



# ENACTMENT NEWS

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## Enacted House Bill 86 Felony Sentencing & Juvenile Justice

Signed by the Governor on June 29, 2011

Effective September 30, 2011

[Enacted House Bill 86](#) makes changes to Ohio's felony sentencing laws and juvenile justice system. The changes are intended to reduce the amount of public funds used to operate state prisons, to reduce the number of offenders in prison for violation of low to moderate level offenses, to increase the availability of community control sanctions, to provide the right to a jury determination of all significant facts consistent with the U.S. and Ohio Constitutions, and to enhance the juvenile justice system.

Ohio courts should be aware of the following changes:

### Right to a Jury Trial: Judicial Fact-Finding during Sentencing

- **Judicial Fact-Finding.** Codifies *State v. Foster* (2006) by removing language from the Ohio Revised Code that required judicial fact-finding prior to the imposition of sentences that exceed the minimum, sentences that are at the maximum, and sentences that are consecutive. [deleted text was former Revised Code Sections [2929.14 \(B\) and \(C\)](#); [R.C. 2929.14 \(D\)\(3\)\(b\)](#); R.C. [2929.14\(E\)\(4\)](#), [R.C. 2929.19 \(B\)\(2\)](#), [R.C. 2929.41 \(A\)](#), and [R.C. 2953.08](#)]
- **Consecutive Sentences.** Reinstates the state policy preference for concurrent sentences; reinstates the requirement for judicial fact-finding prior to the imposition of consecutive sentences that was declared unconstitutional in *State v. Foster* (2006). This demonstrates a deliberate policy decision of the Ohio General Assembly that is consistent with the post-foster decisions of *Oregon v. Ice* (2009) and *State v. Hodge* (2010). [[R.C. 2929.14\(C\)\(4\)](#); [2929.41\(A\)](#)]

### Sentencing: Prison Population Reduction

- **Resources.** By repositioning the statement that judicial sentencing should not create a burden on local resources, the General Assembly has added this to the overriding purposes of felony sentencing. [[R.C. 2929.11](#)]
- **Sentencing Options—F4 and F5.** Establishes mandatory community control sanctions of at least one year's duration for non-violent, first-time F4 and F5 offenders; authorizes judges to sentence F4 and F5 offenders to prison if the offender committed the offense with a firearm or if the offender committed physical harm to another person while committing the offense; requires the court to notify the Department of Rehabilitation and Correction if the court determines that there is no adequate community control sanction available to fulfill the overriding purpose of sentencing; requires the Department of Rehabilitation and Correction to

report to the court within 45 days with an appropriate community control sanction. [R.C. [2929.13](#)]

- **Sentencing Options—F3.** Reduces the maximum penalty to 3 years for F3 offenders where the offense is not an offense of violence, a sexually oriented offense, aggravated vehicular homicide, aggravated vehicular assault, repeat robbery, or repeat burglary. Expands sentencing optional terms to include 9 months, 12 months, 18 months, and 24 months. [R.C. [2929.14](#)]
- **Sentencing Options--F1.** Increases the maximum penalty to 11 years for F1 offenders. [R.C. [2929.14](#)]
- **Misdemeanor Sentencing.** Expands misdemeanor sentencing options to include up to 60 days in a community alternative or district community alternative sentencing center; provides for the establishment of a Community Alternative Sentencing Center; permits judges to sentence an OVI offender to a community alternative sentencing center. [R.C. [2929.26](#); [2929.34](#); [307.932](#)]
- **Risk Reduction.** Authorizes courts to recommend a risk reduction sentence if the court determines it is appropriate and if the offender has not been convicted of aggravated murder, murder, murder complicity, offense of violence (F1 & F2), attempt offense of violence, offense of violence complicity, or a sexually oriented offense; requires the Department of Rehabilitation and Correction to provide risk reduction programming and treatment to eligible offenders and to release the offenders to supervised release after the offender has served each mandatory prison term and a minimum of 80% of the non-mandatory prison terms to which the offender was sentenced; requires the Department of Rehabilitation and Correction to notify the sentencing court at least 30 days prior to the date the offender is to be released. [R.C. [2929.143](#) and [5120.036](#); also see R.C. [5120.16](#), [5120.331](#); [5120.48](#)]
- **Reentry Plan.** Requires the Department of Rehabilitation and Correction to develop a reentry plan for all offenders imprisoned for more than 30 days, except those sentenced to life without parole or death. [R.C. [5120.113](#)]
- **Reentry Report.** Expands the information to be included in the reentry report of the ex-offender reentry coalition. [R.C. [5120.07](#)]
- **Single Validated Risk Assessment Tool.** Requires the Department of Rehabilitation and Correction to design a single validated risk assessment tool; requires that when an assessment is ordered the single validated risk assessment tool be used by courts, probation departments, CBCF's and other entities; ties state funding and local subsidies to the use of the single validated risk assessment tool. [R.C. [5120.114](#), [5120.115](#), [5149.34](#); [5120.07](#) and [5149.31](#)]
- **Judicial Release--Adult.** Revises the existing judicial release eligibility requirements such that inmates serving non-mandatory prison terms of 5 years may file for judicial release after 4 years, and inmates serving aggregated non-mandatory prison terms of more than 10 years may file for judicial release after 5 years or after completing half of their stated prison term. Establishes a new procedure authorizing the director of the Department of Rehabilitation to petition courts for release of inmates after serving 80 percent of their sentence. The petition may be filed not earlier than 90 days prior to 80 percent completion and the petition constitutes

