



## Section IV

# criminal law

“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.

## Kinds of Crimes

There are two major classifications of crimes: *felonies* and *misdemeanors*. 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 kidnapping, 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.

## Criminal Codes

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. The *United States Code* contains federal criminal offenses, applicable nationwide.

# Penalties and Sentencing

## 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*. Often called “probation,” community control sanctions cover a wide variety of residential, non-residential and financial sanctions (see glossary).

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.

## Felony Sentencing 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			If sex offense, 5 years, no reduction;  otherwise, 3 years, reducible by Parole Board
<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	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	Yes if sex or violent 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	Yes if sex offense;  otherwise optional	
<b>F-5</b>		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.

Misdemeanor Jail Terms and Fines		
Offense	Maximum Term	Maximum Fine
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

## 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.

### 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.

## 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. 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.

## 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.

## 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.

## 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.

## Victims' Rights

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

## Covering Criminal Trials

Coverage of criminal trials, particularly of felony trials, normally draws intense media scrutiny and interest. As with other areas of court business but especially with criminal trials, reporters are encouraged to understand, research and report on the step-by-step process of criminal adjudication so that readers/viewers can understand and appreciate the differences among criminal indictments, pre-trial hearings, cross-examination and rules on sentencing, for instance.

In each criminal trial, it is the courtroom bailiff and assistants for the judges who will help to manage media presence at the trial. Reporters are advised to work closely with these individuals regarding coverage and access issues. In some cases, journalists may want to make arrangements ahead of time for seating passes, designations for cameras (if permitted), access to electronic equipment for filing, and parking for vans.

In high-profile criminal cases, the judge may impose rules and restrictions on media coverage, perhaps limiting the number of media in the courtroom, for instance, or requesting greater gallery cooperation from spectators. Judges, in these instances, are required to weigh the defendant's Sixth Amendment rights to a fair and impartial jury against the media's First Amendment rights to cover the trial. The U.S. Supreme Court has ruled that the public has a First Amendment right to attend criminal court proceedings. Judges are armed with other remedies (such as ordering a change of venue or

gagging trial participants) in the event that a defendant's fair trial rights may be compromised. Journalists are advised to be prepared for such limitations on coverage and should consult with their own attorneys about preparing for the possibility that a judge may limit or restrict coverage of court proceedings. In rare instances in which a judge decides to close or restrict access to court proceedings, a journalist may request a separate hearing to appeal the judge's decision. Journalists must be prepared to make such a request during the course of the proceedings.

Criminal trials can entail an element of theater. While it may be tempting for journalists to highlight the theatrics of lawyers or witnesses, it is more important for journalists to understand when a lawyer is using drama to make an effective legal point, and when the lawyer is simply engaging in show business that has little positive effect on the judge or jury. Gaining experience in understanding both legal procedure and the flow and theater of a courtroom proceeding can help those who cover the courts make these kinds of important distinctions for their readers and viewers. When covering a criminal trial, a reporter should not:

- come to a trial with preconceived notions or beliefs about the guilt or innocence of an accused person;
- risk missing important events by leaving the courtroom, except to file a story;
- pay too much attention to secondhand information heard outside of the courtroom;
- forget that lawyers represent their clients, and that any confidential information they may offer is likely designed to help their clients.

## Web Links:

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

<http://www.ohiobar.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.ohiobar.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)

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Campbell, Andrea and Ohm, Richard. *Legal Ease: A Guide to Criminal Law, Evidence and Procedure*. Charles C. Thomas Pub., Ltd., 2007