

OPINION NO. 2009-028

Syllabus:

2009-028

1. Pursuant to R.C. 2929.13-.18, a court of common pleas may sentence a person who is convicted of a felony to a term of house arrest with electronic monitoring in lieu of a prison term or jail term and order the person to pay the cost of such electronic monitoring, provided (1) the court is not required to impose a prison term,

mandatory prison term, or term of life imprisonment upon the person or precluded by law from imposing a term of house arrest with electronic monitoring upon the person, and (2) the imposition of a term of house arrest with electronic monitoring upon the person is consistent with the purposes and principles of sentencing set forth in R.C. 2929.11.

2. Pursuant to R.C. 2929.22 and R.C. 2929.24-.28, a court of common pleas or county court may sentence a person who is convicted of a misdemeanor, other than a minor misdemeanor, to a term of house arrest with electronic monitoring in lieu of a jail term and order the person to pay the cost of such electronic monitoring, provided (1) the court is not required to impose a jail term or mandatory jail term upon the person or precluded by law from imposing a term of house arrest with electronic monitoring upon the person, and (2) the imposition of a term of house arrest with electronic monitoring upon the person is an effective way to achieve the purposes and principles of sentencing set forth in R.C. 2929.21.
3. A court of common pleas or county court that is required to sentence a person who is convicted of a misdemeanor to a mandatory jail term may impose a term of house arrest with electronic monitoring in lieu of the mandatory jail term when the court has specific statutory authority to do so, and may, pursuant to R.C. 2929.28(A)(3)(a)(i), order the person to pay the cost of such electronic monitoring.
4. Neither a court of common pleas nor a county court has the authority to sentence a person found in contempt of court to a term of house arrest with electronic monitoring.

To: Aaron E. Haslam, Adams County Prosecuting Attorney, West Union, Ohio

By: Richard Cordray, Ohio Attorney General, July 15, 2009

You have requested an opinion whether a court of common pleas or county court may sentence a person to a term of house arrest with electronic monitoring in lieu of actual incarceration in the county jail when the person is convicted of a criminal offense or is found in contempt of court, and, if so, whether the cost of the electronic monitoring may be billed to the person.¹

Resolution of your question requires us first to parse the general sentencing

¹ Your question only concerns the authority of a court of common pleas or county court to impose a term of house arrest with electronic monitoring when sentencing a person who is convicted of a criminal offense. This opinion therefore does not address the propriety of imposing a term of house arrest with electronic monitoring in lieu of a suspension of all or a portion of a person's driver's or commercial driver's

authority of courts set forth in R.C. Chapter 2929. This chapter provides, in relevant part, that, except as provided in R.C. 2929.13(E)-(G) and unless a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, a court that imposes a sentence upon a person who is convicted of a felony may impose any sanction or combination of sanctions on the person that are provided in R.C. 2929.14-.18.² R.C. 2929.13(A).

One sentencing option available to courts in felony cases under R.C. 2929.14-.18 is community control sanctions. *See* R.C. 2929.15. When used in the context of R.C. Chapter 2929, the phrase “community control sanction” means “a sanction that is not a prison term and that is described in [R.C. 2929.15-.18] or a sanction that is not a jail term and that is described in [R.C. 2929.26-.28].” R.C. 2929.01(E).

Pursuant to R.C. 2929.13(B)(2), a court may, in lieu of a prison term, impose community control sanctions upon a person who is convicted of a felony as follows:

(a) If the court makes a finding described in [R.C. 2929.13(B)(1)] and if the court, after considering the factors set forth in [R.C. 2929.12], finds that a prison term is consistent with the purposes and principles of sentencing set forth in [R.C. 2929.11] and finds that the offender is not amenable to an available community control sanction, the court shall impose a prison term upon the offender.

license or permit or nonresident operating privilege, *see* R.C. 4510.037(G), or as a term or condition of bail, transitional control, post-release control, conditional release, judicial release, an intervention plan, a serious youthful offender dispositional sentence, or order of disposition, *see* R.C. 2152.13(D)(1)(a); R.C. 2152.14(E)(2); R.C. 2152.19(A)(4)(k); R.C. 2152.20(A)(4)(a); R.C. 2929.14(F); R.C. 2929.20; R.C. 2951.041(C)-(D); R.C. 2967.26; R.C. 2967.28-.29; R.C. 2971.05; R.C. 5120.031-.033; Ohio R. Crim. P. 46(B)(3).

