



“We will sell no man, we will not deny to any man, either justice or right.”

– Magna Carta

**C**riminal law is one of the oldest of the major branches of law. It spells out rules of conduct for society to follow and provides for penalties when those rules are broken. The law also protects by shielding citizens from wrongful prosecutions and mistakes made by law enforcement officials, affording certain constitutional rights if an individual is accused of committing a crime.

## What Constitutes an Offense?

In Ohio, all crimes must be defined by state statute or local ordinance. *Statutes* and *ordinances* (commonly referred to as *laws*) must also provide penalties for committing crimes. There are varying degrees of criminal offenses, ranging from jaywalking to premeditated murder.

In Ohio and most other jurisdictions, two things are required for an act or omission to qualify as a criminal offense. First, the law must prohibit the unlawful act or conduct, or there must be a failure to perform some duty required by the law. (This is called *actus reus*, or guilty act.) Second, at the time of the unlawful act, conduct, or omission, the person committing the offense must have a certain guilty state of mind, or *culpable mental state* (in Latin, *mens rea*).

Depending on the specific crime with which an offender is charged, it must be shown that he or she:

- acted in a reckless manner; or
- acted with purpose or knowledge; or
- acted with criminal negligence.

With few exceptions, for an act or omission to be considered a crime, at least one of these culpable mental states must be present.

For example, the crime of murder is defined as *purposely* causing the death of another person. Thus, causing someone’s death *accidentally* is not murder (though it may be *negligent homicide*)

because the required guilty state of mind for the crime of murder is not present. Someone might actually plan to steal and therefore have a guilty mind. But that person has not committed a crime until he or she actually takes or attempts to take something while having a guilty mind.

The exceptions to requiring a culpable mental state generally have to do with regulatory offenses dealing with public health and safety. Selling impure food, for example, is a violation of the pure food and drug laws even if the seller did not know the food was tainted. Such crimes are commonly known as *strict liability offenses*.

## Kinds of Crimes

There are two major classifications of crimes: felonies and misdemeanors. The word *felony* comes from the Latin word *felonia*, meaning treason or treachery. *Misdemeanor* combines “mis” for “wrong” or “bad,” and “demeanor” from the Middle English “demenure,” meaning to govern oneself or behave. Both felonies and misdemeanors are further classified according to the comparative seriousness of the offense, with crimes of the *first degree* generally representing the most serious. Some crimes are simply defined as felonies or misdemeanors without being classified by degree.

Felonies are the most serious crimes and, in Ohio, they carry a potential penalty of from six months or more in a state prison to a penalty of death for aggravated murder. Punishment for *felons* (persons committing felonies) may include imprisonment, community sanctions and various financial penalties.

The most serious felony is *aggravated murder*, followed by *murder*. Both are done purposely, but aggravated murder is committed “with prior calculation and design.” Aggravated murder also can be a purposeful killing that is committed while the perpetrator is also committing a first- or second-degree felony such as kid-

napping, rape and robbery. The murder offenses are followed in descending level of seriousness by felonies of the first, second, third, fourth and fifth degrees.

Under certain circumstances, felony offenders can serve time in local jails or community-based correctional facilities; however, most violent or repeat offenders are housed in state prisons.

Misdemeanors are less serious than felonies. They range from speeding and littering to drunken driving and simple assault (with minimal harm). In Ohio, the penalty for a misdemeanor can range from payment of court costs to no more than six months in jail and/or a fine of \$1,000 per offense. In addition, the penalty may include community control sanctions such as probation or community service. In fact, the penalty for most *misdemeanants* (persons committing misdemeanors) involves community and financial sanctions rather than jail time.

Minor misdemeanors are the least serious offenses and, in Ohio, may be punished only by a fine of \$150 or less, but no jail time.

### **Crimes in the *Ohio Criminal Code***

The *Ohio Revised Code* lists all crimes that apply in Ohio. Most of these appear in Title 29, the *Ohio Criminal Code*, which lists most of the serious offenses according to state law.

Subjects covered include:

- homicide, assault and menacing threats;
- kidnapping, abduction, false imprisonment, extortion and coercion;
- patient abuse and neglect;
- rape and other sexual assaults, prostitution, obscenity and disseminating matter harmful to juveniles;
- arson and other property damage offenses;
- robbery, burglary, breaking and entering, safecracking and trespassing;
- theft, bad check and credit card offenses, forgery, fraud and other theft offenses;
- gambling;
- inciting violence;
- riot, disorderly conduct and false alarms;

- certain aspects of abortion, nonsupport, endangering children and domestic violence;
- bribery, perjury, resisting arrest, harboring criminals, escape, graft, conflict of interest, dereliction of public duty and violation of civil rights;
- conspiracy, attempt and complicity;
- weapons and explosives control;
- corrupt activity (racketeering); and
- drug offenses including possession, sale, manufacture and cultivation.

### **Crimes Outside the *Ohio Criminal Code***

Besides the crimes defined in Title 29, a number of other criminal offenses are enumerated in the *Ohio Revised Code*. Some, such as traffic and liquor control offenses, are grouped in a single chapter, while others are spread throughout the Code.

