Q.** Are other enforcement methods used (e.g., required reasons for departure; published judge-specific departure rates; narrow permitted sentencing alternatives and/or ranges)?

It does not appear that other enforcement mechanisms (such as publishing departure reasons) are used in this jurisdiction.

**Q.** Are some deviations from the guidelines not deemed departures?

There are no formal provisions recognizing certain deviations from guidelines recommendations as non-departures. However, the statutory statements of sentencing purposes and principles are arguably a kind of “soft” recommendation -- sentencing courts are directed to consider the circumstances surrounding the offense,<sup>122</sup> the offender’s criminal history,<sup>123</sup> and whether the punishment rendered will achieve the goals and purposes of the sentencing scheme as a whole.<sup>124</sup> But judges are not required to state how they have considered these matters, and failure to properly consider and apply them is not, in itself, deemed a “departure” or grounds for appeal.

**Q.** Do some deviations require especially strong justification? Or minimal justification?

It does not appear that any deviations from guidelines recommendations require either especially strong justification or minimal justification. In some cases specified findings are required in order to impose a sentence different from what would normally apply, but there is no requirement to state reasons for such a finding,<sup>125</sup> nor is the court required to notify the offender of the reasons for the particular sentence given.<sup>126</sup>

<sup>1</sup> The Commission was briefly called the “Sentencing Council” from 1996-2000. See 1996 Ohio Laws 6141 (codifying H.B. 591); 1999 Ohio Laws 8675 (amending S.B. 107).

<sup>2</sup> 1990 Ohio Laws 1538 (amending S.B. 258).

<sup>3</sup> *Id.*

<sup>4</sup> 1994 Ohio Laws 2768 (amending H.B. 21).

<sup>5</sup> 1996 Ohio Laws 6141 (codifying H.B. 591).

<sup>6</sup> 1994 Ohio Laws 4580 (amending H.B. 152).

<sup>7</sup> 1996 Ohio Laws 6144 (codifying H.B. 591).

<sup>8</sup> See Ohio Criminal Sentencing Commission, FAQ Page, <http://www.supremecourt.ohio.gov/Boards/Sentencing/faq.asp#three> (last visited Sept. 24, 2016).

<sup>9</sup> 1990 Ohio Laws 1325 (amending S.B. 258).

<sup>10</sup> Ohio Rev. Code Ann. § 181.22 (West 2017).

<sup>11</sup> Title XXIX of the Ohio Revised Code Annotated is titled “Crimes — Procedure” and contains almost all of the state’s statutes on violent crime and drug offenses. Essentially this means that this one member of the sentencing commission could be loosely characterized as “a victim of a violent crime.”

<sup>12</sup> Ohio Rev. Code Ann. § 181.21(A) (West 2017).

<sup>13</sup> *Id.*

<sup>14</sup> Ohio Rev. Code Ann. § 181.22 (West 2017). See Ohio Criminal Sentencing Commission, *Annual Report* 11 (2015) (mentioning that, as of 2015, there were a total of 21 persons serving on the Advisory Committee).

<sup>15</sup> Ohio Rev. Code Ann. § 181.21(A) (West 2017).

<sup>16</sup> See Ohio Criminal Sentencing Commission, *Annual Report* (2015).

<sup>17</sup> Ohio Rev. Code Ann. § 181.21(B) (West 2017).

<sup>18</sup> Ohio Rev. Code Ann. § 181.23(A) (West 2017). The Commission’s mandate is to use the results of its studies to develop and recommend to the general assembly a comprehensive criminal sentencing structure, as well as a sentencing policy “designed to enhance public safety by achieving certainty in sentencing, deterrence, and a reasonable use of correctional facilities, programs, and services and shall be designed to achieve fairness in sentencing.”<sup>18</sup>

<sup>19</sup> Ohio Rev. Code Ann. § 181.23(A)-(B) (West 2017).

<sup>20</sup> *Id.*

<sup>21</sup> Ohio Rev. Code Ann. § 2929.22(A) (West 2017).

<sup>22</sup> Ohio Rev. Code Ann. § 2929.11(A) (West 2017).

<sup>23</sup> Sup. Ct. of Ohio & Ohio Jud. Sys., *Publications*, <http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/Publications/> (last visited Aug. 3, 2017).

<sup>24</sup> 1996 Ohio Laws 6512 (codifying H.B. 670).

<sup>25</sup> 2000 Ohio Laws 8208 (amending S.B. 9).

<sup>26</sup> 2002 Ohio Laws 7557 (amending H.B. 327).

<sup>27</sup> See, e.g., Ohio Rev. Code Ann. § 2929.13(B) (West 2017).

