



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## Felony Sentencing

The Felony Sentencing Law establishes guidelines for courts imposing sentences on offenders for felony offenses. The Law provides that the overriding purposes of felony sentencing are to protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local resources.

The purpose of this Brief is to provide a general overview of the Felony Sentencing Law. The Brief summarizes the purposes of felony sentencing and how to achieve them, the factors and considerations that a court must contemplate when imposing sentences for felony offenses, and general prison terms and fines a court may impose for felony offenses.

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### Overriding purposes of felony sentencing

The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local resources. To achieve those purposes, the sentencing court must consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.<sup>1</sup>

<sup>1</sup> R.C. 2929.11(A).

## Factors for imposing a felony sentence

### Seriousness of the conduct

When a court imposes a sentence on an offender for a felony offense, the court must consider all of the following factors and any other factor that indicates that the offender's conduct is more serious than conduct normally constituting the offense:<sup>2</sup>

- The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim;
- The victim suffered serious physical, psychological, or economic harm as a result of the offense;
- The offender held a public office or position of trust in the community, and the offense related to that office or position;
- The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice;
- The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others;
- The offender's relationship with the victim facilitated the offense;
- The offender committed the offense for hire or as part of organized criminal activity;
- In committing the offense, the offender was motivated by prejudice based on race, ethnicity, gender, sexual orientation, or religion;
- If the offense is domestic violence, felonious assault, aggravated assault, or assault involving a person who was a family or household member, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim is a parent, guardian, custodian, or person *in loco parentis* of one or more of those children.

The court must also consider all of the following factors and any other factor that indicates that the offender's conduct is less serious than conduct normally constituting the offense:<sup>3</sup>

- The victim induced or facilitated the offense;
- In committing the offense, the offender acted under strong provocation;
- In committing the offense, the offender did not cause or expect to cause physical harm to any person or property;

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<sup>2</sup> R.C. 2929.12(A) and (B).

<sup>3</sup> R.C. 2929.12(A) and (C).

- There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute an offense.

### **Likelihood of the offender's recidivism**

When a court imposes a sentence on an offender for a felony offense, the court must consider all of the following factors and any other factor that indicates that the offender is likely to commit future crimes:<sup>4</sup>

- At the time of committing the offense, the offender: (1) was under release from confinement before trial or sentencing, (2) was under a community control sanction, (3) was under a post-release control sanction, (4) was under transitional control in connection with a prior offense, or (5) had absconded from the offender's approved community placement resulting in the offender's removal from the transitional control program;
- The offender previously was adjudicated a delinquent child or has a history of criminal convictions;
- The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child or has not responded favorably to sanctions previously imposed for criminal convictions;
- The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and refuses to acknowledge that the offender has demonstrated that pattern, or refuses treatment for the drug or alcohol abuse;
- The offender shows no genuine remorse for the offense.

The court must also consider all of the following factors and any other factor that indicates that the offender is not likely to commit future crimes:<sup>5</sup>

- Prior to committing the offense, the offender had not been adjudicated a delinquent child;
- Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense;
- Prior to committing the offense, the offender had led a law-abiding life for a significant number of years;
- The offense was committed under circumstances not likely to recur;
- The offender shows genuine remorse for the offense.

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<sup>4</sup> R.C. 2929.12(A) and (D).

<sup>5</sup> R.C. 2929.12(A) and (E).

## Service in the armed forces

When a court imposes a sentence on an offender for a felony offense, the court must consider the offender’s military service record and whether the offender has an emotional, mental, or physical condition that is traceable to the offender’s service in the U.S. armed forces and that was a contributing factor in the offender’s commission of that offense.<sup>6</sup>

## Considerations for imposing a felony sentence

In determining the appropriate sentence to impose on an offender for a felony offense, the court must contemplate the considerations listed in the table below.