Many are regulatory offenses and these address such matters as motor vehicle licensing and registration, agricultural products and raw materials, weights and measures, hunting and fishing, boating, licensing of professionals, public health and elections.

Municipal ordinances, while duplicating many state misdemeanors, also cover local issues such as building repairs, property care, noisy neighbors, curfews and pets. Under the Ohio Constitution, municipalities cannot create felonies.

The *United States Code* contains federal criminal offenses, applicable nationwide. Federal offenses include crimes committed across state lines, on federal property or against federally insured banks. Overall, a very small percentage of criminal cases involve federal offenses. The vast majority of criminal prosecutions take place in state courts and involve violations of state statutes and local ordinances.

# Penalties and Sentencing

One of the most important features of the *Ohio Criminal Code* is its plan for penalties and sentencing and its treatment of offenders. Penalties are listed according to the comparative seriousness of offenses. Within each degree of crime a range of penalties is provided, permitting judges to tailor penalties to individual offenders rather than basing the penalties on their offenses alone. The sentencing law provides that judges should give progressively strict penalties for certain repeat offenders, for those who use or threaten the use of violence and for those who use or carry firearms while committing a crime. (*See chart on page 36 showing potential felony penalties and sentencing under Ohio law.*)

## Penalties

The *Ohio Criminal Code* was revised in July 1996, when Senate Bill 2 became law. Now, in most cases, the prison sentence imposed in open court upon a convicted felon is the actual time he or she will serve, minus credit for any time spent in jail while awaiting trial or sentencing.

Before the law was changed, judges would impose indeterminate sentences (e.g., “5 to 25 years”). The length of time offenders actually served would be reduced for good behavior. The ultimate release date would be determined by the Parole Board.

Ultimate control over each offender’s actual sentence is now left to the sentencing judge. The law prevents the Parole Board from releasing people from non-life sentences for acts committed after July 1996. With very narrow exceptions, only a judge can modify a sentence. The judge can do this by *judicial release* (formerly known as *shock probation*) for eligible offenders and by allowing the offender to be placed in a boot camp treatment or furlough program.

The length of an inmate’s sentence may be changed without direct input from a judge only if the inmate earns credit while in prison. An *earned credit* reduces a sentence by one day for each month an inmate participates in meaningful school, work, training or treatment programs.

## Mandatory Terms

While judges have latitude in selecting an appropriate sentence from the range available for misdemeanors or felonies, some crimes carry mandatory jail or prison terms. In those cases, the judge must send the person to prison or jail. Sometimes, the amount of time is specified (e.g., an additional three years for using a firearm during a felony). However, for most mandatory terms, the judge can exercise discretion in selecting the actual duration of the offender’s prison term.

A prison term must be imposed for offenders convicted of criminal acts in the following cases:

- aggravated murder when a death sentence is not imposed;
- murder;
- any rape and any attempted rape when the victim is younger than 13 years old;
- first- or second-degree felonies when the offender has a prior second-degree or higher felony conviction;
- first-, second-, or third-degree drug offenses when specified as mandatory by statute;
- corrupt activity (racketeering) when the most serious underlying offense is a first-degree felony;
- felony vehicular homicides and assaults or drunk driving when specified by statute;
- having a firearm in the commission of a felony;
- gross sexual imposition or sexual battery if the offender has a prior conviction for either, or for rape, involving a victim under age 13;
- any sexual offense where the indictment states that the perpetrator is found to be a sexually violent offender;
- the wearing or carrying of body armor while committing a felony; and

- illegal conveyance, by a prison employee, of contraband items (such as narcotics, alcoholic beverages, weapons or pornography) into a prison facility.

Individuals defined as *repeat violent offenders* and *major drug offenders* face long mandatory terms and can have as many as 10 years added to their sentences. According to Ohio law, a judge must add three years to prison terms for those using, possessing or brandishing a firearm while committing a felony. If the firearm was not visible or indicated during the crime, an additional one-year term is mandated. When the firearm is an automatic or equipped with a silencer, the mandatory sentence is six years.

The offender serves a mandatory term for using a firearm before and separate from the term served for the crime the offender was convicted of committing. Firearm sentences cannot be served simultaneously (concurrently) with the original offense, and they cannot be suspended or reduced other than through credit for jail time served.

## Sentencing Discretion

Although the *Ohio Criminal Code* gives judges sentencing discretion, the discretion is guided by some basic rules, particularly in felony cases. Generally, for first- and second-degree felonies, the law presumes a prison term is needed to punish the offender and protect the public. For fourth- and fifth-degree felonies, the law steers some offenders toward prison while steering many property and non-violent offenders toward *community control sanctions* (community control sanctions are explained later in this chapter).

