

As Introduced

**131st General Assembly
Regular Session
2015-2016**

H. B. No. 439

Representative Anielski

A BILL

To amend sections 2907.08, 2907.321, 2907.322, 1
2907.323, and 2929.13 of the Revised Code to 2
include an impaired person as a victim of 3
voyeurism and to include conduct involving an 4
impaired person within the offenses of pandering 5
obscenity involving a minor, pandering sexually 6
oriented matter involving a minor, and illegal 7
use of a minor in a nudity-oriented material or 8
performance. 9

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

Section 1. That sections 2907.08, 2907.321, 2907.322, 10
2907.323, and 2929.13 of the Revised Code be amended to read as 11
follows: 12

Sec. 2907.08. (A) No person, for the purpose of sexually 13
arousing or gratifying the person's self, shall commit trespass 14
or otherwise surreptitiously invade the privacy of another, to 15
spy or eavesdrop upon another. 16

(B) No person, for the purpose of sexually arousing or 17
gratifying the person's self, shall commit trespass or otherwise 18
surreptitiously invade the privacy of another to videotape, 19

film, photograph, or otherwise record the other person in a 20
state of nudity. 21

(C) No person, for the purpose of sexually arousing or 22
gratifying the person's self, shall commit trespass or otherwise 23
surreptitiously invade the privacy of another to videotape, 24
film, photograph, otherwise record, or spy or eavesdrop upon the 25
other person in a state of nudity if the other person is a minor 26
or an impaired person. 27

(D) No person shall secretly or surreptitiously videotape, 28
film, photograph, or otherwise record another person under or 29
through the clothing being worn by that other person for the 30
purpose of viewing the body of, or the undergarments worn by, 31
that other person. 32

(E) (1) Whoever violates this section is guilty of 33
voyeurism. 34

(2) A violation of division (A) of this section is a 35
misdemeanor of the third degree. 36

(3) A violation of division (B) of this section is a 37
misdemeanor of the second degree. 38

(4) A violation of division (D) of this section is a 39
misdemeanor of the first degree. 40

(5) A violation of division (C) of this section is a 41
felony of the fifth degree. 42

(G) As used in this section, "impaired person" has the 43
same meaning as in section 2907.321 of the Revised Code. 44

Sec. 2907.321. (A) No person, with knowledge of the 45
character of the material or performance involved, shall do any 46
of the following: 47

(1) Create, reproduce, or publish any obscene material 48
that has a minor or impaired person as one of its participants 49
or portrayed observers; 50

(2) Promote or advertise for sale or dissemination; sell, 51
deliver, disseminate, display, exhibit, present, rent, or 52
provide; or offer or agree to sell, deliver, disseminate, 53
display, exhibit, present, rent, or provide, any obscene 54
material that has a minor or impaired person as one of its 55
participants or portrayed observers; 56

(3) Create, direct, or produce an obscene performance that 57
has a minor or impaired person as one of its participants; 58

(4) Advertise or promote for presentation, present, or 59
participate in presenting an obscene performance that has a 60
minor or impaired person as one of its participants; 61

(5) Buy, procure, possess, or control any obscene 62
material, that has a minor or impaired person as one of its 63
participants; 64

(6) Bring or cause to be brought into this state any 65
obscene material that has a minor or impaired person as one of 66
its participants or portrayed observers. 67

(B) (1) This section does not apply to any material or 68
performance that is sold, disseminated, displayed, possessed, 69
controlled, brought or caused to be brought into this state, or 70
presented for a bona fide medical, scientific, educational, 71
religious, governmental, judicial, or other proper purpose, by 72
or to a physician, psychologist, sociologist, scientist, 73
teacher, person pursuing bona fide studies or research, 74
librarian, ~~clergyman~~ member of the clergy, prosecutor, judge, or 75
other person having a proper interest in the material or 76

performance. 77

(2) Mistake of age is not a defense to a charge under this 78
section. 79

(3) In a prosecution under this section, the trier of fact 80
may infer that a person in the material or performance involved 81
is a minor or impaired person if the material or performance, 82
through its title, text, visual representation, or otherwise, 83
represents or depicts the person as a minor or impaired person. 84

(C) Whoever violates this section is guilty of pandering 85
obscenity involving a minor or impaired person. Violation of 86
division (A) (1), (2), (3), (4), or (6) of this section is a 87
felony of the second degree. Violation of division (A) (5) of 88
this section is a felony of the fourth degree. If the offender 89
previously has been convicted of or pleaded guilty to a 90
violation of this section or section 2907.322 or 2907.323 of the 91
Revised Code, pandering obscenity involving a minor or impaired 92
person in violation of division (A) (5) of this section is a 93
felony of the third degree. 94