<sup>28</sup> See Ohio Rev. Code Ann. § 181.24 (West 2016) (noting the Commission’s powers are limited to making recommendations for a “comprehensive criminal sentencing structure” to the General Assembly, but has no lawmaking power of its own).

<sup>29</sup> Ohio Rev. Code Ann. §§ 2929.11–.31 (West 2017).

<sup>30</sup> Ohio Rev. Code Ann. §§ 2929.02–.04, 2929.14(A) (West 2017).

<sup>31</sup> See Burt W. Griffin and Lewis R. Katz, *Sentencing Consistency: Basic Principles Instead of Numerical Grids: The Ohio Plan*, 53 Case W. Res. 1 (2002).

<sup>32</sup> Ohio Crim. Sentencing Comm’n, *Felony Sentencing Quick Reference Guide* at 5 (2015), <https://www.supremecourt.ohio.gov/Boards/Sentencing/resources/summaries/felonyQuickRef.pdf>.

<sup>33</sup> See Ohio Rev. Code Ann. § 2929.12 (West 2017).

<sup>34</sup> Ohio Rev. Code Ann. § 2929.11(A) (West 2017).

<sup>35</sup> See Ohio Rev. Code Ann. § 2929.12 (West 2017).

<sup>36</sup> Ohio Rev. Code Ann. § 2929.13(F) (West 2017). For example, a defendant convicted of a first-degree felony could be sentenced to any prison term (in whole years) between three and eleven years. But an offense such as trafficking in persons, which is defined as a felony in the first degree, carries a higher mandatory sentencing range of ten to fifteen years. Ohio Rev. Code Ann. § 2905.32(E) (West 2017).

<sup>37</sup> Ohio Rev. Code Ann. §§ 2929.13(D)–(E) (West 2017).

<sup>38</sup> Ohio Rev. Code Ann. § 2913.02(B)(4) (West 2017).

<sup>39</sup> See Ohio Rev. Code Ann. § 2929.13(D)(2) (West 2017).

<sup>40</sup> See Ohio Rev. Code Ann. § 2929.13(C) (West 2017).

<sup>41</sup> *Id.*, § 2929.13(B)(1)(a)–(b) (West 2017).

<sup>42</sup> See Ohio Rev. Code Ann. § 2929.13(B)(2) (West 2017) (citing the general purposes and principles in sections 2929.11 and 2929.12).

<sup>43</sup> Ohio Rev. Code Ann. § 2929.14(A)(1) (West 2017).

<sup>44</sup> Ohio Rev. Code Ann. §§ 2929.14(B)–(K) (West 2017).

<sup>45</sup> See Ohio Rev. Code Ann. §§ 2929.15–2929.18 (West 2017).

<sup>46</sup> See, e.g., Ohio Rev. Code Ann. § 2929.15(A)(1) (West 2017).

<sup>47</sup> Ohio Rev. Code Ann. § 2929.14(D)(1) (West 2017).

<sup>48</sup> Ohio Rev. Code Ann. § 2929.14(D)(2) (West 2017).

<sup>49</sup> Ohio Rev. Code Ann. § 2929.13(F) (West 2017).

<sup>50</sup> Ohio Rev. Code Ann. §§ 2929.13(C)–(E) (West 2017).

<sup>51</sup> Ohio Rev. Code Ann. § 2929.13(B)(1)(a) (West 2017).

<sup>52</sup> See Ohio Rev. Code Ann. §§ 2929.14–.18 (West 2017).

<sup>53</sup> See Ohio Rev. Code Ann. § 2929.14 (West 2017).

<sup>54</sup> Ohio Rev. Code Ann. § 2929.15(B)(3) (West 2017).

<sup>55</sup> *Id.*

<sup>56</sup> Ohio Rev. Code Ann. §§ 2929.13(B)–(C) (West 2017).

<sup>57</sup> See Ohio Rev. Code Ann. § 2929.13(D)(2) (West 2017).

<sup>58</sup> Ohio Rev. Code Ann. § 2929.13(B)(1)(a) (West 2017). See, e.g., *State v. Wells*, 41 N.E.3d 216 (2015) (holding failure to impose a mandatory community control sanction is reversible error).

<sup>59</sup> Ohio Rev. Code Ann. §§ 2929.13(B)(1)(b)–(c) (West 2017).

<sup>60</sup> Ohio Rev. Code Ann. §§ 2929.11–.12 (West 2017).

<sup>61</sup> Ohio Rev. Code Ann. § 2929.14 (West 2017).

<sup>62</sup> Ohio Rev. Code Ann. § 2929.13(D)(2) (West 2017). See, e.g., *State v. Milhoan*, 2014 WL 351991 (Ohio Ct. App. 2014), *discret. appeal den.*, 10 N.E.3d 738 (Ohio 2014) (affirming imposition of a community control sentence).