In deciding whether to sentence a person to prison for a fourth- or fifth-degree felony, the judge must first determine if the offense:

- brought physical harm to a person;
- involved an attempted or actual threat of harm with a weapon;
- involved an attempted or actual threat of such harm without a weapon when the offender has a prior conviction for causing harm;
- was committed by an offender possessing a firearm;
- was related to a public office or position of trust;
- was for hire or as part of organized crime;
- was a sex offense;
- was committed by an offender who has been to prison before; or
- was committed while the offender was under indictment or under community control for another offense.

If any of these factors is present, the *Ohio Criminal Code* steers the judge toward imposing a prison sentence, provided the court finds the offender is not a good candidate for available community sanctions. If none of the factors is present, the judge is steered toward community sanctions.

Judges can choose not to follow the *Ohio Criminal Code*'s guidance in favor of or against a prison term when choosing a sentence. For example, a judge may order a community drug-rehabilitation program rather than a prison sentence for a second-degree felon who has a history of drug dependency but no other criminal record. A judge can also sentence repeat non-violent offenders if it is determined that the offender deserves to go to prison and is not amenable to community control. However, if the judge goes against the guidance, he or she must give reasons for the decision.

In every felony case, the sentence must serve to punish the offender and protect the public. Judges must look at factors indicating whether the crime was more serious or less serious and factors suggesting whether the offender is more or less likely to repeat the crime.

In sentencing for misdemeanor offenses, the judge must consider factors similar to those considered when sentencing felons, including the risk of a repeated offense, the need to protect the public, the nature and circumstances of the offense, victim-impact statements, the history/character/condition of the offender, the offender's need for correctional or rehabilitative treatment and the offender's ability to pay a fine, if a fine is imposed. But the law is less strict about judges

giving reasons for sentences in misdemeanor cases, and sentence appeals are far less common.

Victims of crime, as well as the victim's family members, may provide input in the sentencing process by way of *impact statements*. There are two kinds of victim impact statements. One is an actual statement made by the victim or the victim's family members at sentencing. It can be made orally in court or in writing. Such a statement allows the person or persons most affected by a particular crime to tell the judge how the crime has affected them. The other kind of impact statement is information a victim gives to a probation officer as part of a pre-sentence investigation. The pre-sentence investigation is ordered by the judge to gather information (such as the offender's criminal history, social history, employment record, financial situation, personal characteristics, family situation and physical and mental condition) before choosing an appropriate sentence. The probation officer gives this information, including the victim's impact statement, to the judge, and it generally remains confidential.

After reviewing the pre-sentence report, and after having heard from the victims and the defendant in open court, the judge determines the sentence to be imposed. A judge is more likely to be lenient with a first-time offender, provided leniency does not mock the seriousness of the offender's crime or the likelihood that the offender will commit future crimes. A judge is more likely to be severe when the offender is a repeat or a dangerous offender.

The *Ohio Criminal Code* generally instructs judges that a prison-bound felon should be sentenced to the minimum term if the offender has not previously served a prison sentence. A judge

can choose a longer term, provided it is consistent with other basic sentencing principles. Conversely, the Code instructs judges to impose the longest sentence, from the range stated by law, for the worst offenders. If the court imposes the longest ("maximum") sentence, the defendant has the right to have a court of appeals review the sentence.

If a felon or misdemeanant does not face mandatory prison or jail time, the judge may sentence the offender to community control sanctions or probation rather than prison or jail. Judges may place some felons on community control after they have served a certain portion of their prison terms. The time to be served before seeking early judicial release varies depending on the length of the sentence. However, these options are not available to those sentenced to mandatory prison terms.

While mandatory sentencing reduces judges' ability to modify sentences, most crimes do not carry mandatory terms. For all of these non-mandatory offenses, judges' sentencing latitude includes:

- ordering a sentence to be served in a local jail on weekends or overnight, enabling the offender to keep a job and maintain family responsibilities (much more common for misdemeanants than for felons);
- suspending all or any portion of a fine imposed for an offense or permit payment in installments;
- providing for commitment and treatment options for offenders determined to be mentally deficient, mentally ill or drug- or alcohol-dependent.

## Felony Penalty Table

<b>Felony Level</b>	<b>Sentencing Guidance</b> §2929.13 (B)-(E)	<b>Prison Terms</b> §2929.14 (A)	<b>Maximum Fine*</b> §2929.18 (A)(2) & (3)	<b>Repeat Violent Offender Enhancement</b> §2929.14 (D)(2)	<b>Is Post-Release Control Required?</b> §2967.28(B) & (C)	<b>PCR Period</b> §2967.28(B) & (D)(2)
<b>F-1</b>	Presumption for prison (also applies to “in favor” drug offenses)	3, 4, 5, 6, 7, 8, 9, or 10 years	\$20,000	1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years	Yes	5 years, no reduction
<b>F-2</b>		2, 3, 4, 5, 6, 7, or 8 years	\$15,000			For F-2 involving attempted serious harm or for invol. manslaughter: 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years; otherwise none
<b>F-3</b>	No guidance other than purposes & principles (also applies to “Div. (C)” drug offenses)	1, 2, 3, 4, or 5 years	\$10,000	None	Yes if sex offense; otherwise optional	
<b>F-4</b>	If any of 9 factors & not amenable to other sanction(s), guidance for prison. If none of 9 factors, guidance against prison. (Also applies to “Div. (B)” drug offenses)	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months	\$5,000			None
<b>F-5</b>	guidance against prison. (Also applies to “Div. (B)” drug offenses)	6, 7, 8, 9, 10, 11, or 12 months	\$2,500			