(D) As used in this section and sections 2907.322 and 95
2907.323 of the Revised Code, "impaired person" means a person 96
whose ability to resist or consent is substantially impaired 97
because of a mental or physical condition or because of advanced 98
age, and the offender knows or has reasonable cause to believe 99
that the other person's ability to resist or consent is 100
substantially impaired because of a mental or physical condition 101
or because of advanced age. 102

Sec. 2907.322. (A) No person, with knowledge of the 103
character of the material or performance involved, shall do any 104
of the following: 105

- (1) Create, record, photograph, film, develop, reproduce, 106
or publish any material that shows a minor or impaired person 107
participating or engaging in sexual activity, masturbation, or 108
bestiality; 109
- (2) Advertise for sale or dissemination, sell, distribute, 110
transport, disseminate, exhibit, or display any material that 111
shows a minor or impaired person participating or engaging in 112
sexual activity, masturbation, or bestiality; 113
- (3) Create, direct, or produce a performance that shows a 114
minor or impaired person participating or engaging in sexual 115
activity, masturbation, or bestiality; 116
- (4) Advertise for presentation, present, or participate in 117
presenting a performance that shows a minor or impaired person 118
participating or engaging in sexual activity, masturbation, or 119
bestiality; 120
- (5) Knowingly solicit, receive, purchase, exchange, 121
possess, or control any material that shows a minor or impaired 122
person participating or engaging in sexual activity, 123
masturbation, or bestiality; 124
- (6) Bring or cause to be brought into this state any 125
material that shows a minor or impaired person participating or 126
engaging in sexual activity, masturbation, or bestiality, ~~or~~ 127
~~bring~~; 128
- (7) Bring, cause to be brought, or finance the bringing of 129
any minor into or across this state with the intent that the 130
minor engage in sexual activity, masturbation, or bestiality in 131
a performance or for the purpose of producing material 132
containing a visual representation depicting the minor engaged 133
in sexual activity, masturbation, or bestiality. 134

(B) (1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, ~~clergyman~~ member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under this section.

(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor or impaired person if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor or impaired person.

(C) Whoever violates this section is guilty of pandering sexually oriented matter involving a minor or impaired person. Violation of division (A) (1), (2), (3), (4), ~~or (6)~~, or (7) of this section is a felony of the second degree. Violation of division (A) (5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.321 or 2907.323 of the Revised Code, pandering sexually oriented matter involving a minor or impaired person in violation of division (A) (5) of this section is a felony of the third degree.

Sec. 2907.323. (A) No person shall do any of the following:

(1) Photograph any minor or impaired person who is not the person's child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor or impaired person in a state of nudity, unless both of the following apply:

(a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;

(b) The minor's or impaired person's parents, guardian, or custodian consents in writing to the photographing of the minor or impaired person, to the use of the minor or impaired person in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

(2) Consent to the photographing of the person's ~~minor~~ child or ward who is a minor or impaired person, or photograph the person's ~~minor~~ child or ward who is a minor or impaired person, in a state of nudity or consent to the use of the person's ~~minor~~ child or ward who is a minor or impaired person in a state of nudity in any material or performance, or use or transfer a material or performance of that nature, unless the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical,

scientific, educational, religious, governmental, judicial, or 195
other proper purpose, by or to a physician, psychologist, 196
sociologist, scientist, teacher, person pursuing bona fide 197
studies or research, librarian, member of the clergy, 198
prosecutor, judge, or other person having a proper interest in 199
the material or performance; 200

(3) Possess or view any material or performance that shows 201
a minor or impaired person who is not the person's child or ward 202
in a state of nudity, unless one of the following applies: 203

(a) The material or performance is sold, disseminated, 204
displayed, possessed, controlled, brought or caused to be 205
brought into this state, or presented for a bona fide artistic, 206
medical, scientific, educational, religious, governmental, 207
judicial, or other proper purpose, by or to a physician, 208
psychologist, sociologist, scientist, teacher, person pursuing 209
bona fide studies or research, librarian, member of the clergy, 210
prosecutor, judge, or other person having a proper interest in 211
the material or performance. 212