a strong recommendation to the court and should be considered in light of the purposes and principles of sentencing. Authorizes courts to deny the petition for release without a hearing; requires the court to hold a hearing prior to granting release; requires the court to notify the prosecuting attorney and the head of the state correctional institution of the hearing; authorizes the court to make a journal entry ordering the offender to be conveyed to the hearing or to permit the offender to appear at the hearing by video conferencing; requires the court to afford the offender, prosecuting attorney, victim, or other persons to present written information and, if present, oral information; requires the court to enter its ruling within 30 days of the filing of the petition; requires the court to notify the victim of the ruling; requires the court when issuing a release to place the offender under at least one community control sanction; requires the court to reserve the right to re-impose the sentence if the offender violates the sanction; and requires the court to consider ordering that the offender be monitored by GPS. [[R.C. 2967.19](#) and [2929.20](#)]

- **Earned Credit.** Requires judges to provide notice to offenders regarding eligibility for earned credit at time of sentencing; authorizes offenders to earn 5 days of earned credit, with a second 5 day earning potential, capped at 8 percent of the sentence; specifies that credit earned is provisional and that the Department of Rehabilitation and Correction can pull back days of earned credit if the offender commits a prison rule violation. Requires the Department of Rehabilitation and Correction to seek and consider the written feedback of the Ohio Judicial Conference and other parties interested in the operation of the correction system and earned credit. [[R.C. 2929.19](#), [2967.193](#)]
- **Electronic Monitoring.** Requires GPS monitoring of a prisoner placed on post-release control who was released early due to earning 60 or more days of earned credit. [[R.C. 2967.28](#)]
- **Intervention in Lieu.** Expands the eligibility for intervention in lieu of conviction for offenders with mental illness or developmental disabilities. [[R.C. 2951.041](#)]
- **Pretrial Diversion.** Authorizes a library, museum, archival institution, or merchant to establish a pre trial diversion program under certain circumstances. [[R.C. 2935.041](#)]
- **Felony Non-Support.** Requires courts to first consider community control sanctions for felony non-support violations; provides exceptions when the court determines the imposition of prison is consistent with sentencing purposes and principles, when the offender has been convicted, plead guilty, or been sentenced to prison for felony non-support, or when the offender had previously been convicted and failed to comply with the community control sanctions imposed. [[R.C. 2919.21](#)]
- **Certificate of Achievement and Employability.** Creates a certificate program to be administered by the Department of Rehabilitation and Correction that will give employers relief from civil liability for hiring an offender who was trained for a particular job. [[R.C. 2961.21 through 2961.24](#)]
- **Probation.** Requires courts of common pleas to establish policies regarding the supervision of probationers including the minimum number of supervision contacts, and a graduated response policy to govern which types of violations a probation officer may respond to and which types of violations require a hearing by the court; requires the adult parole authority of the

department of rehabilitation and correction to collaborate and consult with the Supreme Court of Ohio in the establishment of hiring, training, evaluating, and reporting requirements for probation departments; requires the department of rehabilitation and correction to establish and administer the probation improvement grant and the probation incentive grant. [[R.C. 2301.27](#), [2301.271](#), [2301.30](#), [5149.311](#)]