**Judicial Release** (§2929.20)--**Eligibility**-Any non-mandatory term ≤ 10 years. (If serving such a non-mandatory term consecutive to a mandatory term, eligible after serving mandatory.) **Filing**-If F-4 & F-5, file in 30 to 90 days; if F-1, F-2, & F-3 serving < 5 years, file after 180 days; if serving 5 years, file after 4 years; if serving 5+ to 10 years, file after 5 years. **Hearing**-May deny without hearing. Must hold hearing before granting. **Presumption**-Against granting to F-1 or F-2.

**Repeat Violent Offenders** are (§2929.01(DD)): (1) Being sentenced for: agg. murder, murder, involuntary manslaughter, any non-drug F-1, or any drug F-1 or any F-2 resulting in death or physical harm, including complicity or attempt (prior may be as juvenile); (2) Previously served, or is serving, a prison term for agg. murder, murder, involuntary manslaughter, rape, FSP, or another F-1 or F-2 resulting in death or physical harm, including complicity or attempt.

**Drug Offenses**--Note penalties track degree of offense, but the sentencing guidance may be different than for other offenses at that level.

\***Maximum Fines**--Cover conventional and day fines. There are possible exceptions in drug trafficking cases (§2929.18(B)(4)-(7)). And, if a superfine is available, the maximum is \$1 million (§2929.25). (For the fine when the offender is an organization, see §2929.31.)

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## Misdemeanor Penalty Table

Misdemeanors are punishable by a definite term in jail, or a fine, or both. Minor misdemeanors are punishable only by a fine of \$150 or less. The judge fixes the sentence from the permissible range. Jail terms and fines may not exceed the maximums specified in the statute. The following table contains the basic misdemeanor jail terms and fines stated in the *Ohio Criminal Code*. (The judge also may impose a jail term, suspend it, and place the misdemeanant on probation.) NOTE: This table does not specifically cover the mandatory jail or prison sentences to be imposed when an offender is convicted of driving while under the influence of alcohol or drugs.

<b>Misdemeanor Jail Terms and Fines</b>		
<u>Offense</u>	<u>Maximum Term</u>	<u>Maximum Fine</u>
1st degree misdemeanor	180 days	\$1,000
2 <sup>nd</sup> degree misdemeanor	90 days	\$750
3 <sup>rd</sup> degree misdemeanor	60 days	\$500
4 <sup>th</sup> degree misdemeanor	30 days	\$250
Minor misdemeanor	None	\$150

## Goals of Sentencing and Corrections

Because Ohio's felony-sentencing system is designed to punish offenders and protect the public from future crimes, courts are asked to assess and balance needs for incarceration, rehabilitation, restoring victims' losses, deterring crime and, in some cases, retribution. Somewhat less formally, courts must make similar assessments when dealing with misdemeanor offenders.

One way to protect the public from future crime is to rehabilitate offenders. This is why the sentencing laws generally allow judges discretion in imposing sentences. However, the law recognizes that not all offenders respond in the same way to efforts aimed at rehabilitation and that, sometimes, there is little chance that an offender will be rehabilitated. In cases where public safety is endangered, the law provides for the offender's long-term removal from society.

## Community Control Sanctions

Since the mid 1990s, in response to crowded and expensive prisons not suited for rehabilitation, the Ohio General Assembly has formally listed a variety of alternatives to prison. These alternatives hold offenders accountable for their crimes while addressing the underlying causes.

Felons not facing mandatory prison terms are eligible for the following residential and non-residential sanctions outlined in the *Ohio Criminal Code* (the non-residential and financial sanctions also are available to misdemeanants):

- residential sanctions including community-based correctional facilities, jails, minimum-security jails and halfway houses;
- non-residential sanctions including house arrest and electronic monitoring; community service; drug testing; drug treatment; basic supervision; intensive supervision; monitored time; alcohol monitoring; curfew; employment; education or training; victim-offender mediation; anger management programs; license-violation reports; and day reporting that allows the offender out of jail for work, training or treatment;
- financial sanctions that can include conventional fines, fines based on a standard percentage of the offender's daily income over a period of time, mandatory fines in higher-level drug cases, restitution to victims for their economic loss, and reimbursement for the costs of sanctions or for the costs of jail or prison;
- boot camps, intense regimens of work, school, training or treatment monitored by the state prison authorities.

Boot camp typically involves 90-day periods of incarceration with military-style discipline, physical training and labor, substance-abuse education, psychological treatment and social and employment skills training. Incarceration is followed by a 30- to 90-day stay in a halfway house or community-based correctional facility, followed by a period of supervision in the community.