(b) The person knows that the minor's or impaired person's 213
parents, guardian, or custodian has consented in writing to the 214
photographing or use of the minor or impaired person in a state 215
of nudity and to the manner in which the material or performance 216
is used or transferred. 217

(B) Whoever violates this section is guilty of illegal use 218
of a minor or impaired person in a nudity-oriented material or 219
performance. Whoever violates division (A) (1) or (2) of this 220
section is guilty of a felony of the second degree. Except as 221
otherwise provided in this division, whoever violates division 222
(A) (3) of this section is guilty of a felony of the fifth 223
degree. If the offender previously has been convicted of or 224

pleaded guilty to a violation of this section or section 225
2907.321 or 2907.322 of the Revised Code, illegal use of a minor 226
or impaired person in a nudity-oriented material or performance 227
in violation of division (A) (3) of this section is a felony of 228
the fourth degree. If the offender who violates division (A) (1) 229
or (2) of this section also is convicted of or pleads guilty to 230
a specification as described in section 2941.1422 of the Revised 231
Code that was included in the indictment, count in the 232
indictment, or information charging the offense, the court shall 233
sentence the offender to a mandatory prison term as provided in 234
division (B) (7) of section 2929.14 of the Revised Code and shall 235
order the offender to make restitution as provided in division 236
(B) (8) of section 2929.18 of the Revised Code. 237

Sec. 2929.13. (A) Except as provided in division (E), (F), 238
or (G) of this section and unless a specific sanction is 239
required to be imposed or is precluded from being imposed 240
pursuant to law, a court that imposes a sentence upon an 241
offender for a felony may impose any sanction or combination of 242
sanctions on the offender that are provided in sections 2929.14 243
to 2929.18 of the Revised Code. 244

If the offender is eligible to be sentenced to community 245
control sanctions, the court shall consider the appropriateness 246
of imposing a financial sanction pursuant to section 2929.18 of 247
the Revised Code or a sanction of community service pursuant to 248
section 2929.17 of the Revised Code as the sole sanction for the 249
offense. Except as otherwise provided in this division, if the 250
court is required to impose a mandatory prison term for the 251
offense for which sentence is being imposed, the court also 252
shall impose any financial sanction pursuant to section 2929.18 253
of the Revised Code that is required for the offense and may 254
impose any other financial sanction pursuant to that section but 255

may not impose any additional sanction or combination of 256
sanctions under section 2929.16 or 2929.17 of the Revised Code. 257

If the offender is being sentenced for a fourth degree 258
felony OVI offense or for a third degree felony OVI offense, in 259
addition to the mandatory term of local incarceration or the 260
mandatory prison term required for the offense by division (G) 261
(1) or (2) of this section, the court shall impose upon the 262
offender a mandatory fine in accordance with division (B) (3) of 263
section 2929.18 of the Revised Code and may impose whichever of 264
the following is applicable: 265

(1) For a fourth degree felony OVI offense for which 266
sentence is imposed under division (G) (1) of this section, an 267
additional community control sanction or combination of 268
community control sanctions under section 2929.16 or 2929.17 of 269
the Revised Code. If the court imposes upon the offender a 270
community control sanction and the offender violates any 271
condition of the community control sanction, the court may take 272
any action prescribed in division (B) of section 2929.15 of the 273
Revised Code relative to the offender, including imposing a 274
prison term on the offender pursuant to that division. 275

(2) For a third or fourth degree felony OVI offense for 276
which sentence is imposed under division (G) (2) of this section, 277
an additional prison term as described in division (B) (4) of 278
section 2929.14 of the Revised Code or a community control 279
sanction as described in division (G) (2) of this section. 280

(B) (1) (a) Except as provided in division (B) (1) (b) of this 281
section, if an offender is convicted of or pleads guilty to a 282
felony of the fourth or fifth degree that is not an offense of 283
violence or that is a qualifying assault offense, the court 284
shall sentence the offender to a community control sanction of 285

at least one year's duration if all of the following apply:	286
(i) The offender previously has not been convicted of or pleaded guilty to a felony offense.	287 288
(ii) The most serious charge against the offender at the time of sentencing is a felony of the fourth or fifth degree.	289 290
(iii) If the court made a request of the department of rehabilitation and correction pursuant to division (B)(1)(c) of this section, the department, within the forty-five-day period specified in that division, provided the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court.	291 292 293 294 295 296 297
(iv) The offender previously has not been convicted of or pleaded guilty to a misdemeanor offense of violence that the offender committed within two years prior to the offense for which sentence is being imposed.	298 299 300 301
(b) The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense if any of the following apply:	302 303 304 305 306
(i) The offender committed the offense while having a firearm on or about the offender's person or under the offender's control.	307 308 309
(ii) If the offense is a qualifying assault offense, the offender caused serious physical harm to another person while committing the offense, and, if the offense is not a qualifying assault offense, the offender caused physical harm to another person while committing the offense.	310 311 312 313 314