Considerations in imposing a felony sentence	
Discretion	<p>Unless otherwise provided in the Revised Code, a court that imposes a sentence for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing.<sup>7</sup></p> <p>Unless the court is required to impose a specific sanction or is precluded from imposing a specific sanction, the court may impose any sanction or combination of sanctions under the Felony Sentencing Law.<sup>8</sup></p>
Mandatory community control for fourth and fifth degree felonies	<p>If an offender is convicted of or pleads guilty to a fourth or fifth degree felony that is not an offense of violence or that is a qualifying assault offense, the court must sentence the offender to a community control sanction if all of the following apply: (1) the offender previously has not been convicted of or pleaded guilty to a felony offense, (2) the most serious charge against the offender at the time of the sentencing is a fourth or fifth degree felony, and (3) 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 the sentence is being imposed.<sup>9</sup></p> <p>The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a fourth or fifth degree felony that is not an offense of violence or that is a qualifying assault offense under specified circumstances.<sup>10</sup></p>

<sup>6</sup> R.C. 2929.12(A) and (F).

<sup>7</sup> R.C. 2929.12(A).

<sup>8</sup> R.C. 2929.13(A).

<sup>9</sup> R.C. 2929.13(B)(1)(a).

<sup>10</sup> R.C. 2929.13(B)(1)(b).

Considerations in imposing a felony sentence	
No presumption of prison term for third degree felonies and specified drug offenses	Unless otherwise provided in the Revised Code, in determining whether to impose a prison term for a third degree felony or a “felony drug offense” under R.C. Chapter 2925 that is specified as being subject to R.C. 2929.13(C), the court must comply with the purposes and principles of felony sentencing. <sup>11</sup>
Presumption of prison term	<p>Unless otherwise provided in the Revised Code, for a first or second degree felony or for a felony drug offense for which a presumption in favor of a prison term is specified, it is presumed that a prison term is necessary to comply with the purposes and principles of sentencing.<sup>12</sup></p> <p>The presumption may be rebutted, and the court may impose community control sanctions on an offender for a first or second degree felony or for a felony drug offense for which a presumption in favor of a prison term is specified, if the court makes both of the following findings:<sup>13</sup></p> <ol style="list-style-type: none"> <li>1. A community control sanction or a combination of community control sanctions would adequately punish the offender and protect the public from future crime, because the factors indicating a lesser likelihood of recidivism outweigh the factors indicating a greater likelihood of recidivism; and</li> <li>2. A community control sanction or combination of community control sanctions would not demean the seriousness of the offense, because one or more factors indicating that the offender’s conduct was less serious than conduct normally constituting the offense apply, and they outweigh the factors indicating that the offender’s conduct was more serious than conduct normally constituting the offense.</li> </ol> <p>(For purposes of this provision, felony drug offense means a felony drug offense under R.C. Chapter 2925 (drug offenses), 3719 (controlled substances), or 4729 (pharmacists and dangerous drugs).)</p>
Consecutive prison terms	If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender, and that consecutive sentences are not

<sup>11</sup> R.C. 2929.13(C).

<sup>12</sup> R.C. 2929.13(D)(1).

<sup>13</sup> R.C. 2929.13(D)(2).

Considerations in imposing a felony sentence	
	<p>disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public. The court must also find any of the following:</p> <ol style="list-style-type: none"> <li>1. The offender committed one or more of the offenses while awaiting trial or sentencing or was under a community control or post-release control sanction for a prior offense;</li> <li>2. At least two of the offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the offenses was so great or unusual that no single prison term for any of the offenses committed adequately reflects the seriousness of the offender’s conduct; or</li> <li>3. The offender’s history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.<sup>14</sup></li> </ol>
Financial sanctions	A court imposing a sentence for a felony may sentence the offender to any financial sanction or combination of financial sanctions, including court costs, fines, restitution, and reimbursement. <sup>15</sup>

### Prison terms and fines for a felony sentence

A court may impose a life sentence for aggravated murder, murder, rape (if the victim is less than 13 years old), and kidnapping (if the victim is less than 13 years old).<sup>16</sup>

