

2017 Ohio House Bill No. 411, Ohio One Hundred Thirty-Second General Assembly - 2017-2018 Session

OHIO BILL TEXT

**TITLE: To modify the state's wrongful imprisonment law and to modify the purpose of violation sanction centers.**

VERSION: Adopted

December 21, 2018

Seitz, B

 [Image 1 within document in PDF format.](#)

SUMMARY: To modify the state's wrongful imprisonment law and to modify the purpose of violation sanction centers.

**TEXT:**

(132nd General Assembly)

(Substitute House Bill Number 411)

AN ACT

To amend sections 2305.02, 2743.48, 2929.01, 2967.141, and 2969.21 of the Revised Code to modify the state's wrongful imprisonment law and to modify the purpose of violation sanction centers.

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

SECTION 1. That sections 2305.02, 2743.48, 2929.01, 2967.141, and 2969.21 of the Revised Code be amended to read as follows:

Sec. 2305.02. The court of common pleas in the county where the underlying criminal action was initiated has exclusive, original jurisdiction to hear and determine a civil ~~an~~ **an** action or proceeding that is commenced by an individual who seeks a determination by that court that the individual ~~satisfies divisions (A)(1) to (5) of section 2743.48 of the Revised Code~~ **and that seeks a determination by the court that an error in procedure of the type described in division (A)(5) of that section occurred, that the offense of which the individual was found guilty, including all lesser included offenses, was not committed by the individual, or that no offense was committed by any person.** If that ~~the~~ court enters the requested determination, it shall comply with division (B) of that section.

Sec. 2743.48. (A) As used in this section and section 2743.49 of the Revised Code, a "wrongfully imprisoned individual" means an individual who satisfies each of the following:

(1) The individual was charged with a violation of a section of the Revised Code by an indictment or information, and the violation charged was an aggravated felony ~~or~~ **felony, or misdemeanor.**

(2) The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony ~~or~~ **felony, or misdemeanor.**

(3) The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty.

(4) The individual's conviction was vacated, dismissed, or reversed on appeal, ~~the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court,~~ and ~~no~~ **all of the following apply:**

**(a) No criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction.**

**(b) The prosecuting attorney in the case, within one year after the date of the vacating, dismissal, or reversal, has not sought any further appeal of right or upon leave of court, provided that this division does not limit or affect the seeking of any such appeal after the expiration of that one-year period as described in division (C)(3) of this section.**

**(c) The prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation, within one year after the date of the vacating, dismissal, or reversal, has not brought a criminal proceeding against the individual for any act associated with that conviction, provided that this division does not limit or affect the bringing of any such proceeding after the expiration of that one-year period as described in division (C)(3) of this section.**

(5) Subsequent to sentencing ~~and~~ **or** during or subsequent to imprisonment, an error in procedure **was discovered that occurred prior to, during, or after sentencing, that involved a violation of the Brady Rule which violated the individual's rights to a fair trial under the Ohio Constitution or the United States Constitution, and that** resulted in the individual's release, or it was determined by the court of common pleas in the county where the underlying criminal action was initiated **either that the charged- offense of which the individual was found guilty, including all lesser-included offenses, either- was not committed by the individual or that no offense was not- committed by any person. In addition to any other application of the provisions of this division regarding an error in procedure that occurred prior to, during, or after sentencing, as those provisions exist on and after the effective date of this amendment, if an individual had a claim dismissed, has a claim pending, or did not file a claim because the state of the law in effect prior to the effective date of this amendment barred the claim or made the claim appear to be futile, those provisions apply with respect to the individual and the claim and, on or after that effective date, the individual may file a claim and obtain the benefit of those provisions.**

(B)(1) A person may file a civil action to be declared a wrongfully imprisoned individual in the court of common pleas in the county where the underlying criminal action was initiated. That civil action shall be separate from the underlying finding of guilt ~~by the court of common pleas~~ . Upon the filing of a civil action to be determined a wrongfully imprisoned individual, the attorney general shall be served with a copy of the complaint and shall be heard.