- **Adult Parole Authority.** Changes the definition of “full board hearing” to a majority of members; establishes the terms of office for members. [[R.C. 5149.01](#), [5149.10](#)]
- **Absconding.** Re-defines the crime of escape based upon absconding from Adult Parole Authority Supervision [[R.C. 2921.34](#)]
- **Aggravated Murder.** Expands the scope of this offense to include offenders who purposely cause the death of another while trespassing in the habitation of another when a person is present or likely to be present. [[R.C. 2903.01](#)]
- **Concurrent Supervision Offenders.** Defines concurrent supervision offenders and establishes default standards for supervision; authorizes separate courts or judges of various courts that have jurisdiction over a concurrent supervision offender to enter into an agreement, adopt local rules of procedure, or agree by journal entry to transfer jurisdiction over that concurrent supervision offender from one court to another court. [[R.C. 2951.022](#)]
- **Cocaine and Crack Distinction.** Removes the distinction between crack and powder cocaine. [[R.C. 2925.03](#), [2925.05](#), [2925.11](#), and [2929.01](#)]
- **Traffic.** Prohibits arresting, charging, or convicting a person for speeding based on a peace officer’s unaided visual estimation of the speed of the vehicle. Allows the officer to make an assessment of whether vehicle was being driven at a safe speed given the weather conditions or other exigent circumstances. [[R.C. 4511.091](#)]
- **Corrections Commissions/Regional Jails.** Removes judicial seats from the Corrections Commission; establishes a judicial advisory board to make recommendations to the corrections commission on specific things that the corrections commission “considers appropriate”; and changes the representation of the county commissioners from the “president” to a “member” of the board of county commissioners. [[R.C. 307.93](#)]
- **Halfway Houses.** Removes the requirement that payments to halfway houses for beds and services be equal to the centers’ average daily per capita costs at full capacity. [[R.C. 2967.14](#)]
- **Community Based Correctional Facilities and Community Correction Programs.** Requires the Department of Rehabilitation and Correction to adopt standards for offenders whose degree of felony, revocation history, and risk level make them suitable for admission to a CBCF or participation in a community corrections program; links compliance with that standard to the level of state financial assistance or level of local subsidy. [[R.C. 5120.07](#), [5120.111](#), [5149.31](#), [5149.32](#), [5149.33](#), [5149.34](#)]
- **Theft Offenses.** Increases the threshold amount for theft-related offenses, vandalism, and engaging in a pattern of corrupt activity; revises and clarifies the law regarding prosecution of

multiple thefts, Medicaid fraud, workers' compensation fraud, and other offenses; includes workers' compensation fraud as a theft offense. [R.C. [926.99](#), [1333.99](#), [1707.99](#), [1716.99](#), [2901.08](#), [2903.01](#), [2903.11](#), [2903.12](#), [2905.01](#), [2907.21](#), [2907.22](#), [2907.323](#), [2909.03](#), [2909.05](#), [2909.11](#), [2911.12](#), [2913.01](#), [2913.02](#), [2913.03](#), [2913.04](#), [2913.11](#), [2913.31](#), [2913.32](#), [2913.34](#), [2913.40](#), [2913.401](#), [2913.42](#), [2913.421](#), [2913.43](#), [2913.45](#), [2913.46](#), [2913.47](#), [2913.48](#), [2913.49](#), [2913.51](#), [2913.61](#), [2915.05](#), [2917.21](#), [2917.31](#), [2917.32](#), [2921.13](#), and [2981.07](#)]

- **Reparations.** Clarifies reparations law. [R.C. [2743.51](#), [2743.56](#), [2743.59](#), [2743.60](#), [2743.601](#)]