- (iii) The offender violated a term of the conditions of bond as set by the court. 315
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- (iv) The court made a request of the department of rehabilitation and correction pursuant to division (B)(1)(c) of this section, and the department, within the forty-five-day period specified in that division, did not provide the court with the name of, contact information for, and program details of any community control sanction of at least one year's duration that is available for persons sentenced by the court. 317
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- (v) The offense is a sex offense that is a fourth or fifth degree felony violation of any provision of Chapter 2907. of the Revised Code. 324
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- (vi) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon. 327
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- (vii) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person. 330
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- (viii) The offender held a public office or position of trust, and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others. 334
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- (ix) The offender committed the offense for hire or as part of an organized criminal activity. 340
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- (x) The offender at the time of the offense was serving, or the offender previously had served, a prison term. 342
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(xi) The offender committed the offense while under a 344
community control sanction, while on probation, or while 345
released from custody on a bond or personal recognizance. 346

(c) If a court that is sentencing an offender who is 347
convicted of or pleads guilty to a felony of the fourth or fifth 348
degree that is not an offense of violence or that is a 349
qualifying assault offense believes that no community control 350
sanctions are available for its use that, if imposed on the 351
offender, will adequately fulfill the overriding principles and 352
purposes of sentencing, the court shall contact the department 353
of rehabilitation and correction and ask the department to 354
provide the court with the names of, contact information for, 355
and program details of one or more community control sanctions 356
of at least one year's duration that are available for persons 357
sentenced by the court. Not later than forty-five days after 358
receipt of a request from a court under this division, the 359
department shall provide the court with the names of, contact 360
information for, and program details of one or more community 361
control sanctions of at least one year's duration that are 362
available for persons sentenced by the court, if any. Upon 363
making a request under this division that relates to a 364
particular offender, a court shall defer sentencing of that 365
offender until it receives from the department the names of, 366
contact information for, and program details of one or more 367
community control sanctions of at least one year's duration that 368
are available for persons sentenced by the court or for forty- 369
five days, whichever is the earlier. 370

If the department provides the court with the names of, 371
contact information for, and program details of one or more 372
community control sanctions of at least one year's duration that 373
are available for persons sentenced by the court within the 374

forty-five-day period specified in this division, the court 375
shall impose upon the offender a community control sanction 376
under division (B) (1) (a) of this section, except that the court 377
may impose a prison term under division (B) (1) (b) of this 378
section if a factor described in division (B) (1) (b) (i) or (ii) 379
of this section applies. If the department does not provide the 380
court with the names of, contact information for, and program 381
details of one or more community control sanctions of at least 382
one year's duration that are available for persons sentenced by 383
the court within the forty-five-day period specified in this 384
division, the court may impose upon the offender a prison term 385
under division (B) (1) (b) (iv) of this section. 386

(d) A sentencing court may impose an additional penalty 387
under division (B) of section 2929.15 of the Revised Code upon 388
an offender sentenced to a community control sanction under 389
division (B) (1) (a) of this section if the offender violates the 390
conditions of the community control sanction, violates a law, or 391
leaves the state without the permission of the court or the 392
offender's probation officer. 393

(2) If division (B) (1) of this section does not apply, 394
except as provided in division (E), (F), or (G) of this section, 395
in determining whether to impose a prison term as a sanction for 396
a felony of the fourth or fifth degree, the sentencing court 397
shall comply with the purposes and principles of sentencing 398
under section 2929.11 of the Revised Code and with section 399
2929.12 of the Revised Code. 400

(C) Except as provided in division (D), (E), (F), or (G) 401
of this section, in determining whether to impose a prison term 402
as a sanction for a felony of the third degree or a felony drug 403
offense that is a violation of a provision of Chapter 2925. of 404

the Revised Code and that is specified as being subject to this 405
division for purposes of sentencing, the sentencing court shall 406
comply with the purposes and principles of sentencing under 407
section 2929.11 of the Revised Code and with section 2929.12 of 408
the Revised Code. 409