(2) When the court of common pleas in the county where the underlying criminal action was initiated determines ~~in a separate civil action-~~ that a person is a wrongfully imprisoned individual, the court shall provide the person with a copy of this section and orally inform the person and the person's attorney of the person's rights under this section to commence a civil action against the state in the court of claims because of the person's wrongful imprisonment and to be represented in that civil action by counsel of the person's own choice.

(3) The court described in division (B)(1) of this section shall notify the clerk of the court of claims, in writing and within seven days after the date of the entry of its determination that the person is a wrongfully imprisoned individual, of the name and proposed mailing address of the person and of the fact that the person has the rights to commence a civil action and to have legal representation as provided in this section. The clerk of the court of claims shall maintain in the

clerk's office a list of wrongfully imprisoned individuals for whom notices are received under this section and shall create files in the clerk's office for each such individual.

(4) Within sixty days after the date of the entry of the determination by the court of common pleas in the county where the underlying criminal action was initiated that a person is a wrongfully imprisoned individual, the clerk of the court of claims shall forward a preliminary judgment to the president of the controlling board requesting the payment of fifty per cent of the amount described in division (E)(2)(b) of this section to the wrongfully imprisoned individual. The board shall take all actions necessary to cause the payment of that amount out of the emergency purposes special purpose account of the board.

(5) If an individual was serving at the time of the wrongful imprisonment concurrent sentences on other convictions that were not vacated, dismissed, or reversed on appeal, the individual is not eligible for compensation as described in this section for any portion of that wrongful imprisonment that occurred during a concurrent sentence of that nature.

(C)(1) In a civil action under this section, a wrongfully imprisoned individual has the right to have counsel of the individual's own choice.

(2) If a wrongfully imprisoned individual who is the subject of a court determination as described in division (B)(2) of this section does not commence a civil action under this section within six months after the entry of that determination, the clerk of the court of claims shall send a letter to the wrongfully imprisoned individual, at the address set forth in the notice received from the court of common pleas pursuant to division (B)(3) of this section or to any later address provided by the wrongfully imprisoned individual, that reminds the wrongfully imprisoned individual of the wrongfully imprisoned individual's rights under this section. Until the statute of limitations provided in division (H) of this section expires and unless the wrongfully imprisoned individual commences a civil action under this section, the clerk of the court of claims shall send a similar letter in a similar manner to the wrongfully imprisoned individual at least once each three months after the sending of the first reminder.

**(3) If an individual has been determined by the court of common pleas in the county where the underlying criminal action was initiated to be a wrongfully imprisoned individual, as described in division (A) of this section, both of the following apply:**

**(a) The finding under division (A)(4)(b) of this section does not affect or negate any right or authority the prosecuting attorney in the case may have to seek, after the expiration of the one-year period described in that division, a further appeal of right or upon leave of court with respect to the conviction that was vacated, dismissed, or reversed on appeal, and the prosecuting attorney may seek such a further appeal after the expiration of that period.**

**(b) The finding under division (A)(4)(c) of this section does not affect or negate any right or authority the prosecuting attorney in the case may have under any other provision of law to bring, after the expiration of the one-year period described in that division, a criminal proceeding against the individual for any act associated with the conviction that was vacated, dismissed, or reversed on appeal, and the prosecuting attorney may bring such a proceeding after the expiration of that period as provided under any other provision of law.**

(D) Notwithstanding any provisions of this chapter to the contrary, a wrongfully imprisoned individual has and may file a civil action against the state, in the court of claims, to recover a sum of money as described in this section, because of the individual's wrongful imprisonment. The court of claims shall have exclusive, original jurisdiction over such a civil action. The civil action shall proceed, be heard, and be determined as provided in sections 2743.01 to 2743.20 of the Revised Code, except that if a provision of this section conflicts with a provision in any of those sections, the provision in this section controls.

(E)(1) In a civil action as described in division (D) of this section, the complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the court of claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of the determination of the court of common pleas that the claimant is a wrongfully imprisoned individual under division (B)(2) of this section. No other evidence shall be required of the complainant to establish that the claimant is a wrongfully imprisoned individual, and the claimant shall be irrebuttably presumed to be a wrongfully imprisoned individual.

