



Ohio Revised Code

Section 2967.28 Post-release controls - failure to notify offender.

Effective: September 30, 2021

Legislation: House Bill 110

(A) As used in this section:

(1) "Monitored time" means the monitored time sanction specified in section 2929.17 and defined in section 2929.01 of the Revised Code.

(2) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

(3) "Felony sex offense" means a violation of a section contained in Chapter 2907. of the Revised Code that is a felony.

(4) "Risk reduction sentence" means a prison term imposed by a court, when the court recommends pursuant to section 2929.143 of the Revised Code that the offender serve the sentence under section 5120.036 of the Revised Code, and the offender may potentially be released from imprisonment prior to the expiration of the prison term if the offender successfully completes all assessment and treatment or programming required by the department of rehabilitation and correction under section 5120.036 of the Revised Code.

(5) "Victim's immediate family" has the same meaning as in section 2967.12 of the Revised Code.

(6) "Minor drug possession offense" has the same meaning as in section 2925.11 of the Revised Code.

(7) "Single validated risk assessment tool" means the single validated risk assessment tool selected by the department of rehabilitation and correction under section 5120.114 of the Revised Code.

(B) Each sentence to a prison term, other than a term of life imprisonment, for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree



that is an offense of violence and is not a felony sex offense shall include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender's release from imprisonment. This division applies with respect to all prison terms of a type described in this division, including a term of any such type that is a risk reduction sentence. If a court imposes a sentence including a prison term of a type described in this division on or after July 11, 2006, the failure of a sentencing court to notify the offender pursuant to division (B)(2)(d) of section 2929.19 of the Revised Code of this requirement or to include in the judgment of conviction entered on the journal a statement that the offender's sentence includes this requirement does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under this division. This division applies with respect to all prison terms of a type described in this division, including a non-life felony indefinite prison term. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to notify the offender pursuant to division (B)(2)(d) of section 2929.19 of the Revised Code regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence pursuant to division (D)(1) of section 2929.14 of the Revised Code a statement regarding post-release control. Unless reduced by the parole board pursuant to division (D) of this section when authorized under that division, a period of post-release control required by this division for an offender shall be of one of the following periods:

(1) For a felony sex offense, five years;

(2) For a felony of the first degree that is not a felony sex offense, up to five years, but not less than two years;

(3) For a felony of the second degree that is not a felony sex offense, up to three years, but not less than eighteen months;

(4) For a felony of the third degree that is an offense of violence and is not a felony sex offense, up to three years, but not less than one year.

(C) Any sentence to a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (B)(1) or (4) of this section shall include a requirement that the offender be subject to a period of post-release control of up to two years after the offender's release from imprisonment, if



the parole board, in accordance with division (D) of this section, determines that a period of post-release control is necessary for that offender. This division applies with respect to all prison terms of a type described in this division, including a term of any such type that is a risk reduction sentence. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to notify the offender pursuant to division (B)(2)(e) of section 2929.19 of the Revised Code regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence pursuant to division (D)(2) of section 2929.14 of the Revised Code a statement regarding post-release control. Pursuant to an agreement entered into under section 2967.29 of the Revised Code, a court of common pleas or parole board may impose sanctions or conditions on an offender who is placed on post-release control under this division.

(D)(1) Before the prisoner is released from imprisonment, the parole board or, pursuant to an agreement under section 2967.29 of the Revised Code, the court shall impose on a prisoner described in division (B) of this section, shall impose on a prisoner described in division (C) of this section who is to be released before the expiration of the prisoner's stated prison term under a risk reduction sentence, may impose on a prisoner described in division (C) of this section who is not to be released before the expiration of the prisoner's stated prison term under a risk reduction sentence, and shall impose on a prisoner described in division (B)(2)(b) of section 5120.031 or in division (B)(1) of section 5120.032 of the Revised Code, one or more post-release control sanctions to apply during the prisoner's period of post-release control. Whenever the board or court imposes one or more post-release control sanctions on a prisoner, the board or court, in addition to imposing the sanctions, also shall include as a condition of the post-release control that the offender not leave the state without permission of the court or the offender's parole or probation officer and that the offender abide by the law. The board or court may impose any other conditions of release under a post-release control sanction that the board or court considers appropriate, and the conditions of release may include any community residential sanction, community nonresidential sanction, or financial sanction that the sentencing court was authorized to impose pursuant to sections 2929.16, 2929.17, and 2929.18 of the Revised Code. Prior to the release of a prisoner for whom it will impose one or more post-release control sanctions under this division, the parole board or court shall review the prisoner's criminal history, results from the single validated risk assessment tool, and the record of the prisoner's conduct while imprisoned. The parole board or court shall consider any recommendation regarding post-release control sanctions for the prisoner made by the office of victims' services. After