Eligibility for the program is limited to offenders who are approved by the trial judge

and the prison officials, and who are generally healthy, young, nonviolent inmates who have not spent much time in prison.

### **Intervention in Lieu of Conviction and Diversion Programs**

The Ohio General Assembly provides that certain non-violent drug users (not sellers) who are amenable to treatment can enter and complete an intervention program before being found guilty of the crime for which they are charged. If the offender is unsuccessful in the program, he or she is convicted of the offense and generally is sentenced to prison. Common pleas judges administer this program.

The Ohio General Assembly also authorizes county prosecutors to administer felony diversion programs. To be eligible for diversion, individuals must be first-time non-violent offenders who can successfully complete a diversion program with conditions that include restitution to the victim(s), if any, employment, community service and no offenses during the time in the program.

## **Criminal Law and Constitutional Rights**

The U.S. and Ohio constitutions provide people accused of crimes with basic rights that are designed to protect the individual from unreasonable government intrusion and to ensure fundamental fairness. These rights are so important that violating them may result in the suppression of evidence or dismissal of criminal charges and/or charges against those responsible for violating those rights.

The following is an outline of some basic constitutional rights under the law.

### **Equal Protection Under the Law**

The 14th Amendment to the U.S. Constitution entitles everyone to equal protection under the law. In the criminal law context, this means the

law must be the same for everyone regardless of race, creed or economic standing.

### **Due Process of Law**

The 14th Amendment also prohibits the state or federal government from taking away a person's life, liberty or property without *due process of law*. This means that the laws must be enforced only through a rational procedure that is constructed and used to ensure fundamental fairness. Due process prevents an accused person from arbitrarily being fined, jailed or otherwise punished. Guilt or innocence must be determined fairly, impartially and in a timely manner through an appropriate procedure, such as a hearing, where the accused has the opportunity to face his or her accusers and to offer a defense.

### **Double Jeopardy**

Both the U.S. and Ohio constitutions provide that no one can be placed in jeopardy, or tried, more than once for the same crime. In general, this means that in criminal prosecutions, the state has only one chance to prove the accused committed the crime. If a person is found not guilty, the state cannot appeal or attempt to try that person again. The same is true if an accused is found guilty. The state cannot accuse a person again and attempt to inflict double punishment for the crime. The rule prohibiting a second trial does not apply if the second trial is held when the accused was found guilty and the guilty finding was overturned on appeal.

### **Search and Seizure**

The U.S. and Ohio constitutions prohibit unreasonable searches and seizures. Generally, law enforcement officers need a search warrant to search a person or property. Only judges can issue search warrants when there is probable cause to believe that a search will uncover particular evidence of a crime. Searches without warrants also are permitted in certain situations, such as in connection with a lawful arrest, when the search

is conducted with the permission of the person whose property is being searched or when the items found are in plain view of the officer.

### **Self-Incrimination**

Individuals cannot be compelled, tortured, frightened, coerced or tricked into self-incrimination. This means a person cannot be forced to confess or make damaging statements or even any statement at all that might suggest wrongdoing. During a trial, the accused cannot be forced to testify (be a witness). Likewise, if the accused decides to remain silent, the prosecution cannot suggest to the jury that silence indicates guilt.

### **Right to Counsel**

Everyone is constitutionally entitled to the services of an attorney when accused of a crime. If a prison sentence is a possible punishment for the crime and the accused cannot afford an attorney, the state must provide one. In serious cases, legal counsel must be provided at all significant steps of the procedure, from arrest and police questioning through arraignment, trial and appeal, if necessary.

### **Indictment by a Grand Jury**

Both the U.S. and Ohio constitutions provide that no one can be brought to trial for a felony unless a grand jury hands down an *indictment*, or the prosecutor files an *information* statement saying that there is “probable cause” to believe the accused has committed the crime. Indictment by a grand jury helps ensure that no one is subjected to trial on false or spiteful accusations.

### **Notice of Charge**

An accused person is entitled to fair notice of the specific charges against him or her. This notice allows the accused to prepare a defense intelligently. An accused cannot prepare a proper defense if the charge is a vague statement of some unspecified wrongdoing.

### **Speedy Trial**

The U.S. and Ohio constitutions state that a person charged with a crime is entitled to a speedy trial so that the matter will not be hanging over the accused person’s head indefinitely.

Ohio time limits are provided by statute and are extended only for good reasons. The maximum time limits for a hearing or trial after an arrest or summons service are:

- 30 days for trial in mayors’ courts or minor misdemeanors in any court;
- 45 days for misdemeanors carrying a maximum penalty of 60 days in jail;
- 90 days for more serious misdemeanors;
- 15 days for preliminary hearings in felony cases;
- 270 days for trials in felony cases.

Ohio law provides that when counting prison time, each day spent in jail awaiting trial is counted as three days. For example, the accused felon who cannot make bail must be given a preliminary hearing within five days ( $15 \text{ days} \div 3 = 5$ ) after the arrest, and must be brought to trial within 90 days ( $270 \text{ days} \div 3 = 90$ ) after the arrest.