(D) (1) Except as provided in division (E) or (F) of this 410
section, for a felony of the first or second degree, for a 411
felony drug offense that is a violation of any provision of 412
Chapter 2925., 3719., or 4729. of the Revised Code for which a 413
presumption in favor of a prison term is specified as being 414
applicable, and for a violation of division (A) (4) or (B) of 415
section 2907.05 of the Revised Code for which a presumption in 416
favor of a prison term is specified as being applicable, it is 417
presumed that a prison term is necessary in order to comply with 418
the purposes and principles of sentencing under section 2929.11 419
of the Revised Code. Division (D) (2) of this section does not 420
apply to a presumption established under this division for a 421
violation of division (A) (4) of section 2907.05 of the Revised 422
Code. 423

(2) Notwithstanding the presumption established under 424
division (D) (1) of this section for the offenses listed in that 425
division other than a violation of division (A) (4) or (B) of 426
section 2907.05 of the Revised Code, the sentencing court may 427
impose a community control sanction or a combination of 428
community control sanctions instead of a prison term on an 429
offender for a felony of the first or second degree or for a 430
felony drug offense that is a violation of any provision of 431
Chapter 2925., 3719., or 4729. of the Revised Code for which a 432
presumption in favor of a prison term is specified as being 433
applicable if it makes both of the following findings: 434

(a) A community control sanction or a combination of 435
community control sanctions would adequately punish the offender 436
and protect the public from future crime, because the applicable 437
factors under section 2929.12 of the Revised Code indicating a 438
lesser likelihood of recidivism outweigh the applicable factors 439
under that section indicating a greater likelihood of 440
recidivism. 441

(b) A community control sanction or a combination of 442
community control sanctions would not demean the seriousness of 443
the offense, because one or more factors under section 2929.12 444
of the Revised Code that indicate that the offender's conduct 445
was less serious than conduct normally constituting the offense 446
are applicable, and they outweigh the applicable factors under 447
that section that indicate that the offender's conduct was more 448
serious than conduct normally constituting the offense. 449

(E) (1) Except as provided in division (F) of this section, 450
for any drug offense that is a violation of any provision of 451
Chapter 2925. of the Revised Code and that is a felony of the 452
third, fourth, or fifth degree, the applicability of a 453
presumption under division (D) of this section in favor of a 454
prison term or of division (B) or (C) of this section in 455
determining whether to impose a prison term for the offense 456
shall be determined as specified in section 2925.02, 2925.03, 457
2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 458
2925.36, or 2925.37 of the Revised Code, whichever is applicable 459
regarding the violation. 460

(2) If an offender who was convicted of or pleaded guilty 461
to a felony violates the conditions of a community control 462
sanction imposed for the offense solely by reason of producing 463
positive results on a drug test, the court, as punishment for 464

the violation of the sanction, shall not order that the offender 465
be imprisoned unless the court determines on the record either 466
of the following: 467

(a) The offender had been ordered as a sanction for the 468
felony to participate in a drug treatment program, in a drug 469
education program, or in narcotics anonymous or a similar 470
program, and the offender continued to use illegal drugs after a 471
reasonable period of participation in the program. 472

(b) The imprisonment of the offender for the violation is 473
consistent with the purposes and principles of sentencing set 474
forth in section 2929.11 of the Revised Code. 475

(3) A court that sentences an offender for a drug abuse 476
offense that is a felony of the third, fourth, or fifth degree 477
may require that the offender be assessed by a properly 478
credentialed professional within a specified period of time. The 479
court shall require the professional to file a written 480
assessment of the offender with the court. If the offender is 481
eligible for a community control sanction and after considering 482
the written assessment, the court may impose a community control 483
sanction that includes treatment and recovery support services 484
authorized by division (A) (11) of section 340.03 of the Revised 485
Code. If the court imposes treatment and recovery support 486
services as a community control sanction, the court shall direct 487
the level and type of treatment and recovery support services 488
after considering the assessment and recommendation of community 489
addiction services providers. 490

(F) Notwithstanding divisions (A) to (E) of this section, 491
the court shall impose a prison term or terms under sections 492
2929.02 to 2929.06, section 2929.14, section 2929.142, or 493
section 2971.03 of the Revised Code and except as specifically 494

provided in section 2929.20, divisions (C) to (I) of section 495
2967.19, or section 2967.191 of the Revised Code or when parole 496
is authorized for the offense under section 2967.13 of the 497
Revised Code shall not reduce the term or terms pursuant to 498
section 2929.20, section 2967.19, section 2967.193, or any other 499
provision of Chapter 2967. or Chapter 5120. of the Revised Code 500
for any of the following offenses: 501