(2) In a civil action as described in division (D) of this section, upon presentation of requisite proof to the court of claims, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts:

(a) The amount of any fine or court costs imposed and paid, and the reasonable attorney's fees and other expenses incurred by the wrongfully imprisoned individual in connection with all associated criminal proceedings and appeals, and, if applicable, in connection with obtaining the wrongfully imprisoned individual's discharge from confinement in the state correctional institution;

(b) For each full year of imprisonment in the state correctional institution for the offense of which the wrongfully imprisoned individual was found guilty, forty thousand three hundred thirty dollars or the adjusted amount determined by the auditor of state pursuant to section 2743.49 of the Revised Code, and for each part of a year of being so imprisoned, a pro-rated share of forty thousand three hundred thirty dollars or the adjusted amount determined by the auditor of state pursuant to section 2743.49 of the Revised Code;

(c) Any loss of wages, salary, or other earned income that directly resulted from the wrongfully imprisoned individual's arrest, prosecution, conviction, and wrongful imprisonment;

(d) The amount of the following cost debts the department of rehabilitation and correction recovered from the wrongfully imprisoned individual who was in custody of the department or under the department's supervision:

(i) Any user fee or copayment for services at a detention facility, including, but not limited to, a fee or copayment for sick call visits;

(ii) The cost of housing and feeding the wrongfully imprisoned individual in a detention facility;

(iii) The cost of supervision of the wrongfully imprisoned individual;

(iv) The cost of any ancillary services provided to the wrongfully imprisoned individual.

(F)(1) If the court of claims determines in a civil action as described in division (D) of this section that the complainant is a wrongfully imprisoned individual, it shall enter judgment for the wrongfully imprisoned individual in the amount of the sum of money to which the wrongfully imprisoned individual is entitled under division (E)(2) of this section. In determining that sum, the court of claims shall not take into consideration any expenses incurred by the state or any of its political subdivisions in connection with the arrest, prosecution, and imprisonment of the wrongfully imprisoned individual, including, but not limited to, expenses for food, clothing, shelter, and medical services. The court shall reduce that sum by the amount of the payment to the wrongfully imprisoned individual described in division (B)(4) of this section.

(2) If the wrongfully imprisoned individual was represented in the civil action under this section by counsel of the wrongfully imprisoned individual's own choice, the court of claims shall include in the judgment entry referred to in division (F)(1) of this section an award for the reasonable attorney's fees of that counsel. These fees shall be paid as provided in division (G) of this section.

(3) If the wrongfully imprisoned individual owes any debt to the state or any of its political subdivisions, the court of claims, in the judgment entry referred to in division (F)(1) of this section, shall deduct the amount of any such debts that are known from the sum of money to which the wrongfully imprisoned individual is entitled under division (E)(2) of this section. The court shall include in the judgment entry an award to the state or a political subdivision, whichever is applicable, of any amount deducted pursuant to this division. These amounts shall be paid as provided in division (G) of this section.

(4)(a) If, at the time of the judgment entry referred to in division (F)(1) of this section, the wrongfully imprisoned individual has won or received a qualifying monetary award or recovery that arose from any conduct that resulted in or contributed to the person being determined to be a wrongfully imprisoned individual, all of the following apply:

(i) The court of claims, in the judgment entry, shall deduct the amount of the award or recovery in the action that the wrongfully imprisoned individual actually collected prior to the time of the judgment entry, after the payment of the individual's attorney's fees and costs related to the litigation, from the sum of money to which the wrongfully imprisoned individual is entitled under division (E)(2) of this section. If the wrongfully imprisoned individual has won or received two or more qualifying monetary awards or recoveries of the type described in division (F)(4)(a) of this section, the court shall aggregate the amounts of all of those awards or recoveries that the individual actually collected prior to the date of the judgment entry, and the aggregate amount shall be the amount deducted under this division from the sum of money to which the wrongfully imprisoned individual is entitled under division (E)(2) of this section. The court shall include in the judgment entry an award to the state of any amount deducted pursuant to this division. These amounts shall be paid as provided in division (G) of this section.