considering those materials, the board or court shall determine, for a prisoner described in division (B) of this section, division (B)(2)(b) of section 5120.031, or division (B)(1) of section 5120.032 of the Revised Code and for a prisoner described in division (C) of this section who is to be released before the expiration of the prisoner's stated prison term under a risk reduction sentence, which post-release control sanction or combination of post-release control sanctions is reasonable under the circumstances or, for a prisoner described in division (C) of this section who is not to be released before the expiration of the prisoner's stated prison term under a risk reduction sentence, whether a post-release control sanction is necessary and, if so, which post-release control sanction or combination of post-release control sanctions is reasonable under the circumstances. In the case of a prisoner convicted of a felony of the fourth or fifth degree other than a felony sex offense, the board or court shall presume that monitored time is the appropriate post-release control sanction unless the board or court determines that a more restrictive sanction is warranted. A post-release control sanction imposed under this division takes effect upon the prisoner's release from imprisonment.

Regardless of whether the prisoner was sentenced to the prison term prior to, on, or after July 11, 2006, prior to the release of a prisoner for whom it will impose one or more post-release control sanctions under this division, the parole board shall notify the prisoner that, if the prisoner violates any sanction so imposed or any condition of post-release control described in division (B) of section 2967.131 of the Revised Code that is imposed on the prisoner, the parole board may impose a prison term of up to one-half of the stated prison term originally imposed on the prisoner.

At least thirty days before the prisoner is released from imprisonment under post-release control, except as otherwise provided in this paragraph, the department of rehabilitation and correction shall notify the victim and the victim's immediate family of the date on which the prisoner will be released, the period for which the prisoner will be under post-release control supervision, and the terms and conditions of the prisoner's post-release control regardless of whether the victim or victim's immediate family has requested the notification. The notice described in this paragraph shall not be given to a victim or victim's immediate family if the victim or the victim's immediate family has requested pursuant to division (B)(2) of section 2930.03 of the Revised Code that the notice not be provided to the victim or the victim's immediate family. At least thirty days before the prisoner is released from imprisonment and regardless of whether the victim or victim's immediate family has requested that the notice described in this paragraph be provided or not be provided to the victim or the victim's immediate family, the department also shall provide notice of that nature to the



prosecuting attorney in the case and the law enforcement agency that arrested the prisoner if any officer of that agency was a victim of the offense.

If the notice given under the preceding paragraph to the victim or the victim's immediate family is based on an offense committed prior to March 22, 2013, and if the department of rehabilitation and correction has not previously successfully provided any notice to the victim or the victim's immediate family under division (B), (C), or (D) of section 2930.16 of the Revised Code with respect to that offense and the offender who committed it, the notice also shall inform the victim or the victim's immediate family that the victim or the victim's immediate family may request that the victim or the victim's immediate family not be provided any further notices with respect to that offense and the offender who committed it and shall describe the procedure for making that request. The department may give the notices to which the preceding paragraph applies by any reasonable means, including regular mail, telephone, and electronic mail. If the department attempts to provide notice to any specified person under the preceding paragraph but the attempt is unsuccessful because the department is unable to locate the specified person, is unable to provide the notice by its chosen method because it cannot determine the mailing address, electronic mail address, or telephone number at which to provide the notice, or, if the notice is sent by mail, the notice is returned, the department shall make another attempt to provide the notice to the specified person. If the second attempt is unsuccessful, the department shall make at least one more attempt to provide the notice. If the notice is based on an offense committed prior to March 22, 2013, in each attempt to provide the notice to the victim or victim's immediate family, the notice shall include the opt-out information described in this paragraph. The department, in the manner described in division (D)(2) of section 2930.16 of the Revised Code, shall keep a record of all attempts to provide the notice, and of all notices provided, under this paragraph and the preceding paragraph. The record shall be considered as if it was kept under division (D)(2) of section 2930.16 of the Revised Code. This paragraph, the preceding paragraph, and the notice-related provisions of divisions (E)(2) and (K) of section 2929.20, division (D)(1) of section 2930.16, division (H) of section 2967.12, division (E)(1)(b) of section 2967.19, division (A)(3)(b) of section 2967.26, and division (A)(2) of section 5149.101 of the Revised Code enacted in the act in which this paragraph and the preceding paragraph were enacted, shall be known as "Roberta's Law."