(1) Aggravated murder when death is not imposed or murder; 502

(2) Any rape, regardless of whether force was involved and 503
regardless of the age of the victim, or an attempt to commit 504
rape if, had the offender completed the rape that was attempted, 505
the offender would have been guilty of a violation of division 506
(A) (1) (b) of section 2907.02 of the Revised Code and would be 507
sentenced under section 2971.03 of the Revised Code; 508

(3) Gross sexual imposition or sexual battery, if the 509
victim is less than thirteen years of age and if any of the 510
following applies: 511

(a) Regarding gross sexual imposition, the offender 512
previously was convicted of or pleaded guilty to rape, the 513
former offense of felonious sexual penetration, gross sexual 514
imposition, or sexual battery, and the victim of the previous 515
offense was less than thirteen years of age; 516

(b) Regarding gross sexual imposition, the offense was 517
committed on or after August 3, 2006, and evidence other than 518
the testimony of the victim was admitted in the case 519
corroborating the violation. 520

(c) Regarding sexual battery, either of the following 521
applies: 522

(i) The offense was committed prior to August 3, 2006, the 523

offender previously was convicted of or pleaded guilty to rape, 524
the former offense of felonious sexual penetration, or sexual 525
battery, and the victim of the previous offense was less than 526
thirteen years of age. 527

(ii) The offense was committed on or after August 3, 2006. 528

(4) A felony violation of section 2903.04, 2903.06, 529
2903.08, 2903.11, 2903.12, 2903.13, 2905.32, or 2907.07 of the 530
Revised Code if the section requires the imposition of a prison 531
term; 532

(5) A first, second, or third degree felony drug offense 533
for which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 534
2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, 535
or 4729.99 of the Revised Code, whichever is applicable 536
regarding the violation, requires the imposition of a mandatory 537
prison term; 538

(6) Any offense that is a first or second degree felony 539
and that is not set forth in division (F) (1), (2), (3), or (4) 540
of this section, if the offender previously was convicted of or 541
pleaded guilty to aggravated murder, murder, any first or second 542
degree felony, or an offense under an existing or former law of 543
this state, another state, or the United States that is or was 544
substantially equivalent to one of those offenses; 545

(7) Any offense that is a third degree felony and either 546
is a violation of section 2903.04 of the Revised Code or an 547
attempt to commit a felony of the second degree that is an 548
offense of violence and involved an attempt to cause serious 549
physical harm to a person or that resulted in serious physical 550
harm to a person if the offender previously was convicted of or 551
pleaded guilty to any of the following offenses: 552

(a) Aggravated murder, murder, involuntary manslaughter,	553
rape, felonious sexual penetration as it existed under section	554
2907.12 of the Revised Code prior to September 3, 1996, a felony	555
of the first or second degree that resulted in the death of a	556
person or in physical harm to a person, or complicity in or an	557
attempt to commit any of those offenses;	558
(b) An offense under an existing or former law of this	559
state, another state, or the United States that is or was	560
substantially equivalent to an offense listed in division (F) (7)	561
(a) of this section that resulted in the death of a person or in	562
physical harm to a person.	563
(8) Any offense, other than a violation of section 2923.12	564
of the Revised Code, that is a felony, if the offender had a	565
firearm on or about the offender's person or under the	566
offender's control while committing the felony, with respect to	567
a portion of the sentence imposed pursuant to division (B) (1) (a)	568
of section 2929.14 of the Revised Code for having the firearm;	569
(9) Any offense of violence that is a felony, if the	570
offender wore or carried body armor while committing the felony	571
offense of violence, with respect to the portion of the sentence	572
imposed pursuant to division (B) (1) (d) of section 2929.14 of the	573
Revised Code for wearing or carrying the body armor;	574
(10) Corrupt activity in violation of section 2923.32 of	575
the Revised Code when the most serious offense in the pattern of	576
corrupt activity that is the basis of the offense is a felony of	577
the first degree;	578
(11) Any violent sex offense or designated homicide,	579
assault, or kidnapping offense if, in relation to that offense,	580
the offender is adjudicated a sexually violent predator;	581