(ii) If the wrongfully imprisoned individual actually collects any amount of the qualifying monetary award or recovery after the date of the judgment entry referred to in division (F)(1) of this section, the wrongfully imprisoned individual shall reimburse the state for the sum of money paid under the judgment entry referred to in division (F)(1) of this section, after the deduction of the individual's attorney's fees and costs related to the litigation, for the amount of the qualifying monetary award or recovery actually collected after that date. A reimbursement required under this division shall not exceed the amount that the wrongfully imprisoned individual actually collects under the qualifying monetary award or recovery. If the wrongfully imprisoned individual has won or received two or more qualifying monetary awards or recoveries of the type described in division (F)(4)(a) of this section and actually collects any amount of two or more of those qualifying monetary awards or recoveries after the date of the judgment entry referred to in division (F)(1) of this section, the court shall apply this division separately with respect to each such qualifying monetary award or recovery.

(iii) The total amount a court deducts under division (F)(4)(a)(i) of this section with respect to a qualifying monetary award or recovery plus the total amount of a reimbursement required under division (F)(4)(a)(ii) of this section with respect to that same qualifying monetary award or recovery shall not exceed the amount that the wrongfully imprisoned individual actually collects under that qualifying monetary award or recovery.

(b) If division (F)(4)(a) of this section does not apply and if, after the time of the judgment entry referred to in division (F)(1) of this section, the wrongfully imprisoned individual wins a qualifying monetary award or recovery that arose from any conduct that resulted in or contributed to the person being determined to be a wrongfully imprisoned individual, the wrongfully imprisoned individual shall reimburse the state for the sum of money paid under the judgment entry referred to in division (F)(1) of this section, after the deduction of the individual's attorney's fees and costs related to the litigation. A

reimbursement required under this division shall not exceed the amount that the wrongfully imprisoned individual actually collects under the qualifying monetary award or recovery. If the wrongfully imprisoned individual has won or received two or more such qualifying monetary awards or recoveries, the court shall apply this division separately with respect to each such qualifying monetary award or recovery.

(c) Divisions (F)(4)(a) and (b) of this section apply only with respect to judgment entries referred to in division (F)(1) of this section that are entered on or after the effective date of divisions (F)(4)(a) and (b) of this section.

(5) If, after the time of the judgment entry referred to in division (F)(1) of this section, the wrongfully imprisoned individual is convicted of or pleads guilty to an offense that is based on any act associated with the conviction that was vacated, reversed, or dismissed on appeal and that was the basis of the person being determined to be a wrongfully imprisoned individual, the wrongfully imprisoned individual shall reimburse the state for the entire sum of money paid under the judgment entry referred to in division (F)(1) of this section.

(6) The state consents to be sued by a wrongfully imprisoned individual because the imprisonment was wrongful, and to liability on its part because of that fact, only as provided in this section. However, this section does not affect any liability of the state or of its employees to a wrongfully imprisoned individual on a claim for relief that is not based on the fact of the wrongful imprisonment, including, but not limited to, a claim for relief that arises out of circumstances occurring during the wrongfully imprisoned individual's confinement in the state correctional institution.

(G) The clerk of the court of claims shall forward a certified copy of a judgment under division (F) of this section to the president of the controlling board. The board shall take all actions necessary to cause the payment of the judgment out of the emergency purposes special purpose account of the board.

(H) To be eligible to recover a sum of money as described in this section because of wrongful imprisonment, both of the following shall apply to a wrongfully imprisoned individual:

(1) The wrongfully imprisoned individual shall not have been, prior to September 24, 1986, the subject of an act of the general assembly that authorized an award of compensation for the wrongful imprisonment or have been the subject of an action before the former sundry claims board that resulted in an award of compensation for the wrongful imprisonment.

(2) The wrongfully imprisoned individual shall commence a civil action under this section in the court of claims no later than two years after the date of the entry of the determination of the court of common pleas that the individual is a wrongfully imprisoned individual under division (B)(2) of this section.