### **Public Trial in a Locality**

Both the U.S. and Ohio constitutions give an accused the right to a public trial, thus ensuring that trials are not held in secret, but are conducted openly, fairly and properly. An accused also has the right to be tried where the alleged offense was committed so that witnesses and evidence are readily available and the state cannot transfer the trial to a place where the atmosphere is hostile toward the accused. Even so, accused persons who believe they cannot get a fair trial in the place where the alleged crime occurred can have their trials transferred (called a *change of venue*).

### **Confronting Accusers and Securing Witnesses**

Both constitutions also state that defendants in criminal cases are entitled to meet the accusers and the witnesses against them. The Ohio

Constitution specifically requires that this confrontation occur face to face, allowing accused persons to question these witnesses and eliminating the use of anonymous witnesses. In some cases the courts have allowed a narrow exception to the face-to-face confrontation in some sex-offense cases involving young victims where the witness can testify by videotape. Likewise, accused persons are entitled to have their own witnesses be subpoenaed to speak on their behalf. Just as the state can force witnesses to testify, if necessary, so can the defense.

### **Trial by Jury**

Under the U.S. Constitution, a defendant is entitled to trial by jury if it is possible for the defendant to receive a punishment of more than six months in prison. Ohio's constitution and statutes are even more stringent and entitle an accused to a jury trial if the potential penalty is greater than a \$100 fine. There are eight jurors in a misdemeanor case, and 12 jurors in a felony case. All decisions, whether guilty or not guilty, must be unanimous. If the jurors cannot agree, there is a *hung jury* and the prosecution has the option to retry the accused or dismiss the charges.

### **Other Constitutional Rights**

In addition to the rights mentioned above, other constitutional rights are important in all criminal proceedings. These include constitutional prohibitions against certain kinds of laws as well as constitutional rights that limit criminal laws. The following paragraphs explain some of these constitutional rights.

Neither Congress nor the states can enact retroactive or *ex post facto* laws. This means a person's criminal liability must be established according to the law at the time the person committed the alleged crime. If a person's conduct was not considered a crime when it occurred, he or she cannot be subjected to liability under a subsequent or later law prohibiting the earlier conduct. Additionally, such a person cannot be subjected to a greater penalty or have a defense taken away by a subsequent law.

Both the U.S. and Ohio constitutions prohibit *cruel and unusual punishment* for crimes such as torture; death by barbaric, painful, or lingering means; and excessive punishments. (An example of an excessive punishment would be a prison term for a minor traffic offense.) Additionally, the Ohio Constitution prohibits punishments that include forcing an offender to give up personal property or family inheritance. However, if property is used in a crime (e.g., an automobile used in a drug transaction), it can be forfeited as part of a civil proceeding.

Criminal laws must be specific, in that they must make clear what people are prohibited from doing and what they are required to do.

The U.S. and Ohio constitutions also guarantee certain basic civil rights to everyone and state that laws prohibiting or interfering with these rights are invalid. Everyone is entitled to:

- practice a religion of choice;
- freely express and write their opinions as long as the opinions are not slanderous, libelous or pose a public danger;
- assemble for peaceful purposes; and
- petition the government to have grievances heard.

Similarly, the federal government cannot prohibit a state from forming a militia. Also, because of the U.S. and Ohio constitutions, persons in Ohio are entitled to keep and bear weapons for their own defense. However, the state and federal government can impose specific restrictions on the possession, sale or use of certain firearms. The state is also permitted to prohibit the carrying of concealed weapons and the possession of weapons, whether concealed or not, in liquor establishments, on airplanes or in jails or prisons.

### **Informing the Accused of Rights**

Accused persons cannot intelligently insist on or waive their constitutional rights if they are not fully aware of them. Accused persons must be informed of their rights in any case if they ask, or when police have them in custody and wish to interrogate them. These rights are called *Miranda*

warnings, and they were established as a result of a 1966 U.S. Supreme Court decision saying, in essence, that, before interrogation can begin, a suspect in custody must understand that he or she has certain constitutionally protected rights. For example, if someone is taken into custody, that person must be told of his or her right to remain silent, to have counsel and to have counsel provided at state expense if that person cannot afford it. The accused also must be given an explanation of his or her constitutional rights when appearing before a judge and entering a plea of guilty to any charge.

### **Waiver of Rights**

An accused individual can waive or forego a constitutional right. For example, an accused woman can confess to a crime, waiving the constitutional right that allows her to remain silent so as not to incriminate herself as long as the waiver is voluntary and is made with full knowledge of the rights being waived and of the consequences of waiving those rights.

### **Enforcement of Rights**

Constitutional rights can be enforced in a variety of ways:

- Evidence obtained through an unreasonable search or an involuntary confession can be *suppressed* or kept from being heard in court.
- A decision can be reversed and the case dismissed or remanded for a new trial if evidence is provided that shows these rights were violated, and that their violation was or could have influenced the outcome of the trial. Public officials responsible for violating constitutional rights can be liable for civil damages.