(12) A violation of division (A) (1) or (2) of section 582
2921.36 of the Revised Code, or a violation of division (C) of 583
that section involving an item listed in division (A) (1) or (2) 584
of that section, if the offender is an officer or employee of 585
the department of rehabilitation and correction; 586

(13) A violation of division (A) (1) or (2) of section 587
2903.06 of the Revised Code if the victim of the offense is a 588
peace officer, as defined in section 2935.01 of the Revised 589
Code, or an investigator of the bureau of criminal 590
identification and investigation, as defined in section 2903.11 591
of the Revised Code, with respect to the portion of the sentence 592
imposed pursuant to division (B) (5) of section 2929.14 of the 593
Revised Code; 594

(14) A violation of division (A) (1) or (2) of section 595
2903.06 of the Revised Code if the offender has been convicted 596
of or pleaded guilty to three or more violations of division (A) 597
or (B) of section 4511.19 of the Revised Code or an equivalent 598
offense, as defined in section 2941.1415 of the Revised Code, or 599
three or more violations of any combination of those divisions 600
and offenses, with respect to the portion of the sentence 601
imposed pursuant to division (B) (6) of section 2929.14 of the 602
Revised Code; 603

(15) Kidnapping, in the circumstances specified in section 604
2971.03 of the Revised Code and when no other provision of 605
division (F) of this section applies; 606

(16) Kidnapping, abduction, compelling prostitution, 607
promoting prostitution, engaging in a pattern of corrupt 608
activity, illegal use of a minor or impaired person in a nudity- 609
oriented material or performance in violation of division (A) (1) 610
or (2) of section 2907.323 of the Revised Code, or endangering 611

children in violation of division (B) (1), (2), (3), (4), or (5) 612
of section 2919.22 of the Revised Code, if the offender is 613
convicted of or pleads guilty to a specification as described in 614
section 2941.1422 of the Revised Code that was included in the 615
indictment, count in the indictment, or information charging the 616
offense; 617

(17) A felony violation of division (A) or (B) of section 618
2919.25 of the Revised Code if division (D) (3), (4), or (5) of 619
that section, and division (D) (6) of that section, require the 620
imposition of a prison term; 621

(18) A felony violation of section 2903.11, 2903.12, or 622
2903.13 of the Revised Code, if the victim of the offense was a 623
woman that the offender knew was pregnant at the time of the 624
violation, with respect to a portion of the sentence imposed 625
pursuant to division (B) (8) of section 2929.14 of the Revised 626
Code. 627

(G) Notwithstanding divisions (A) to (E) of this section, 628
if an offender is being sentenced for a fourth degree felony OVI 629
offense or for a third degree felony OVI offense, the court 630
shall impose upon the offender a mandatory term of local 631
incarceration or a mandatory prison term in accordance with the 632
following: 633

(1) If the offender is being sentenced for a fourth degree 634
felony OVI offense and if the offender has not been convicted of 635
and has not pleaded guilty to a specification of the type 636
described in section 2941.1413 of the Revised Code, the court 637
may impose upon the offender a mandatory term of local 638
incarceration of sixty days or one hundred twenty days as 639
specified in division (G) (1) (d) of section 4511.19 of the 640
Revised Code. The court shall not reduce the term pursuant to 641

section 2929.20, 2967.193, or any other provision of the Revised Code. The court that imposes a mandatory term of local incarceration under this division shall specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender shall serve the term in the type of facility specified by the court. A mandatory term of local incarceration imposed under division (G) (1) of this section is not subject to any other Revised Code provision that pertains to a prison term except as provided in division (A) (1) of this section.

(2) If the offender is being sentenced for a third degree felony OVI offense, or if the offender is being sentenced for a fourth degree felony OVI offense and the court does not impose a mandatory term of local incarceration under division (G) (1) of this section, the court shall impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or shall impose upon the offender a mandatory prison term of sixty days or one hundred twenty days as specified in division (G) (1) (d) or (e) of section 4511.19 of the Revised Code if the offender has not been convicted of and has not pleaded guilty to a specification of that type. Subject to divisions (C) to (I) of section 2967.19 of the Revised Code, the court shall not reduce the term pursuant to section 2929.20, 2967.19, 2967.193, or any other provision of the Revised Code. The offender shall serve the one-, two-, three-, four-, or five-year mandatory prison term consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the

