

Executive Summary of Ohio's New Misdemeanor Sentencing and Other Changes Under House Bill 490

HB 490 was signed by Governor Bob Taft on January 2, 2003 and took effect January 1, 2004.

The bill states the purposes of misdemeanor sentencing are to protect the public from future crime and punish the Defendant

Misdemeanor courts (Municipal / Mayor's / County) must consider:

- The nature and circumstances of the act;
- History of persistent crime and the risk of re-offending;
- Substantial risk of Defendant endangering others
- Pattern of repetitive, compulsive, or aggressive behavior with "heedless indifference" to the consequences;
- Defendant's criminal record
- Defendant's character;
- Likelihood of recidivism (re-offending); and
- Any other relevant factors consistent with the above purposes of sentencing.

The New Ohio Misdemeanor Laws require the court to determine whether the alleged victim is 65 or older, under 18, or permanently and totally disabled. If yes, the court must favor imposing a jail term or restitution

Any Misdemeanor sentence should not impose an unnecessary burden on local government resources, therefore... before imposing jail time, a judge should consider community control sanctions (f.k.a. Probation) R.C. § 2929.22.C

The maximum fine for a Minor Misdemeanor is now \$150 (was \$100).

Minor Misdemeanor Defendants can now be sentenced to restitution, and up to 30 hours community service R.C. § 2929.27.C

Jail time is required for:

- Drunk driving (OVI – formerly OMVI)
- Driving while under an OVI suspension
- OVI in a boat
- Some other crimes which specify jail time

Ohio Alternatives to Jail

Judges can now release inmates during jail time or house arrest (with exceptions). Overnight, weekends or any other time relating to maintaining employment or her family are allowed. §2929.24.B

Judges may also authorize temporary releases for Defendants to

- Find / maintain employment
- Obtain education
- Obtain treatment
- Do Community Service
- Perform a legal obligation

Incarcerated Defendants can be tested for Tuberculosis, Hepatitis, AIDS, HIV, and other contagious diseases. §2929.26.E.

All Misdemeanants (except minor) can receive “residential sanctions” including, but not limited to, a halfway house or alternative residential placements.

Alternative placements are government licensed places in which a Defendant is ordered to live, other than a Prison, Jail, Community Based Correctional Facility (CBCF), or her home, which provide employment, education, treatment, or rehabilitation programs.

Ohio Types of Probation

1. Intensive Probation is “frequent contact” with a probation officer to supervise court ordered employment, education, and treatment programs.

2. Basic Probation is defined as maintaining contact with the probation officer in accordance with court orders.

3. Monitored Time, commonly known as “PNC,” (provided no convictions) is defined as a period in which the Defendant is subject to no punishment other than leading a law-abiding life.

Restitution

A court *must* determine the amount of restitution to be paid. Restitution is based on the victim’s economic loss, such as loss of income, medical costs, funeral expenses, etc. A hearing is not needed unless the offender or victim disputes the amount § 2929.28.A.1.

Restitution is a civil judgment in favor of the victim § 2929.28.D (!!)

Any financial sanction (i.e. a fine) under § 2929.28.A is a civil judgment in favor of the government. § 2929.28.D. It may be collected by attachment, wage garnishment or assignment, et cetera.

Sentencing

“Direct sentencing” is now done in misdemeanor courts. The judge should directly impose the sanction(s) and state how long they are in effect, and warn that, the court may, for violations:

- Impose up to 5 years of sanctions
- Impose a more restrictive sanction
- Impose jail time
- Jail time on a violation can't exceed the jail time possible for the offense.

The judge **must consider** any relevant statement by the victim regarding sentencing and, must inform the victim of his or her right to seek an award under the Crime Victims' Reparations Law.

When a possible fine does not exceed \$1,000, and jail time is not possible, there is no right to a Jury. § 2945.17.B.2 (!!)

Miscellaneous Provisions

- Juvenile Driving Privileges may be granted for work, school, vocational and medical purposes, taking a driver's license exam, court-ordered treatment, and to allow juveniles to practice driving with a parent, guardian, or custodian, provided that the adult is licensed and sits up front with the young driver.
- Computer Photo Downloads, Kiddie Porn: Harmful to Juveniles now means “that quality of any material or performance describing nudity, sexual content, sexual excitement, or sado-masochistic abuse,” and :
 - it “appeals to the prurient interest in sex of juveniles”
 - is “patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles”
 - it “lacks serious literary, artistic, political, and scientific value for juveniles”

It's Good We Have a Definition Now: According to the Government, “Sado-Masochistic Abuse” means “flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained” § 2907.01.P