(I) No determination of a court of common pleas as specified in division (B) of this section or of the court of claims as described in division (D) of this section that a person is a wrongfully imprisoned individual, and no finding in the civil action that results in either of those determinations, is admissible as evidence in any criminal proceeding that is pending at the time of, or is commenced subsequent to, that civil action.

(J)(1) As used in division (A) of this section, "Brady Rule" means the rule established pursuant to the decision of the United States supreme court in *Brady v. Maryland* (1963), 373 U.S. 83.

(2) As used in divisions (F)(3) to (5) of this section:

(a) "State" and "political subdivisions" have the same meanings as in section 2743.01 of the Revised Code.

**(b) "Qualifying monetary award or recovery" means a monetary award won in, or a monetary recovery received through a settlement in, a civil action under section 1983 of Title 42 of the United States Code, 93 Stat. 1284 (1979), 42 U.S.C. 1983, as amended.**

Sec. 2929.01. As used in this chapter:

(A)(1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

(C) "Cocaine," "fentanyl-related compound," "hashish," "L.S.D.," and "unit dose" have the same meanings as in section 2925.01 of the Revised Code.

(D) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to sections 2301.51 to 2301.58 of the Revised Code.

(E) "Community control sanction" means a sanction that is not a prison term and that is described in section 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code or a sanction that is not a jail term and that is described in section 2929.26, 2929.27, or 2929.28 of the Revised Code. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

(F) "Controlled substance," "marihuana," "schedule I," and "schedule II" have the same meanings as in section 3719.01 of the Revised Code.

(G) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.

(H) "Day reporting" means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

(I) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(J) "Drug and alcohol use monitoring" means a program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(K) "Drug treatment program" means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

(L) "Economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Education or training" includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy curricula or their equivalent.

(N) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(O) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to section 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.

(P) "House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:

(1) The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.

(2) The offender is required to report periodically to a person designated by the court or parole board.

(3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

(Q) "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28 of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(R) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.



(S) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(T) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (E) or (G) of section 2929.24 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

(U) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(V) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to section 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

(W) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of cocaine; at least one thousand unit doses or one hundred grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; at least fifty grams of a controlled substance analog; at least one thousand unit doses or one hundred grams of a fentanyl-related compound; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(X) "Mandatory prison term" means any of the following:

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (21) of section 2929.13 and division (B) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code.

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Y) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

(Z) "Offender" means a person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor.

(AA) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction ~~but does not include~~ **and includes** a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(BB) "Prison term" includes either of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.143, 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073 of the Revised Code.

(CC) "Repeat violent offender" means a person about whom both of the following apply:

(1) The person is being sentenced for committing or for complicity in committing any of the following:

(a) Aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (CC)(1)(a) of this section.

(2) The person previously was convicted of or pleaded guilty to an offense described in division (CC)(1)(a) or (b) of this section.

(DD) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of sections 2929.14 to 2929.18 or 2929.24 to 2929.28 of the Revised Code.

(EE) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(FF) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142, or 2971.03 of the Revised Code or under section 2919.25 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 of the Revised Code. If an offender is serving a prison term as a risk reduction sentence under sections 2929.143 and 5120.036 of the Revised Code, "stated prison term" includes any period of time by which the prison term imposed upon the offender is shortened by the offender's successful completion of all assessment and treatment or programming pursuant to those sections.

(GG) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(HH) "Fourth degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree.

(II) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.

(JJ) "Designated homicide, assault, or kidnapping offense," "violent sex offense," "sexual motivation specification," "sexually violent offense," "sexually violent predator," and "sexually violent predator specification" have the same meanings as in section 2971.01 of the Revised Code.

(KK) "Sexually oriented offense," "child-victim oriented offense," and "tier III sex offender/child-victim offender" have the same meanings as in section 2950.01 of the Revised Code.

(LL) An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

(MM) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(NN) "Motor vehicle" and "manufactured home" have the same meanings as in section 4501.01 of the Revised Code.

(OO) "Detention" and "detention facility" have the same meanings as in section 2921.01 of the Revised Code.

