

As Reported by the House Criminal Justice Committee

135th General Assembly

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Sub. H. B. No. 234

Representatives Williams, Rogers

Cosponsors: Representatives Schmidt, Willis, Hillyer, Upchurch, Humphrey, Seitz

A BILL

To amend sections 2929.12 and 2929.22 of the
Revised Code to prohibit a court imposing a
sentence on an offender for a felony or
misdemeanor from considering whether the
offender who entered an Alford plea shows
genuine remorse for the offense.

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

Section 1. That sections 2929.12 and 2929.22 of the
Revised Code be amended to read as follows:

Sec. 2929.12. (A) Unless otherwise required by section
2929.13 or 2929.14 of the Revised Code, a court that imposes a
sentence under this chapter upon an offender for a felony has
discretion to determine the most effective way to comply with
the purposes and principles of sentencing set forth in section
2929.11 of the Revised Code. In exercising that discretion, the
court shall consider the factors set forth in divisions (B) and
(C) of this section relating to the seriousness of the conduct,
the factors provided in divisions (D) and (E) of this section
relating to the likelihood of the offender's recidivism, ~~and~~ the

factors set forth in division (F) of this section pertaining to 19
the offender's service in the armed forces of the United States, 20
and the factors set forth in division (G) of this section 21
relating to Alford pleas and, in addition, may consider any 22
other factors that are relevant to achieving those purposes and 23
principles of sentencing. 24

(B) The sentencing court shall consider all of the 25
following that apply regarding the offender, the offense, or the 26
victim, and any other relevant factors, as indicating that the 27
offender's conduct is more serious than conduct normally 28
constituting the offense: 29

(1) The physical or mental injury suffered by the victim 30
of the offense due to the conduct of the offender was 31
exacerbated because of the physical or mental condition or age 32
of the victim. 33

(2) The victim of the offense suffered serious physical, 34
psychological, or economic harm as a result of the offense. 35

(3) The offender held a public office or position of trust 36
in the community, and the offense related to that office or 37
position. 38

(4) The offender's occupation, elected office, or 39
profession obliged the offender to prevent the offense or bring 40
others committing it to justice. 41

(5) The offender's professional reputation or occupation, 42
elected office, or profession was used to facilitate the offense 43
or is likely to influence the future conduct of others. 44

(6) The offender's relationship with the victim 45
facilitated the offense. 46

(7) The offender committed the offense for hire or as a part of an organized criminal activity. 47
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(8) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion. 49
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(9) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, 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 of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children. 52
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(C) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense: 60
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(1) The victim induced or facilitated the offense. 65

(2) In committing the offense, the offender acted under strong provocation. 66
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(3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property. 68
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(4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense. 70
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(D) The sentencing court shall consider all of the following that apply regarding the offender, and any other 73
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relevant factors, as factors indicating that the offender is 75
likely to commit future crimes: 76

(1) At the time of committing the offense, the offender 77
was under release from confinement before trial or sentencing; 78
was under a sanction imposed pursuant to section 2929.16, 79
2929.17, or 2929.18 of the Revised Code; was under post-release 80
control pursuant to section 2967.28 or any other provision of 81
the Revised Code for an earlier offense or had been unfavorably 82
terminated from post-release control for a prior offense 83
pursuant to division (B) of section 2967.16 or section 2929.141 84
of the Revised Code; was under transitional control in 85
connection with a prior offense; or had absconded from the 86
offender's approved community placement resulting in the 87
offender's removal from the transitional control program under 88
section 2967.26 of the Revised Code. 89

(2) The offender previously was adjudicated a delinquent 90
child pursuant to Chapter 2151. of the Revised Code prior to 91
January 1, 2002, or pursuant to Chapter 2152. of the Revised 92
Code, or the offender has a history of criminal convictions. 93

(3) The offender has not been rehabilitated to a 94
satisfactory degree after previously being adjudicated a 95
delinquent child pursuant to Chapter 2151. of the Revised Code 96
prior to January 1, 2002, or pursuant to Chapter 2152. of the 97
Revised Code, or the offender has not responded favorably to 98
sanctions previously imposed for criminal convictions. 99

(4) The offender has demonstrated a pattern of drug or 100
alcohol abuse that is related to the offense, and the offender 101
refuses to acknowledge that the offender has demonstrated that 102
pattern, or the offender refuses treatment for the drug or 103
alcohol abuse. 104