(2) If a prisoner who is placed on post-release control under this section is released before the expiration of the definite term that is the prisoner's stated prison term or the expiration of the



minimum term that is part of the prisoner's indefinite prison term imposed under a non-life felony indefinite prison term by reason of credit earned under section 2967.193 or a reduction under division (F) of section 2967.271 of the Revised Code and if the prisoner earned sixty or more days of credit, the adult parole authority may supervise the offender with an active global positioning system device for the first fourteen days after the offender's release from imprisonment. This division does not prohibit or limit the imposition of any post-release control sanction otherwise authorized by this section.

(3) After a prisoner is released from imprisonment and during the period of post-release control applicable to the releasee, the adult parole authority or, pursuant to an agreement under section 2967.29 of the Revised Code, the court may review the releasee's behavior under the post-release control sanctions imposed upon the releasee under this section. The authority or court may determine, based upon the review and in accordance with the standards established under division (E) of this section, that the releasee has satisfactorily complied with the sanctions imposed, and if such a determination is made, the authority may recommend a less restrictive sanction, reduce the period of post-release control, or, no sooner than the minimum period of time required under section 2967.16 of the Revised Code, recommend that the parole board or court terminate the duration of the period of post-release control. In no case shall the board or court reduce the duration of the period of control imposed for a felony sex offense described in division (B)(1) of this section.

(4) The department of rehabilitation and correction shall develop factors that the parole board or court shall consider in determining under division (D)(3) of this section whether to terminate the period of control imposed on a releasee .

(E) The department of rehabilitation and correction, in accordance with Chapter 119. of the Revised Code, shall adopt rules that do all of the following:

(1) Establish standards for the imposition by the parole board of post-release control sanctions under this section that are consistent with the overriding purposes and sentencing principles set forth in section 2929.11 of the Revised Code and that are appropriate to the needs of releasees;

(2) Establish standards that provide for a period of post-release control of up to two years for all prisoners described in division (C) of this section who are to be released before the expiration of



their stated prison term under a risk reduction sentence and standards by which the parole board can determine which prisoners described in division (C) of this section who are not to be released before the expiration of their stated prison term under a risk reduction sentence should be placed under a period of post-release control;

(3) Establish standards to be used by the parole board in reducing or terminating the duration of the period of post-release control imposed by the court when authorized under division (D) of this section, in imposing a more restrictive post-release control sanction than monitored time on a prisoner convicted of a felony of the fourth or fifth degree other than a felony sex offense, or in imposing a less restrictive control sanction on a releasee based on results from the single validated risk assessment tool and on the releasee's activities including, but not limited to, remaining free from criminal activity and from the abuse of alcohol or other drugs, successfully participating in approved rehabilitation programs, maintaining employment, and paying restitution to the victim or meeting the terms of other financial sanctions;

(4) Establish standards to be used by the adult parole authority in modifying a releasee's post-release control sanctions pursuant to division (D)(2) of this section;

(5) Establish standards to be used by the adult parole authority or parole board in imposing further sanctions under division (F) of this section on releasees who violate post-release control sanctions, including standards that do the following:

(a) Classify violations according to the degree of seriousness;

(b) Define the circumstances under which formal action by the parole board is warranted;

(c) Govern the use of evidence at violation hearings;

(d) Ensure procedural due process to an alleged violator;

(e) Prescribe nonresidential community control sanctions for most misdemeanor and technical violations;



(f) Provide procedures for the return of a releasee to imprisonment for violations of post-release control.

(F)(1) Whenever the parole board imposes one or more post-release control sanctions on an offender under this section, the offender upon release from imprisonment shall be under the general jurisdiction of the adult parole authority and generally shall be supervised by the field services section through its staff of parole and field officers as described in section 5149.04 of the Revised Code, as if the offender had been placed on parole. If the offender upon release from imprisonment violates the post-release control sanction or any conditions described in division (A) of section 2967.131 of the Revised Code that are imposed on the offender, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction shall report the violation directly to the adult parole authority or to the officer of the authority who supervises the offender. The authority's officers may treat the offender as if the offender were on parole and in violation of the parole, and otherwise shall comply with this section.