Under Ohio law, certain violations of civil rights constitute crimes. For example, public servants may not knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right while serving in public office. Individuals violating the law in this way are guilty of interfering with civil rights, a first-degree misdemeanor.

### **Review on Appeal**

In Ohio, a defendant who has a trial and is found guilty of a crime has the right of *appeal*. If the defendant cannot afford it, the state must provide legal counsel and a transcript of the trial proceedings. The appeal is limited to questions of law or issues appearing in the official court record (the trial transcript), or in papers filed in the case. If the court of appeals finds that an error occurred that affected the outcome of the trial, it will reverse the conviction and send the case back to the trial court for retrial or other proceedings. If no prejudicial error occurred (an error that might have unfairly prejudiced the jury against the defendant), the court of appeals will uphold the conviction.

In a capital case in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the judgment or final order may be appealed from the trial court directly to the Supreme Court of Ohio, as a matter of the defendant's statutory right. In contrast, the defendant in a non-death-penalty case will appeal to the court of appeals rather than to the Supreme Court of Ohio. If the defendant in a non-death-penalty case loses at the appeals level, he or she may *petition* (ask) the Supreme Court of Ohio to review the case. A defendant does not have an automatic right of review by the Supreme Court, except in capital cases in which a sentence of death has been imposed.

In general, the Supreme Court of Ohio does not have to accept an appeal in non-death-penalty cases, but may do so depending on the issues raised in the appeal and how the court of appeals' decision affects Ohio law. If the Supreme Court of Ohio decides not to hear the defendant's appeal or if it allows the appeal but then upholds the conviction, the defendant may petition the U.S. Supreme Court to review the case. The U.S. Supreme Court can review only issues involving rights granted or claimed under the U.S. Constitution. The high court is not required to allow an appeal, but may do so depending upon the issues presented in the appeal.

Strict time limitations must be met when filing an appeal, and a document called a *notice of appeal* must be filed within the required time to secure the review of a court decision by a higher court. If an appeal is *by right* (according to statutory law in death-penalty cases), counsel is always appointed to represent the defendant. If an appeal is not by statutory right (non-death-penalty cases), the accused must retain his or her own attorney or file the appeal *pro se* (on his or her own behalf).

Further, defendants generally have no right to counsel when asking the Supreme Court of Ohio or the U.S. Supreme Court to allow an appeal, although, in many cases, counsel may be appointed. The state public defender may represent a criminal defendant who has been convicted of a crime and wants to appeal to the Supreme Court of Ohio.

## Review of Sentence on Appeal

When the *Ohio Criminal Code* was revised in July 1996 it afforded new rights to appeal certain felony sentences to the court of appeals that serves the district in which the case was heard.

The defendant may appeal to the court of appeals when:

- the maximum prison term is imposed;
- there was guidance against a prison sentence and the judge sentenced the offender to prison anyway; and
- the sentence is otherwise contrary to law.

The prosecution may appeal to the same court of appeals when:

- a first- or second-degree felon did not receive a prison sentence;
- the felon is granted judicial release; and
- the sentence was otherwise contrary to law.

However, these rights to appeal do not apply if the sentence was based on a plea bargain, and was lawfully imposed. (The defendant also may appeal certain consecutive sentences, but the appellate court does not have to review these appeals, and they must be consolidated with other appeals in the case.)

## Post-Conviction Relief

The appeal procedure outlined above, referred to as *direct appeal*, only allows for a review of issues that appear in the record. Sometimes defendants claim errors occurred that violated their constitutional rights and contributed to their convictions, but the errors are not included in the court's record.

Because the errors claimed do not appear in the record, these cases cannot be reviewed through direct appeal, but a defendant may file a petition for post-conviction relief in the trial court in which he or she was convicted. The defendant must include evidence that is not in the record to support his or her claims. The petition may be denied without a hearing. Since there is no right to counsel in post-conviction proceedings, the defendant must secure counsel at his or her own expense or act as his or her own counsel (*pro se*), although the court may choose to appoint counsel in rare cases. The public defender generally will represent a defendant on post-conviction relief if the public defender believes a claim exists.

Lastly, a defendant may seek post-conviction relief if the sentencing pattern of an individual judge shows an impermissible bias based on the race, ethnicity, gender or religion of the defendant.

## Victims' Rights

Suffering at the hands of a criminal can be traumatic for anyone, and it becomes more frustrating if it is perceived that the criminal justice system treats victims unfairly.

Punishing criminal behavior through arrest, prosecution and sentencing, and protecting the public from future crimes are the primary functions of the criminal justice system. Because we live in a free society, the system requires balance between the power of the government and individual rights.

This interest in ensuring a balance of power has driven the system to focus on protecting the rights of the accused, which, in turn, has led some

to conclude that the system treats the accused better than the crime victims. Since the 1980s, this perception has given rise to a growing victims' rights movement, and laws have been enacted at both state and federal levels to address the issue.