Also, your question only concerns imposing a term of house arrest with electronic monitoring in lieu of actual incarceration in the county jail. In many instances Ohio statutes grant a court of common pleas or a county court the authority to impose a sentence consisting of both a term of actual incarceration in the county jail and a term of house arrest with electronic monitoring. *See, e.g.*, R.C. 1547.99(G)(1); R.C. 2929.13(A); R.C. 2929.14(D)(4); R.C. 2929.15(A)(1); R.C. 2929.17; R.C. 2929.22(A); R.C. 2929.25(A)(1); R.C. 4511.19(G).

Finally, this opinion does not consider the propriety of a court of common pleas or county court to impose a term of house arrest with electronic monitoring along with other community control sanctions unless the additional sanction is for the payment of the cost of such electronic monitoring. *See, e.g.*, R.C. 2929.13(A); R.C. 2929.15(A)(1); R.C. 2929.25(A)(1)(a).

² As used in R.C. Chapter 2929, a “sanction” is “any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. ‘Sanction’ includes any sanction imposed pursuant to any provision of [R.C. 2929.14-.18] or [R.C. 2929.24-.28].” R.C. 2929.01(DD).

(b) Except as provided in [R.C. 2929.13(E)-(G)], if the court does not make a finding described in [R.C. 2929.13(B)(1)] and if the court, after considering the factors set forth in [R.C. 2929.12], finds that a community control sanction or combination of community control sanctions is consistent with the purposes and principles of sentencing set forth in [R.C. 2929.11], the court shall impose a community control sanction or combination of community control sanctions upon the offender.

The authority of a court to impose community control sanctions in felony cases is further described in R.C. 2929.15(A)(1), which provides, in part: “If in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions authorized pursuant to [R.C. 2929.16-.18].” Accordingly, pursuant to R.C. 2929.13(A)-(B) and R.C. 2929.15(A)(1), a court may, in lieu of a prison term or jail term,³ impose community control sanctions upon a person who is convicted of a felony, provided (1) the court is not required to impose a prison term, mandatory prison term, or term of life imprisonment upon the person⁴ or precluded by law from imposing a term of house arrest with electronic monitoring upon the person,

³ A court may, in lieu of a prison term, impose a jail term upon a person who is convicted of a felony, provided (1) the court is not required to impose a prison term, mandatory prison term, or term of life imprisonment upon the person or precluded by law from imposing a jail term upon the person, and (2) the imposition of a jail term is consistent with the purposes and principles of sentencing set forth in R.C. 2929.11. *See* R.C. 2929.13(A)-(B); R.C. 2929.15(A)(1); R.C. 2929.16(A).

⁴ R.C. 2929.01 defines the terms “mandatory prison term” and “prison term” for purposes of R.C. Chapter 2929 as follows:

(X) “Mandatory prison term” means any of the following:

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (18) of [R.C. 2929.13] and [R.C. 2929.14(D)]. Except as provided in [R.C. 2925.02, R.C. 2925.03, R.C. 2925.04, R.C. 2925.05, and R.C. 2925.11], unless the maximum or another specific term is required under [R.C. 2929.14 or R.C. 2929.142], a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to [R.C. 2929.13(G)(2)] and division (G)(1)(d) or (e) of [R.C. 4511.19] or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to [R.C. 2929.13(G)(2)].

(3) The term in prison imposed pursuant to [R.C. 2971.03(A)] for the offenses and in the circumstances described in [R.C. 2929.13(F)(11)] or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of [R.C. 2971.03] and that term as modified or terminated pursuant to [R.C. 2971.05].

and (2) the imposition of a term of house arrest with electronic monitoring upon the person is consistent with the purposes and principles of sentencing set forth in R.C. 2929.11.

Community control sanctions may consist of nonresidential and financial sanctions. The specific power of a court to impose nonresidential sanctions in felony cases is set forth in R.C. 2929.17, which provides, in part:

Except as provided in this section, the court imposing a sentence for a felony upon an offender who is not required to serve a mandatory prison term may impose any nonresidential sanction or combination of nonresidential sanctions authorized under this section

. . . . *Nonresidential sanctions include*, but are not limited to, the following:

. . . .

(B) *A term of house arrest with electronic monitoring* or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest without electronic monitoring or continuous alcohol monitoring. (Emphasis added.)