(2) If the adult parole authority or, pursuant to an agreement under section 2967.29 of the Revised Code, the court determines that a releasee has violated a post-release control sanction or any conditions described in division (A) of section 2967.131 of the Revised Code imposed on the releasee and that a more restrictive sanction is appropriate, the authority or court may impose a more restrictive sanction on the releasee, in accordance with the standards established under division (E) of this section or in accordance with the agreement made under section 2967.29 of the Revised Code, or may report the violation to the parole board for a hearing pursuant to division (F)(3) of this section. The authority or court may not, pursuant to this division, increase the duration of the releasee's post-release control or impose as a post-release control sanction a residential sanction that includes a prison term, but the authority or court may impose on the releasee any other residential sanction, nonresidential sanction, or financial sanction that the sentencing court was authorized to impose pursuant to sections 2929.16, 2929.17, and 2929.18 of the Revised Code.

(3) The parole board or, pursuant to an agreement under section 2967.29 of the Revised Code, the court may hold a hearing on any alleged violation by a releasee of a post-release control sanction or any conditions described in division (A) of section 2967.131 of the Revised Code that are imposed upon the releasee. If after the hearing the board or court finds that the releasee violated the sanction or condition, the board or court may increase the duration of the releasee's post-release control up to



the maximum duration authorized by division (B) or (C) of this section or impose a more restrictive post-release control sanction. If a releasee was acting pursuant to division (B)(2)(b) of section 2925.11 of the Revised Code and in so doing violated the conditions of a post-release control sanction based on a minor drug possession offense as defined in that section, the board or the court may consider the releasee's conduct in seeking or obtaining medical assistance for another in good faith or for self or may consider the releasee being the subject of another person seeking or obtaining medical assistance in accordance with that division as a mitigating factor before imposing any of the penalties described in this division. When appropriate, the board or court may impose as a post-release control sanction a residential sanction that includes a prison term. The board or court shall consider a prison term as a post-release control sanction imposed for a violation of post-release control when the violation involves a deadly weapon or dangerous ordnance, physical harm or attempted serious physical harm to a person, or sexual misconduct. Unless a releasee's stated prison term was reduced pursuant to section 5120.032 of the Revised Code, the period of a prison term that is imposed as a post-release control sanction under this division shall not exceed nine months, and the maximum cumulative prison term for all violations under this division shall not exceed one-half of the definite prison term that was the stated prison term originally imposed on the offender as part of this sentence or, with respect to a stated non-life felony indefinite prison term, one-half of the minimum prison term that was imposed as part of that stated prison term originally imposed on the offender. If a releasee's stated prison term was reduced pursuant to section 5120.032 of the Revised Code, the period of a prison term that is imposed as a post-release control sanction under this division and the maximum cumulative prison term for all violations under this division shall not exceed the period of time not served in prison under the sentence imposed by the court. The period of a prison term that is imposed as a post-release control sanction under this division shall not count as, or be credited toward, the remaining period of post-release control. If, during the period of the releasee's post-release control, the releasee serves as a post-release control sanction the maximum prison time available as a sanction, the post-release control shall terminate.

If an offender is imprisoned for a felony committed while under post-release control supervision and is again released on post-release control for a period of time, the maximum cumulative prison term for all violations under this division shall not exceed one-half of the total stated prison terms of the earlier felony, reduced by any prison term administratively imposed by the parole board or court, plus one-half of the total stated prison term of the new felony.



(G)(1) If an offender is simultaneously subject to a period of parole under an indefinite or life sentence and a period of post-release control, or is simultaneously subject to two periods of post-release control, the period of supervision that expires last shall determine the length and form of supervision for all the periods and the related sentences.

(2) An offender shall receive credit for post-release control supervision during the period of parole, and shall not be eligible for final release under section 2967.16 of the Revised Code until the post-release control period otherwise would have ended.

(3) If the period of parole ends prior to the end of the period of post-release control, the requirements of parole supervision shall be satisfied during the post-release control period.

(H)(1) A period of post-release control shall not be imposed consecutively to any other post-release control period.

(2) The period of post-release control for a releasee who commits a felony while under post-release control for an earlier felony shall be the longer of the period of post-release control specified for the new felony under division (B) or (C) of this section or the time remaining under the period of post-release control imposed for the earlier felony as determined by the parole board or court.