<sup>63</sup> Ohio Rev. Code Ann. §§ 2929.13(B)(1)(b)–(B)(1)(c) (West 2017).

<sup>64</sup> See, e.g., *State v. Wells*, 41 N.E.3d 216 (Ohio Ct. App. 2015) (reversing trial court’s imposition of a prison sentence after it received a corrections official’s report that the available community program only had a four- to six-month duration; defendant had been in jail for roughly six months at the time of sentencing, and the appeals court concluded that this detention, if combined with the reported program, available electronic home monitoring, and up to five years of community supervision, would have adequately fulfilled the purposes of punishment).

<sup>65</sup> Ohio Rev. Code Ann. § 2929.14(A)(1) (West 2017).

<sup>66</sup> Ohio Rev. Code Ann. §§ 2929.14(B)–(H) (West 2017); *id.* § 2941.144 (mentioning automatic firearm or silencer).

<sup>67</sup> See, e.g., Ohio Rev. Code Ann. § 2929.14(B)(2)(a) (West 2017).

<sup>68</sup> See Ohio Rev. Code Ann. §§ 2929.12(B), (C), and (F) (West 2017).

<sup>69</sup> Ohio Rev. Code Ann. §§ 2929.12(D)–(E) (West 2017).

<sup>70</sup> Ohio Rev. Code Ann. §§ 2929.14 (West 2017).

<sup>71</sup> See Ohio Rev. Code Ann. §§ 2929.11, 2929.12 (West 2017).

<sup>72</sup> Ohio Rev. Code Ann. §§ 2929.12(D)(5), (E)(5) (West 2017).

<sup>73</sup> See Ohio Rev. Code Ann. §§ 2929.13, 2929.14 (West 2017).

<sup>74</sup> Ohio Rev. Code Ann. §§ 2929.11, 2929.12, and 2929.14 (West 2017).

<sup>75</sup> Ohio Rev. Code Ann. §§ 2929.14(B)–(H) (West 2017).

<sup>76</sup> See Ohio Rev. Code Ann. § 2929.13(D)(2) (West 2017).

<sup>77</sup> See *State v. Milhoan*, 2014 WL 351991 (Ohio Ct. App. 2014), *discret. appeal den.*, 10 N.E.3d 738 (Ohio 2015).

<sup>78</sup> Ohio Rev. Code Ann. § 2929.13(B)(1)(c) (West 2017).

<sup>79</sup> See Ohio Rev. Code Ann. § 2967.01(E) (2017) (defining parole).

<sup>80</sup> See Ohio Rev. Code Ann. §§ 2967.13 (life sentences) and 2971.03 (West 2017) (stating certain sex offenders may be sentenced to an “indefinite” prison term of years within a specified range [no fewer than X years and no more than Y years]). In addition, most offenders serving a non-mandatory prison term may request the sentencing court to order early release. See Ohio Rev. Code Ann. § 2929.20 (West 2017) (“judicial release”).

<sup>81</sup> Ohio Criminal Sentencing FAQs, <http://www.supremecourt.ohio.gov/Boards/Sentencing/faq.asp>.

<sup>82</sup> See Ohio Rev. Code Ann. § 2967.193(A)(2) (West 2017). However, most offenders serving a non-mandatory prison term may apply for an early, “judicial release.” *Id.* § 2929.20 (West 2017). An additional program allows the Department of Rehabilitation and Correction to petition the court for early release of an eligible offender sentenced after September 30, 2011, who has served at least 80% of the pronounced sentence. Ohio Rev. Code Ann. § 2967.19 (West 2017).

<sup>83</sup> Ohio Rev. Code Ann. § 2967.12 (West 2017).

<sup>84</sup> See Ohio Rev. Code §§ 2967.19, 2967.193, and 2929.20 (West 2017).

<sup>85</sup> Ohio Rev. Code Ann. § 2967.28(C) (West 2017). The length of post-release control depends on the seriousness of the crime committed. For example, a prisoner convicted of a first-degree felony is subject to a five-year period of post-release control. *Id.*

<sup>86</sup> Ohio Admin. Code 5120-2-05 (2015).

<sup>87</sup> Ohio Admin. Code 5120-2-07 (2015).

<sup>88</sup> Ohio Admin. Code 5120-2-06 (2015); see also Ohio Rev. Code Ann. § 2967.193 (West 2017). The types of programs for which prisoners can earn credit vary widely from educational programs to drug rehabilitation.

<sup>89</sup> Ohio Rev. Code Ann. § 2967.193 (West 2017).

<sup>90</sup> Ohio Rev. Code Ann. § 2967.19 (West 2017).

<sup>91</sup> See Ohio Rev. Code Ann. § 2929.20 (West 2017).

<sup>92</sup> Ohio Rev. Code Ann. § 2929.20(L) (West 2017).