R.C. 2929.18(A), which governs the imposition of financial sanctions in felony cases, states further that,

[e]xcept as otherwise provided in this division and in addition to imposing court costs pursuant to [R.C. 2947.23], the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section *Financial sanctions that may be imposed pursuant to this section include*, but are not limited to, the following:

. . . .

(5)(a) *Reimbursement by the offender of any or all of the costs of sanctions incurred by the government*, including the following:

(i) *All or part of the costs of implementing any community control sanction* (Emphasis added.)

. . . .

(BB) "Prison term" includes either of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to [R.C. 2929.20, R.C. 2967.26, R.C. 5120.031, R.C. 5120.032, or R.C. 5120.073].

As explained earlier, a term of house arrest with electronic monitoring imposed under R.C. 2929.17 is a community control sanction. This means that R.C. 2929.18(A)(5)(a)(i) authorizes a court in a felony case to order a person who is sentenced to a term of house arrest with electronic monitoring to pay for the cost of such electronic monitoring. Our review of R.C. 2929.13-.18 thus discloses that a court may sentence a person who is convicted of a felony to a term of house arrest with electronic monitoring in lieu of a prison term or jail term and order the person to pay the cost of such electronic monitoring, provided (1) the court is not required to impose a prison term, mandatory prison term, or term of life imprisonment upon the person or precluded by law from imposing a term of house arrest with electronic monitoring upon the person, and (2) the imposition of a term of house arrest with electronic monitoring upon the person is consistent with the purposes and principles of sentencing set forth in R.C. 2929.11.

Authority similar to that found in R.C. 2929.13-.18 is also found in the statutes governing sentencing in misdemeanor cases. R.C. 2929.22 provides, in relevant part:

(A) Unless a mandatory jail term is required to be imposed by [R.C. 1547.99(G), R.C. 4510.14(B), R.C. 4511.19(G)], or any other provision of the Revised Code a court that imposes a sentence under this chapter upon an offender for a misdemeanor or minor misdemeanor has discretion to determine the most effective way to achieve the purposes and principles of sentencing set forth in [R.C. 2929.21].

Unless a specific sanction is required to be imposed or is precluded from being imposed by the section setting forth an offense or penalty for an offense or by any provision of [R.C. 2929.23-.28], *a court that imposes a sentence upon an offender for a misdemeanor may impose on the offender any sanction or combination of sanctions under [R.C. 2929.24-.28] . . .*

(C) Before imposing a jail term as a sentence for a misdemeanor, a court shall consider the appropriateness of imposing a community control sanction or a combination of community control sanctions under [R.C. 2929.25-.28]. (Emphasis added.)

In addition, R.C. 2929.25 further elaborates on the authority of a court to impose sanctions upon a person in a misdemeanor case as follows:

(A)(1) Except as provided in [R.C. 2929.22] and [R.C. 2929.23] or when a jail term is required by law, in sentencing an offender for a misdemeanor, other than a minor misdemeanor, the sentencing court may do either of the following:

(a) Directly impose a sentence that consists of one or more community control sanctions authorized by [R.C. 2929.26-.28] . . .

(b) Impose a jail term under [R.C. 2929.24] from the range of jail

terms authorized under that section for the offense, suspend all or a portion of the jail term imposed, and place the offender under a community control sanction or combination of community control sanctions authorized under [R.C. 2929.26-.28].

Thus, pursuant to R.C. 2929.22 and R.C. 2929.25(A), a court may, in lieu of a jail term, impose community control sanctions upon a person who is convicted of a misdemeanor, other than a minor misdemeanor, provided (1) the court is not required to impose a jail term or mandatory jail term upon the person⁵ or precluded by law from imposing a term of house arrest with electronic monitoring upon the person, and (2) the imposition of a term of house arrest with electronic monitoring upon the person is an effective way to achieve the purposes and principles of sentencing set forth in R.C. 2929.21.

The community control sanctions that a court may impose upon a person in misdemeanor cases include nonresidential and financial sanctions. With respect to the authority of a court to impose nonresidential sanctions, R.C. 2929.27 states, in relevant part:

(A) Except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any nonresidential sanction or combination of nonresidential sanctions authorized under this division. *Nonresidential sanctions include*, but are not limited to, the following:

.....

(2) *A term of house arrest with electronic monitoring* or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest without electronic monitoring or continuous alcohol monitoring. (Emphasis added.)