(5) The offender shows no genuine remorse for the offense.	105
(E) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is not likely to commit future crimes:	106
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(1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.	110
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(2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.	112
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(3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.	114
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(4) The offense was committed under circumstances not likely to recur.	116
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(5) The <u>Except as provided in division (G) of this section, the</u> offender shows genuine remorse for the offense.	118
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(F) The sentencing court shall 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 armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses.	120
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<u>(G) If the offender enters an Alford plea, the sentencing court shall not consider whether the offender showed genuine remorse for the offense.</u>	126
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Sec. 2929.22. (A) Unless a mandatory jail term is required to be imposed by division (G) of section 1547.99, division (B) of section 4510.14, division (G) of section 4511.19 of the Revised Code, or any other provision of the Revised Code a court	129
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that imposes a sentence under this chapter upon an offender for 133
a misdemeanor or minor misdemeanor has discretion to determine 134
the most effective way to achieve the purposes and principles of 135
sentencing set forth in section 2929.21 of the Revised Code. 136

Unless a specific sanction is required to be imposed or is 137
precluded from being imposed by the section setting forth an 138
offense or the penalty for an offense or by any provision of 139
sections 2929.23 to 2929.28 of the Revised Code, a court that 140
imposes a sentence upon an offender for a misdemeanor may impose 141
on the offender any sanction or combination of sanctions under 142
sections 2929.24 to 2929.28 of the Revised Code. The court shall 143
not impose a sentence that imposes an unnecessary burden on 144
local government resources. 145

(B) (1) In determining the appropriate sentence for a 146
misdemeanor, the court shall consider all of the following 147
factors: 148

(a) The nature and circumstances of the offense or 149
offenses; 150

(b) Whether the circumstances regarding the offender and 151
the offense or offenses indicate that the offender has a history 152
of persistent criminal activity and that the offender's 153
character and condition reveal a substantial risk that the 154
offender will commit another offense; 155

(c) Whether the circumstances regarding the offender and 156
the offense or offenses indicate that the offender's history, 157
character, and condition reveal a substantial risk that the 158
offender will be a danger to others and that the offender's 159
conduct has been characterized by a pattern of repetitive, 160
compulsive, or aggressive behavior with heedless indifference to 161

the consequences;	162
(d) Whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious;	163 164 165
(e) Whether the offender is likely to commit future crimes in general, in addition to the circumstances described in divisions (B) (1) (b) and (c) of this section;	166 167 168
(f) Whether the offender has an emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses;	169 170 171 172 173
(g) The offender's military service record.	174
(2) <u>In determining the appropriate sentence for a misdemeanor, if the offender enters an Alford plea, the sentencing court shall not consider whether the offender showed genuine remorse for the offense.</u>	175 176 177 178
(3) <u>In determining the appropriate sentence for a misdemeanor, in addition to complying with division (B) (1) of this section, the court may consider any other factors that are relevant to achieving the purposes and principles of sentencing set forth in section 2929.21 of the Revised Code.</u>	179 180 181 182 183
(C) Before imposing a jail term as a sentence for a misdemeanor, a court shall consider the appropriateness of imposing a community control sanction or a combination of community control sanctions under sections 2929.25, 2929.26, 2929.27, and 2929.28 of the Revised Code. A court may impose the longest jail term authorized under section 2929.24 of the Revised Code only upon offenders who commit the worst forms of	184 185 186 187 188 189 190

the offense or upon offenders whose conduct and response to 191
prior sanctions for prior offenses demonstrate that the 192
imposition of the longest jail term is necessary to deter the 193
offender from committing a future criminal offense. 194

(D) (1) A sentencing court shall consider any relevant oral 195
and written statement made by the victim, the victim's 196
representative, the victim's attorney, if applicable, the 197
defendant, the defense attorney, and the prosecuting authority 198
regarding sentencing for a misdemeanor. This division does not 199
create any rights to notice other than those rights authorized 200
by Chapter 2930. of the Revised Code. 201

(2) At the time of sentencing for a misdemeanor or as soon 202
as possible after sentencing, the court shall notify the victim 203
of the offense of the victim's right to file an application for 204
an award of reparations pursuant to sections 2743.51 to 2743.72 205
of the Revised Code. 206

Section 2. That existing sections 2929.12 and 2929.22 of 207
the Revised Code are hereby repealed. 208