Congress adopted the Victims and Witness Protection Act in 1982, making it a crime to intimidate a witness or retaliate against someone who testifies or provides evidence for the prosecution. The act allows prosecutors to take steps to protect a witness or victim and to obtain a restraining order for the witness's protection.

At the state level, the Ohio General Assembly has adopted a series of laws over the past two decades to help crime victims. These laws were consolidated and clarified by the Ohio Criminal Sentencing Commission. Emerging from that work were Senate Bill 186, adopted in 1994, and Senate Bill 2, which applies to crimes committed after July 1996.

State law now provides that victims must be notified about each key stage in a criminal case and that they must be given the opportunity to speak to the court before key decisions are made. The law also now centralizes all legislation pertaining to crime victims in Chapter 2930 of the *Ohio Revised Code*.

Because of the 1996 adoption of *definite* sentences (replacing indeterminate sentencing ranges), victims now have greater certainty about how their attackers will be punished. Other recent changes include extending rights to more misdemeanor victims, adding a victim of crime to the Parole Board and creating the Office of Victims' Services at the Ohio Department of Rehabilitation and Correction.

Some of the rights and protections provided to crime victims under current Ohio law are listed below:

- Victims in any felony case, and in misdemeanor cases involving actual or threatened violence, have the right to be informed about the process and the right to be heard.
- Law enforcement officers must give victims certain information when investigating a crime, including notice of any arrest in the case.

- When practical, prosecutors must meet with victims and brief them on pre-trial matters.
- A prosecutor must provide notice of proceedings, convictions and appeals in a case if the victim asks.
- A victim has the right to be present when the defendant is present at any proceeding that is on the record.
- Courts must consider victims' objections to delays and allow them to make victim-impact statements at sentencing.
- The court must consider the impact of the crime on the victim in choosing an appropriate sentence.
- Levels of compensation courts may provide to victims of crime have been increased.
- Upon request by a victim, prisons and jails must notify the victim when the victim's assailant is released.
- The court must make a reasonable effort to minimize contact between victims and defendants. When practical, separate court waiting rooms must be made available so victims do not have to be near the accused.
- Victims of sexual offenders are notified when the defendants are released from prison. All sex offenders must register with the county sheriff in the county in which they reside.
- Sexual offenders who are declared sexual predators and/or repeat sexual offenders must register with the county sheriff for at least 10 years and, in the case of sexual predators and some repeat sexual offenders, neighbors, schools and day care centers are notified by the sheriff of the county in which the offenders live. In larger cities, the location of sexual predators is on the Web sites of county sheriffs.
- The court may grant a motion to prevent disclosure of a victim's address, place of employment, or similar information when the victim fears violence or intimidation by the defendant.
- Employers may not discipline victims for the reasonable exercise of these rights.
- In most cases, victims are entitled to the prompt return of their property.

- Prosecutors have authority to seek compliance with the law on behalf of victims (e.g., if a court clerk ignores the law's victim notice

requirements, the prosecutor can petition the court to compel the clerk to follow the law).

## Chapter Summary

- In Ohio, all crimes must be written and defined by statute or ordinance.
- There are two major classifications of crimes: *felonies* and *misdemeanors*.
- Laws creating criminal offenses are found in the *Ohio Revised Code*, municipal ordinances and the *United States Code*.
- The *Ohio Criminal Code* outlines penalties, sentencing procedures and treatment of offenders for most criminal offenses.
- The overriding purposes of Ohio's felony-sentencing system are to punish offenders and to protect the public from future crime.
- The U.S. and Ohio constitutions provide people accused of a crime with basic rights.
- Since the 1980s, legislation has provided crime victims with certain rights.

## Web Links:

***From the OSBA's LawFacts pamphlet series:***

<http://www.ohioabar.org/pub/lawfacts/> (search by title)

“Being a Witness”

“Your Rights if Questioned, Stopped or Arrested by the Police”

***From the OSBA's "Law You Can Use" columns:***

<http://www.ohioabar.org/pub/lycu/> (search by title or topic)

“Criminals May Go Free When Constable Blunders”

“Guns at Home Can Make Parents Liable for Child's Criminal Actions”

“‘SYO’ Sentences Combine Juvenile and Adult Penalties for Serious Crimes”

“Understanding How Criminal Records Are Expunged”

“Victims of Domestic Violence Should Know Legal Remedies”

“What You Should Know about Crime Victims' Rights”

“What You Should Know about ‘Truth in Sentencing’ for Felons”

***From the Ohio Sentencing Commission:***

[http://www.sconet.state.oh.us/sentencing\\_commission/default.asp](http://www.sconet.state.oh.us/sentencing_commission/default.asp)

***From Hieros Gamos's Web site:***

<http://www.hg.org/crime.html>

***From Cornell Law School Legal Information Institute:***

[http://www.law.cornell.edu/wex/index.php/Criminal\\_law](http://www.law.cornell.edu/wex/index.php/Criminal_law)

[http://www.law.cornell.edu/wex/index.php/Criminal\\_procedure](http://www.law.cornell.edu/wex/index.php/Criminal_procedure)