A court that is required to sentence a person who is convicted of a misde-

⁵ The terms “jail term” and “mandatory jail term,” as used in R.C. Chapter 2929, are defined as follows:

(S) “Jail term” means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to [R.C. 2929.24 or R.C. 2929.25] or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(T) “Mandatory jail term” means the term in a jail that a sentencing court is required to impose pursuant to [R.C. 1547.99(G), R.C. 2929.24(E), R.C. 2929.24(G), R.C. 2903.06(E), R.C. 2903.08(D), R.C. 4510.14(B), or R.C. 4511.19(G)] or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

R.C. 2929.01.

meanor to a mandatory jail term may also impose a term of house arrest with electronic monitoring in lieu of the mandatory jail term when the court has specific statutory authority to do so. *See, e.g.*, R.C. 1547.99(G); R.C. 4510.14(B)-(C); R.C. 4511.19(G)(1)(a).

Moreover, when sentencing a person in a misdemeanor case, a court has the authority to include in the sentence a financial sanction requiring the person to provide reimbursement for any and all of the costs of implementing any community control sanction:

In addition to imposing court costs pursuant to [R.C. 2947.23], the court imposing a sentence upon an offender for a misdemeanor, including a minor misdemeanor, may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section. If the court in its discretion imposes one or more financial sanctions, the *financial sanctions that may be imposed pursuant to this section include*, but are not limited to, the following:

. . . .
 (3)(a) *Reimbursement by the offender of any or all of the costs of sanctions incurred by the government*, including, but not limited to, the following:

(i) *All or part of the costs of implementing any community control sanction . . .* (Emphasis added.)

R.C. 2929.28(A).

Because we previously indicated that a term of house arrest with electronic monitoring is a community control sanction, R.C. 2929.28(A)(3)(a)(i) authorizes a court in a misdemeanor case to order a person to pay for the cost of such electronic monitoring. Accordingly, pursuant to R.C. 2929.22 and R.C. 2929.24-.28, a court may sentence a person who is convicted of a misdemeanor, other than a minor misdemeanor, to a term of house arrest with electronic monitoring in lieu of a jail term and order the person to pay the cost of such electronic monitoring, provided (1) the court is not required to impose a jail term or mandatory jail term upon the person or precluded by law from imposing a term of house arrest with electronic monitoring upon the person, and (2) the imposition of a term of house arrest with electronic monitoring upon the person is an effective way to achieve the purposes and principles of sentencing set forth in R.C. 2929.21. Also, a court that is required to sentence a person who is convicted of a misdemeanor to a mandatory jail term may impose a term of house arrest with electronic monitoring in lieu of the mandatory jail term when the court has specific statutory authority to do so, and may, pursuant to R.C. 2929.28(A)(3)(a)(i), order the person to pay the cost of such electronic monitoring.

Let us now consider your specific question, which asks whether a court of common pleas or county court may sentence a person to a term of house arrest with electronic monitoring in lieu of actual incarceration in the county jail when the

person is convicted of a criminal offense or is found in contempt of court, and, if so, whether the cost of the electronic home monitoring may be billed to the person. Pursuant to R.C. 2931.03, a court of common pleas hears felony and misdemeanor cases. As a result, a court of common pleas confronts instances in which it is required to sentence a person who is convicted of a felony or misdemeanor.

As explained above, when a court sentences a person who is convicted of a felony or misdemeanor, the court may exercise the powers conferred upon it by R.C. 2929.13-.18, R.C. 2929.22, R.C. 2929.24-.28, or any other relevant sentencing statute. This includes the power to sentence the person to a term of house arrest with electronic monitoring in lieu of a term of incarceration in a prison or jail and order him to pay the cost of such electronic monitoring.