Unless otherwise provided above or in the Revised Code, if a court imposes a prison term for a felony offense, the court must impose a prison term listed in the table below (for a felony offense committed on or after March 22, 2019).<sup>17</sup> Likewise, if a court imposes a fine for a felony offense, the court must impose a fine listed in the table below.<sup>18</sup>

Misdemeanor Level	Jail Term	Fine
First degree felony	Indefinite prison term with a stated minimum term of 3, 4, 5, 6, 7, 8, 9, 10, or 11 years and a maximum term that is determined pursuant to R.C. 2929.144 (see below).	Fine of not more than \$20,000

<sup>14</sup> R.C. 2929.14(C)(4).

<sup>15</sup> R.C. 2929.28.

<sup>16</sup> R.C. 2903.01, 2903.02, 2905.01, 2907.02, 2929.02, and 2929.03.

<sup>17</sup> R.C. 2929.14(A).

<sup>18</sup> R.C. 2929.18(A)(3).

Misdemeanor Level	Jail Term	Fine
Second degree felony	Indefinite prison term with a stated minimum term of 2, 3, 4, 5, 6, 7, or 8 years and a maximum term that is determined pursuant to R.C. 2929.144 (see below).	Fine of not more than \$15,000
Third degree felony	<p>A definite prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months for aggravated vehicular homicide committed under certain circumstances; aggravated vehicular assault; vehicular assault committed under certain circumstances; sexual battery; unlawful sexual conduct with a minor; gross sexual imposition committed under certain circumstance; pandering obscenity involving a minor or impaired person committed under certain circumstances; pandering sexually oriented matter involving a minor or impaired person committed under certain circumstances; illegal use of a minor or impaired person in a nudity-oriented material or performance committed under certain circumstances; assisting suicide; operating a vehicle under the influence of alcohol; a drug of abuse; or a combination of them (if the offender previously has been convicted of or pleaded guilty to a felony violation of that offense); robbery or burglary (if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of aggravated robbery, robbery, aggravated burglary, or burglary).</p> <p>For all other third degree felonies, a definite prison term of 9, 12, 18, 24, 30, or 36 months.</p>	Fine of not more than \$10,000

Misdemeanor Level	Jail Term	Fine
Fourth degree felony	Definite prison term of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months.	Fine of not more than \$5,000
Fifth degree felony	Definite prison term of 6, 7, 8, 9, 10, 11, or 12 months.	Fine of not more than \$2,500

If a court imposes on an offender a prison term for a “qualifying felony of the first or second degree” (meaning a first or second degree felony committed on or after March 22, 2019), the court must impose a maximum prison term that is in accordance with the following:<sup>19</sup>

- If the offender is being sentenced for one felony and the felony is a qualifying felony of the first or second degree, the maximum prison term must equal the minimum prison term imposed on the offender plus 50% of that term.
- If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that some or all of the prison terms imposed are to be served consecutively, the court must add all of the minimum terms imposed on the offender for a qualifying felony of the first or second degree that are to be served consecutively and all of the definite terms of the felonies that are not qualifying felonies of the first or second degree that are to be served consecutively, and the maximum term must equal the total of those terms plus 50% of the longest minimum term or definite term for the most serious felony being sentenced.
- If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that all of the prison terms imposed are to run concurrently, the maximum term must equal the longest of the minimum terms imposed on the offender for a qualifying felony of the first or second degree for which the sentence is being imposed plus 50% of the longest minimum term for the most serious qualifying felony being sentenced.
- Any mandatory prison term, or portion of a mandatory prison term, that is imposed on an offender with respect to a conviction of or plea of guilty to a specification, and that is in addition to the sentence imposed for the underlying offense, is separate from the sentence being imposed for the qualifying first or second degree felony, and must not be considered or included in determining a maximum prison term for the offender as described above.

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<sup>19</sup> R.C. 2929.144(A) and (B).