<sup>93</sup> Ohio Rev. Code Ann. § 2967.02(B) (West 2017).

<sup>94</sup> See John Wooldredge et al., *Impact of Ohio’s Senate Bill 2 on Sentencing Disparities: Project Report Submitted to the National Institute of Justice 4* (Nat’l Crim. Justice Ref. Serv. 2003).

<sup>95</sup> Ohio Rev. Code Ann. § 2929.11 (West 2017).

<sup>96</sup> Ohio Rev. Code Ann. § 2929.14(A)(1) (West 2017).

<sup>97</sup> See Ohio Rev. Code Ann. § 2967.193 (West 2017).

<sup>98</sup> Ohio Rev. Code Ann. § 2929.14(A) (West 2017).

<sup>99</sup> Ohio Crim. Sentencing Comm’n, *Felony Sentencing Quick Reference Guide* at 2 (2015), <https://www.supremecourt.ohio.gov/Boards/Sentencing/resources/summaries/felonyQuickRef.pdf>.

<sup>100</sup> Ohio Rev. Code Ann. § 2929.14(A) (West 2017).

<sup>101</sup> Ohio Rev. Code Ann. § 2941.144 (West 2017).

<sup>102</sup> Ohio Rev. Code Ann. § 2941.1410 (West 2017)

<sup>103</sup> Ohio Rev. Code Ann. § 2941.149 (West 2017).

<sup>104</sup> See, e.g., Ohio Rev. Code Ann. § 2941.144 (West 2017).

<sup>105</sup> Ohio Rev. Code Ann. § 2929.13(F) (West 2017); see also 2929.14(B)(1)(b) (West 2017) (forbidding downward departure for sentences on certain enumerated prison term offenses).

<sup>106</sup> Ohio Rev. Code Ann. § 2967.191 (West 2017).

<sup>107</sup> Ohio Rev. Code Ann. § 2929.12(D) (West 2017). See also § 2929.13(B)(1)(a)(i)–(iv) (explaining two of four factors triggering mandatory community control sentence for a non-violent fourth- or fifth-degree felony are the absence of any prior felony convictions and the absence of any violent misdemeanor convictions in the two-year period preceding the current offense); *Id.* § 2929.13(B)(1)(b)(x) and (xi) (noting a court has discretion to impose prison for a non-violent 4<sup>th</sup>- or 5<sup>th</sup>-degree felony if the current offense was committed while serving a prison term or under community control, or if the offender has previously served a prison term).

<sup>108</sup> Ohio Rev. Code Ann. §§ 2929.12(E)(1), (2), and (3) (West 2017).

<sup>109</sup> Ohio Rev. Code Ann. § 2929.12(E)(3) (West 2017).

<sup>110</sup> See Ohio Rev. Code Ann. § 2929.12(A) (West 2017) (referencing purposes and principles set forth in § 2929.11).

<sup>111</sup> Ohio Rev. Code Ann. § 2929.41(A) (West 2017).

<sup>112</sup> *Id.*

<sup>113</sup> See, e.g., Ohio Rev. Code Ann. § 2929.14(C)(1)(a) (West 2017).

<sup>114</sup> Ohio Rev. Code Ann. § 2929.14(C)(4) (West 2017).

<sup>115</sup> *Id.*

<sup>116</sup> See Ohio Rev. Code Ann. § 2929.12 (West 2017).

<sup>117</sup> Ohio Rev. Code Ann. § 2929.14(C)(4) (West 2017).

<sup>118</sup> Ohio Rev. Code Ann. § 2953.08(A) (West 2017). Defendants also have the right to appeal application of rules that count, as a single crime, two or more crimes committed at the same time or as part of the same act or event. Ohio Rev. Code Ann. § 2953.08(D)(2) (West 2017) (referencing one-crime rules contained in § 2929.14(B)(2)(c)).

<sup>119</sup> Ohio Rev. Code Ann. § 2953.08(B) (West 2017); *id.* § 2929.20 (West 2016) (judicial release).

<sup>120</sup> Ohio Rev. Code Ann. § 2953.08(C) (West 2017).

<sup>121</sup> Ohio Rev. Code Ann. § 2953.08(D)(1) (West 2017).

<sup>122</sup> Ohio Rev. Code Ann. § 2929.12(B) (West 2017).

<sup>123</sup> Ohio Rev. Code Ann. § 2929.12(D) (West 2017).

<sup>124</sup> Ohio Rev. Code Ann. § 2929.11 (West 2017).

<sup>125</sup> See, e.g., Ohio Rev. Code Ann. §§ 2929.13(B)–(D) (West 2017).

<sup>126</sup> See Ohio Rev. Code Ann. § 2929.19 (West 2017).