Accordingly, pursuant to R.C. 2929.13-.18, a court of common pleas may sentence a person who is convicted of a felony to a term of house arrest with electronic monitoring in lieu of a prison term or jail term and order the person to pay the cost of such electronic monitoring, provided (1) the court is not required to impose a prison term, mandatory prison term, or term of life imprisonment upon the person or precluded by law from imposing a term of house arrest with electronic monitoring upon the person, and (2) the imposition of a term of house arrest with electronic monitoring upon the person is consistent with the purposes and principles of sentencing set forth in R.C. 2929.11. Also, pursuant to R.C. 2929.22 and R.C. 2929.24-.28, a court of common pleas may sentence a person who is convicted of a misdemeanor, other than a minor misdemeanor, to a term of house arrest with electronic monitoring in lieu of a jail term and order the person to pay the cost of such electronic monitoring, provided (1) the court is not required to impose a jail term or mandatory jail term upon the person or precluded by law from imposing a term of house arrest with electronic monitoring upon the person, and (2) the imposition of a term of house arrest with electronic monitoring upon the person is an effective way to achieve the purposes and principles of sentencing set forth in R.C. 2929.21. Moreover, a court of common pleas that is required to sentence a person who is convicted of a misdemeanor to a mandatory jail term may impose a term of house arrest with electronic monitoring in lieu of the mandatory jail term when the court has specific statutory authority to do so, and may, pursuant to R.C. 2929.28(A)(3)(a)(i), order the person to pay the cost of such electronic monitoring.

Like a court of common pleas, a county court has jurisdiction over misdemeanor cases, R.C. 1907.02(A)(1), and, as such, has the same authority as a court of common pleas when sentencing a person who is convicted of a misdemeanor. Therefore, pursuant to R.C. 2929.22 and R.C. 2929.24-.28, a county court may sentence a person who is convicted of a misdemeanor, other than a minor misdemeanor, to a term of house arrest with electronic monitoring in lieu of a jail term and order the person to pay the cost of such electronic monitoring, provided (1) the court is not required to impose a jail term or mandatory jail term upon the person or precluded by law from imposing a term of house arrest with electronic monitoring upon the person, and (2) the imposition of a term of house arrest with electronic monitoring upon the person is an effective way to achieve the purposes and principles of sentencing set forth in R.C. 2929.21. In addition, a county court that is

required to sentence a person who is convicted of a misdemeanor to a mandatory jail term may impose a term of house arrest with electronic monitoring in lieu of the mandatory jail term when the court has specific statutory authority to do so, and may, pursuant to R.C. 2929.28(A)(3)(a)(i), order the person to pay the cost of such electronic monitoring.

However, no constitutional provision or statute authorizes a county court to impose a sentence upon a person who is convicted of a felony. *See* R.C. 1907.02(A)(1); Ohio R. Crim. P. 5(B). It is thus unnecessary for us to consider the authority of a county court to sentence a person who is convicted of a felony to a term of house arrest with electronic monitoring in lieu of actual incarceration in the county jail and order the person to pay the cost of such electronic monitoring.

With respect to the authority of a court of common pleas or county court to sentence a person to a term of house arrest with electronic monitoring in lieu of actual incarceration in the county jail when the person is found in court, we must look to the power of a court to punish for contempt. The Supreme Court has proclaimed that, “[a] court has authority both under R.C. 2705.02(A) and on the basis of its inherent powers to punish the disobedient orders with contempt proceedings.” *Zakany v. Zakany*, 9 Ohio St. 3d 172, 737 N.E.2d 870 (1984) (syllabus); *see* R.C. 2901.03(C). Moreover, various statutes and rules of procedure adopted and promulgated by the Ohio Supreme Court authorize a court to find a person in contempt of court for a variety of reasons. *See, e.g.*, R.C. 2317.22; R.C. 2705.01; R.C. 2705.02; R.C. 2705.031; R.C. 3111.15(C); R.C. 3113.31(L)(1)(b); Ohio R. Civ. P. 37(B); Ohio R. Civ. P. 45(E).

A person is punished for contempt of court because he violated a court order or for a completed act of disobedience to court authority. 1999 Op. Att’y Gen. No. 99-029 at 2-195; 1987 Op. Att’y Gen. No. 87-053 at 2-337. Contempt proceedings do not result from a violation of a criminal statute nor are they regarded as criminal prosecutions. 1999 Op. Att’y Gen. No. 99-029 at 2-195 through 2-197; 1987 Op. Att’y Gen. No. 87-053 at 2-337.

Instead, as explained in 1999 Op. Att’y Gen. No. 99-029 at 2-195:

In Ohio, “[c]ontempt proceedings are regarded as *sui generis*, [which means of its own kind; peculiar to itself,] and not criminal prosecutions.” *State v. Timson*, 38 Ohio St. 2d 122, 311 N.E.2d 16 (1974) (syllabus, paragraph three) . . . More specifically, it has been stated that such proceedings are neither wholly civil or wholly criminal in nature. The *sui generis* character of contempt proceedings was further explained in *Cincinnati v. Cincinnati District Council 51*, 35 Ohio St. 2d 197, 201-02, 299 N.E.2d 686, 691 (1973), *cert. denied*, 415 U.S. 994 (1974), as follows:

Proceedings in contempt are *sui generis* in the law. They bear some resemblance to suits in equity, to criminal proceedings and to ordinary civil actions; but they are none of these. Contempt proceedings are means through which the courts enforce their law-

ful orders. The power to punish for contempt is said to be inherent in the courts and to exist independently from express constitutional provision or legislative enactment.