## **Juvenile Justice** (Note: The Judicial Conference has also prepared a more detailed analysis for juvenile judges)

- **Juvenile Competency.** Creates a rebuttable presumption that children 14 and older are competent; authorizes the court to proceed with delinquency proceedings when the child is determined to be competent; authorizes the court on its own motion or any party to file a motion for competency determination; authorizes the judge to find the child incompetent or to order an evaluation of the juvenile's competency; requires the court within 10 days to appoint an evaluator; requires the evaluator to prepare and submit to the court a written competency report within 45 days of being appointed; requires the court to make a written determination of competency within 15-30 days of receiving the competency report; authorizes the court, upon a written determination of incompetency, to dismiss charges or delay dismissal for 90 days and refer the juvenile to a provider (public children services and/or family and children first council) for services; requires the provider to submit a competency attainment plan to the court within 30 days of being contacted by the juvenile and to report on the juvenile's progress toward competency to the court every 30 days for a statutory period outlined in ORC [2152.59 \(D\)\(2\)](#); authorizes the court, within 15 days of receiving a progress report, to hold a hearing ([2152.59](#)) to determine if a new order is necessary. [R.C. [2152.51](#) through [2152.59](#)]
- **Truancy.** Permits a person filing a sworn complaint of chronic truancy to file the sworn complaint with respect to the child individually, or with respect to the child and the parent, guardian, or other person having care of the child. [R.C. [2152.021](#)]
- **Bindovers.** Establishes a procedure for juveniles "boundover" for a gun specification or for committing an act that would be murder, attempted murder, aggravated murder, or attempted aggravated murder; requires the general division to transfer back to the juvenile division a juvenile who has been "boundover" to the general division if the juvenile is convicted of or pleads guilty to a lesser offense; requires the general division to expunge the common plea's conviction or guilty plea and all records of it upon the imposition of a serious youthful offender (SYO) dispositional sentence by the juvenile court. [R.C. [2152.02](#), [2152.12](#), [2152.121](#)]
- **Gun Specification Complicity.** Limits judicial discretion to commit a juvenile to DYS for complicity on a gun specification to a period of one year unless the juvenile furnished, used, or disposed of the firearm. [R.C. [2152.02](#), [2152.13](#), [2152.14](#)]
- **Judicial Release--Juvenile.** Grants courts added discretion to order judicial release to court or DYS supervision for a juvenile who has been committed on a gun specification. [R.C. [2152.17](#) and [2152.22](#), [5139.01](#), [5139.06](#), [5139.18](#), [5139.20](#), [5139.43](#), and [5139.52](#)]
- **Treatment Options.** Encourages courts to use, to the extent they are available, research supported and outcome based programs and services. [R.C. [5139.43](#)]

## Other Provisions

- **Name Change.** Prohibits probate courts from ordering a statutory change of name for a person who has committed identify fraud or who must register under the SORN law for having committed a sexually oriented offense or child victim oriented offense. [R.C. [2717.01](#)]
- **Victim Photos.** Prohibits a convicted sex offender or child-victim offender from possessing a photograph of the victim while the offender is serving a term of confinement for the offense. [R.C. [2950.17](#)]
- **Private Sentencing.** Permits greater flexibility and independence for Community Alternative Sentencing Centers. [R.C. [307.932](#)]
- **Inmate Information and Victim Services.** Expands the amount of information regarding inmates and offenders that the Department of Rehabilitation and Corrections makes available to victims and the public. [R.C. [5120.60](#), [5120.66](#)]
- **Bail Forfeiture.** Specifies that notice to the accused and each surety shall be given within 15 days after the declaration of forfeiture and requires each of them to show cause on or before a date specified in the notice but not less than 45 days or more than 60 days from the date of mailing notice. [R.C. [2937.36](#)]
- **Rule of Superintendence.** Requests the Supreme Court of Ohio to adopt a Rule of Superintendence that provides for the collection of statistical data relating to the operation of probation departments. [[Am. Sub. HB 86 section 6](#)]
- **Parole Eligibility Review.** Requires the Department of Rehabilitation and Correction to review parole eligibility for all inmates 65-years and older. [[Am. Sub. HB 86 section 10](#)]
- **Ohio Interagency Task Force on Mental Health and Juvenile Justice.** This task force is designed to investigate and make recommendations on how to most effectively treat delinquent youths who suffer from serious mental illness. The Ohio Judicial Conference and the Ohio Association of Juvenile Court Judges have appointments to this task force. [[Am. Sub HB 86 section 5](#)]

*To view a document with links to the bill and frequently asked questions, visit the Enactments page of OJC website at [www.ohiojudges.org](http://www.ohiojudges.org). (Click on BillBoard and then click on Enactments)*

This Enactment News item was prepared by the Ohio Judicial Conference on July 20, 2011.