(PP) "Third degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree.

(QQ) "Random drug testing" has the same meaning as in section 5120.63 of the Revised Code.

(RR) "Felony sex offense" has the same meaning as in section 2967.28 of the Revised Code.

(SS) "Body armor" has the same meaning as in section 2941.1411 of the Revised Code.

(TT) "Electronic monitoring" means monitoring through the use of an electronic monitoring device.

(UU) "Electronic monitoring device" means any of the following:

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (UU)(1)(b) of this section if the transmitter is removed from the person, turned off, or

altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (UU)(1)(a) of this section, can transmit continuously those signals by a wireless or landline telephone connection to a central monitoring computer of the type described in division (UU)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the device has been turned off or altered without prior court approval or otherwise tampered with. The device is designed specifically for use in electronic monitoring, is not a converted wireless phone or another tracking device that is clearly not designed for electronic monitoring, and provides a means of text-based or voice communication with the person.

(c) The device has a central monitoring computer that can receive continuously the signals transmitted by a wireless or landline telephone connection by a receiver of the type described in division (UU)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (UU)(1)(a) of this section is attached.

(2) Any device that is not a device of the type described in division (UU)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(3) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

(VV) "Non-economic loss" means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

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

(XX) "Continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(YY) A person is "adjudicated a sexually violent predator" if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

(ZZ) An offense is "committed in proximity to a school" if the offender commits the offense in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

(AAA) "Human trafficking" means a scheme or plan to which all of the following apply:

(1) Its object is one or more of the following:

(a) To subject a victim or victims to involuntary servitude, as defined in section 2905.31 of the Revised Code or to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented;

(b) To facilitate, encourage, or recruit a victim who is less than sixteen years of age or is a person with a developmental disability, or victims who are less than sixteen years of age or are persons with developmental disabilities, for any purpose listed in divisions (A)(2)(a) to (c) of section 2905.32 of the Revised Code;

(c) To facilitate, encourage, or recruit a victim who is sixteen or seventeen years of age, or victims who are sixteen or seventeen years of age, for any purpose listed in divisions (A)(2)(a) to (c) of section 2905.32 of the Revised Code, if the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of section 2907.03 of the Revised Code apply with respect to the person engaging in the conduct and the victim or victims.

(2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:

(a) Each of the felony offenses is a violation of section 2905.01, 2905.02, 2905.32, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.

(b) At least one of the felony offenses was committed in this state.

(c) The felony offenses are related to the same scheme or plan and are not isolated instances.

(BBB) "Material," "nudity," "obscene," "performance," and "sexual activity" have the same meanings as in section 2907.01 of the Revised Code.

(CCC) "Material that is obscene, sexually oriented, or nudity oriented" means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

(DDD) "Performance that is obscene, sexually oriented, or nudity oriented" means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

(EEE) "Accelerant" means a fuel or oxidizing agent, such as an ignitable liquid, used to initiate a fire or increase the rate of growth or spread of a fire.

Sec. 2967.141. (A) ~~As used in this section, "alternative residential facility" has the same meaning as in section 2929.01 of the Revised Code.~~

~~(B)~~ The department of rehabilitation and correction, ~~through its division of parole and community services,~~ may operate or contract for the operation of one or more violation sanction centers ~~as an alternative residential facility~~ . A violation sanction center operated under authority of this division is ~~not~~ a prison as defined in section 2929.01 of the Revised Code. A violation sanction center operated under authority of this division may be used for either of the following purposes:

(1) Service of the ~~a prison~~ term of a more restrictive post-release control sanction that the parole board, subsequent to a hearing, imposes pursuant to division (F)(2) **(3)** of section 2967.28 of the Revised Code upon a releasee who has violated a post-release control sanction imposed upon the releasee under that section;

(2) Service of a sanction that ~~As a facility designated by~~ the adult parole authority ~~or parole board imposes upon a parolee whom the authority determines to be~~ **for confining** a parole violator because of a violation of the terms and conditions of the parolee's parole or conditional pardon ~~pursuant to division (A) of section 2967.15 of the Revised Code until a determination is made regarding the person's release status.~~