Contempt citations issued by a court of record thus do not advance or relate to the enforcement of the criminal laws. Such citations are not issued by a court to punish a person who has violated a duty owed to the community. Rather, such citations are a means by which a court enforces its lawful orders or vindicates its authority. (Footnote and citations omitted.)

A person who is found in contempt of court thus has not committed a felony or misdemeanor. 1999 Op. Att’y Gen. No. 99-029 at 2-195 through 2-197; 1987 Op. Att’y Gen. No. 87-053 at 2-337. As such, the provisions of R.C. 2929.13-.18, R.C. 2929.22, and R.C. 2929.24-.28 authorizing a court to sentence a person who is convicted of a felony or misdemeanor to a term of house arrest with electronic monitoring do not apply when a court of common pleas or county court sentences a person for contempt of court.

In addition, no other provision in the Ohio Revised Code, Ohio Rules of Criminal Procedure, or Ohio Rules of Civil Procedure authorizes a court to sentence a person who is found in contempt of court to a term of house arrest with electronic monitoring. Instead, courts are empowered to fine, imprison, and order the payment of reasonable expenses when a person is found in contempt of court. *See, e.g.*, R.C. 2317.22; R.C. 2705.05(A); Ohio R. Civ. P. 37(B); Ohio R. Civ. P. 45(E). *See generally State v. Komadina*, 2004-Ohio-4962, 2004 Ohio App. LEXIS 4525, at ¶9 (Lorain County Sept. 22, 2004) (“criminal contempt sanctions are generally unconditional fines or prison sentences”). Therefore, absent express authority to sentence a person who is found in contempt of court to a term of house arrest with electronic monitoring,⁶ neither a court of common pleas nor a county court has such authority.

In conclusion, it is my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 2929.13-.18, a court of common pleas may sentence a person who is convicted of a felony to a term of house arrest with electronic monitoring in lieu of a prison term or jail term and order the person to pay the cost of such electronic monitoring, provided (1) the court is not required to impose a prison term,

⁶ It might be argued that, under the common law, a court has the inherent authority to use whatever sanction it deems appropriate to punish a person for contempt of court, including the use of a term of house arrest with electronic monitoring. *See* R.C. 2901.03(C). We have found no reported or unreported case from an Ohio court authorizing a court to use a term of house arrest with electronic monitoring as a means of sanctioning a person found in contempt of court. We thus are reluctant to infer such authority under the common law. Rather, we believe it prudent for courts to impose for contempt of court only those sanctions established by statute or rule of procedure adopted and promulgated by the Ohio Supreme Court.

mandatory prison term, or term of life imprisonment upon the person or precluded by law from imposing a term of house arrest with electronic monitoring upon the person, and (2) the imposition of a term of house arrest with electronic monitoring upon the person is consistent with the purposes and principles of sentencing set forth in R.C. 2929.11.

2. Pursuant to R.C. 2929.22 and R.C. 2929.24-.28, a court of common pleas or county court may sentence a person who is convicted of a misdemeanor, other than a minor misdemeanor, to a term of house arrest with electronic monitoring in lieu of a jail term and order the person to pay the cost of such electronic monitoring, provided (1) the court is not required to impose a jail term or mandatory jail term upon the person or precluded by law from imposing a term of house arrest with electronic monitoring upon the person, and (2) the imposition of a term of house arrest with electronic monitoring upon the person is an effective way to achieve the purposes and principles of sentencing set forth in R.C. 2929.21.
3. A court of common pleas or a county court that is required to sentence a person who is convicted of a misdemeanor to a mandatory jail term may impose a term of house arrest with electronic monitoring in lieu of the mandatory jail term when the court has specific statutory authority to do so, and may, pursuant to R.C. 2929.28(A)(3)(a)(i), order the person to pay the cost of such electronic monitoring.
4. Neither a court of common pleas nor a county court has the authority to sentence a person found in contempt of court to a term of house arrest with electronic monitoring.