offense. In no case shall an offender who once has been 673
sentenced to a mandatory term of local incarceration pursuant to 674
division (G) (1) of this section for a fourth degree felony OVI 675
offense be sentenced to another mandatory term of local 676
incarceration under that division for any violation of division 677
(A) of section 4511.19 of the Revised Code. In addition to the 678
mandatory prison term described in division (G) (2) of this 679
section, the court may sentence the offender to a community 680
control sanction under section 2929.16 or 2929.17 of the Revised 681
Code, but the offender shall serve the prison term prior to 682
serving the community control sanction. The department of 683
rehabilitation and correction may place an offender sentenced to 684
a mandatory prison term under this division in an intensive 685
program prison established pursuant to section 5120.033 of the 686
Revised Code if the department gave the sentencing judge prior 687
notice of its intent to place the offender in an intensive 688
program prison established under that section and if the judge 689
did not notify the department that the judge disapproved the 690
placement. Upon the establishment of the initial intensive 691
program prison pursuant to section 5120.033 of the Revised Code 692
that is privately operated and managed by a contractor pursuant 693
to a contract entered into under section 9.06 of the Revised 694
Code, both of the following apply: 695

(a) The department of rehabilitation and correction shall 696
make a reasonable effort to ensure that a sufficient number of 697
offenders sentenced to a mandatory prison term under this 698
division are placed in the privately operated and managed prison 699
so that the privately operated and managed prison has full 700
occupancy. 701

(b) Unless the privately operated and managed prison has 702
full occupancy, the department of rehabilitation and correction 703

shall not place any offender sentenced to a mandatory prison 704
term under this division in any intensive program prison 705
established pursuant to section 5120.033 of the Revised Code 706
other than the privately operated and managed prison. 707

(H) If an offender is being sentenced for a sexually 708
oriented offense or child-victim oriented offense that is a 709
felony committed on or after January 1, 1997, the judge shall 710
require the offender to submit to a DNA specimen collection 711
procedure pursuant to section 2901.07 of the Revised Code. 712

(I) If an offender is being sentenced for a sexually 713
oriented offense or a child-victim oriented offense committed on 714
or after January 1, 1997, the judge shall include in the 715
sentence a summary of the offender's duties imposed under 716
sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised 717
Code and the duration of the duties. The judge shall inform the 718
offender, at the time of sentencing, of those duties and of 719
their duration. If required under division (A) (2) of section 720
2950.03 of the Revised Code, the judge shall perform the duties 721
specified in that section, or, if required under division (A) (6) 722
of section 2950.03 of the Revised Code, the judge shall perform 723
the duties specified in that division. 724

(J) (1) Except as provided in division (J) (2) of this 725
section, when considering sentencing factors under this section 726
in relation to an offender who is convicted of or pleads guilty 727
to an attempt to commit an offense in violation of section 728
2923.02 of the Revised Code, the sentencing court shall consider 729
the factors applicable to the felony category of the violation 730
of section 2923.02 of the Revised Code instead of the factors 731
applicable to the felony category of the offense attempted. 732

(2) When considering sentencing factors under this section 733

in relation to an offender who is convicted of or pleads guilty 734
to an attempt to commit a drug abuse offense for which the 735
penalty is determined by the amount or number of unit doses of 736
the controlled substance involved in the drug abuse offense, the 737
sentencing court shall consider the factors applicable to the 738
felony category that the drug abuse offense attempted would be 739
if that drug abuse offense had been committed and had involved 740
an amount or number of unit doses of the controlled substance 741
that is within the next lower range of controlled substance 742
amounts than was involved in the attempt. 743

(K) As used in this section: 744

(1) "Community addiction services provider" has the same 745
meaning as in section 5119.01 of the Revised Code. 746

(2) "Drug abuse offense" has the same meaning as in 747
section 2925.01 of the Revised Code. 748

(3) "Qualifying assault offense" means a violation of 749
section 2903.13 of the Revised Code for which the penalty 750
provision in division (C) (8) (b) or (C) (9) (b) of that section 751
applies. 752

(L) At the time of sentencing an offender for any sexually 753
oriented offense, if the offender is a tier III sex 754
offender/child-victim offender relative to that offense and the 755
offender does not serve a prison term or jail term, the court 756
may require that the offender be monitored by means of a global 757
positioning device. If the court requires such monitoring, the 758
cost of monitoring shall be borne by the offender. If the 759
offender is indigent, the cost of compliance shall be paid by 760
the crime victims reparations fund. 761

Section 2. That existing sections 2907.08, 2907.321, 762

2907.322, 2907.323, and 2929.13 of the Revised Code are hereby
repealed.

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