~~(C)~~ If a violation sanction center is established under the authority of this section, notwithstanding the fact that the center is an alternative residential facility for the purposes described in division (B) of this section, the center shall be used ~~only for the purposes described in that division.~~ **(B)** A violation sanction center established under the authority of this section is not an alternative residential facility for the purpose of imposing sentence on an offender who is convicted of or pleads guilty to a felony, and a court that is sentencing an offender for a felony pursuant to sections 2929.11 to 2929.19 of the Revised Code shall not sentence the offender to a community residential sanction that requires the offender to serve a term in the center.

~~(D)~~ **(C)** If a releasee is ordered to serve a sanction in a violation sanction center, as described in division (B) **(A)**(1) of this section, all of the following apply:

(1) The releasee shall ~~not~~ be considered to be under a ~~new~~ prison term for a violation of post-release control **imposed pursuant to division (F)(3) of section 2967.28 of the Revised Code.**

(2) The time the releasee serves in the center shall ~~not~~ count toward, and shall ~~not~~ be considered in determining, the maximum cumulative prison term for all violations that is described in division (F)(3) of section 2967.28 of the Revised Code.

(3) The time the releasee serves in the center shall **not** count as part of, and shall **not** be credited toward, the remaining period of post-release control that is applicable to the releasee.

Sec. 2969.21. As used in sections 2969.21 to 2969.27 of the Revised Code:

(A) "Clerk" means the elected or appointed clerk of any court in this state, except the court of claims or the supreme court, in which an inmate has commenced a civil action against a government entity or employee or has filed an appeal of the judgment or order in a civil action of that nature.

(B)(1) "Civil action or appeal against a government entity or employee" means any of the following:

(a) A civil action that an inmate commences against the state, a political subdivision, or an employee of the state or a political subdivision in a court of common pleas, court of appeals, county court, or municipal court;

(b) An appeal of the judgment or order in a civil action of the type described in division (B)(1)(a) of this section that an inmate files in a court of appeals.

(2) "Civil action or appeal against a governmental entity or employee" does not include any civil action that an inmate commences against the state, a political subdivision, or an employee of the state or a political subdivision in the court of claims or the supreme court or an appeal of the judgment or order entered by the court of claims in a civil action of that nature, that an inmate files in a court of appeals or the supreme court.

(C) "Employee" means an officer or employee of the state or of a political subdivision who is acting under color of state law.

(D) "Inmate" means a person who is in actual confinement in a state correctional institution or in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse or a releasee who is serving a sanction in a violation sanction center.

(E) "Inmate account" means an account maintained by the department of rehabilitation and correction under rules adopted by the director of rehabilitation and correction pursuant to section 5120.01 of the Revised Code or a similar account maintained by a sheriff or any other administrator of a jail or workhouse or by the administrator of a violation sanction center.

(F) "Political subdivision" means a county, township, city, or village; the office of an elected officer of a county, township, city, or village; or a department, board, office, commission, agency, institution, or other instrumentality of a county, township, city, or village.

(G) "State" has the same meaning as in section 2743.01 of the Revised Code.

(H) "State correctional institution" has the same meaning as in section 2967.01 of the Revised Code.

(I) "Violation sanction center" means ~~an alternative residential facility~~ a **prison** that houses releasees who have violated a post-release control sanction or the terms and conditions of parole or of a conditional pardon and that is operated pursuant to section 2967.141 of the Revised Code.

SECTION 2. That existing sections 2305.02, 2743.48, 2929.01, 2967.141, and 2969.21 of the Revised Code are hereby repealed.

2017 Ohio House Bill No. 411, Ohio One Hundred..., 2017 Ohio House Bill...

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SECTION 3. Section 2929.01 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 63 and Am. Sub. S.B. 1 of the 132nd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

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Speaker \_\_\_\_\_ of the House of Representatives.

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President \_\_\_\_\_ of the Senate.

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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Governor.

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

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Director, Legislative Service Commission.

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

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Secretary of State.

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_

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