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CRIMINAL SENTENCING COMMISSION
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Felony Sentencing in Ohio:

Then, Now, and Now What?

Sentencing Roundtable Workgroup DRAFT Report & Recommendations
presented to the Ohio Criminal Sentencing Commission December 15, 2022

Title 29 of the Ohio Revised Code – one (slim) volume in the early 1990's compared to five (not so slim) volumes today.
Photo credit: The Honorable Reginald Rouston, Hancock County Court of Common Pleas

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INTRODUCTION

Borrowing from our friends at the Pennsylvania Commission on Sentencing, "Sentencing is the lynchpin of the criminal justice system. Sentencing influences – and is influenced by – events that happen both earlier and later in the chronological progression of a criminal case. Understanding the relationships between those events is crucial."

The General Assembly created the Sentencing Commission in 1990 as part of SB258. The Commission is directed to develop a sentencing policy that enhances public safety by achieving certainty in sentencing, deterrence, and a reasonable use of correctional facilities, programs, and services.[1] Additionally, the sentencing policy shall be designed to achieve fairness in sentencing. The Commission was also directed to evaluate the effectiveness of the sentencing structure of the state.[2] After over 25 years of modifying and amending SB2's sentencing structure, the Commission recognizes that it is time for an overhaul of Ohio's criminal sentencing structure, starting with sentencing policy.

As Retired Judge Nichols opined, "we have arrived at the point where the statutory regimen that governs criminal justice, from the criminal statutes themselves to the sentencing structure they support, is onerous, unworkable, unpredictable, internally inconsistent, and cumbersome. This results in uneven and incongruent sentences, costly and frivolous appeals, and lack of finality in the disposition of individual cases."

Individually, each change seems logical enough, but the complexity and cost increase significantly and generally reflect the heightened sensitivities of an individual interest group, rather than careful public policy analysis. In other words, as stated by retired Ohio Criminal Sentencing Commission Executive Director David Diroll, "[E]xceptions often swallow rules and make it difficult to read and apply the basic statutes".

Today, the reality is that we are suffering from the cumulative effect of tinkering with sentencing structure on limited data sources and a crime-by-crime basis. It's time to acknowledge the need for a realistic, dedicated, and long-range evaluation of criminal sentencing.

[1] Ohio Revised Code 181.23(B)
[2] Ohio Revised Code 181.23(A)(1)

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This DRAFT report and recommendations will be presented to the Commission at its meeting on December 15, 2022. Following that meeting the DRAFT report and recommendations will be widely distributed and posted on the Commission's website for comment (approximately December 15 – December 30, 2022). Further, it is anticipated that the Crafting Committee will reconvene mid-January 2023, the Sentencing Roundtable Workgroup will convene the latter part of January 2023, and a final DRAFT report and recommendations will be presented to the Commission at its March 2023 meeting.

Please contact Sara Andrews, Director of the Commission at sara.andrews@sc.ohio.gov with questions or requests for more information.

Special thanks to those that helped inform the Sentencing Roundtable Workgroup, Crafting Committee, and this report including:

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Judge Fred Pepple, Auglaize County Court of Common Pleas
Brian Martin, Research Chief, Ohio Department of Rehabilitation and Correction
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EXECUTIVE SUMMARY

On the 25TH anniversary of the passage of Senate Bill 2 (SB 2), the "Truth in Sentencing" bill, the Ohio Criminal Sentencing Commission conducted a roundtable discussion led by Reginald Wilkinson, EdD. This roundtable discussion prompted the creation of an ad hoc group, Sentencing Roundtable Workgroup (Workgroup). The goal of the workgroup was to examine the sentencing system in Ohio and develop recommendations to improve the clarity and reduce the complexity of felony sentencing. After the Workgroup met for over the course of a year, a crafting or drafting Committee met several times to develop recommendations to the Workgroup and the Commission.

The Workgroup studied rehabilitative, retributive, restorative, and therapeutic sentencing and reached a consensus that a modified and modernized rehabilitative model, utilizing indeterminate sentences, probation and parole would best promote the objectives of the purposes and principles of sentencing. And consequently, developed recommendations consistent with the Commission's vision to enhance justice and its mission to ensure fair sentencing in the State of Ohio:

1. **Establish a modified and modernized rehabilitative model of criminal sentencing.**
2. **Seriousness and recidivism factors, contained in R.C. 2929.12[3], to be weighted to provide context and distinction to sentences.**
3. **Expand indeterminate sentencing to apply to felonies of the third degree and eliminate the bifurcated structure of felonies of the third degree.**
4. **Implement a definite minimum time that a prisoner must serve before release options become available.**
5. **Modify consecutive sentence statutes to provide proportionality more effectively between similarly situated offenders.**
6. **Expand responsibility of parole system to implement the proposed indeterminate model of sentencing.**
7. **Support the Commission's efforts to promote the adoption of uniform entry templates.**
8. **Standardize Presentence Investigation Reports.[4]**
9. **Reorganize and simplify criminal statutes.**
10. **Authorize an existing agency or create one to act as a clearing house for professional notifications.**
11. **Expand the use of, and resources for, prosecutor diversion programs and specialized dockets.[5]**
12. **The drug epidemic in Ohio needs special attention to ultimately address a solution.**

[3] R.C. 2929.12

[4] With adequate resources, it would be ideal for a PSI to be prepared for all defendants, but those PSIs that are prepared should be uniform in appearance and the information they contain.

[5] With a judges increased participation in treatment options canonical issues may arise and judges should be mindful of those potential issues.

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Sentencing snapshot – beginning in 1970

Ohio's sentencing evolution is consistent with national trends – we are not an outlier. So, you may ask, how did we get here?[i]

1970's

In 1974, Ohio criminal code was significantly rewritten based upon the Model Penal Code. It retained indeterminate sentencing with the judge selecting the minimum term from a range set by statute for each of four felony levels. Ohio's eight prisons held 10,707 inmates on July 1, 1974. Until the mid-1970s, Ohio's criminal code had few mandatory sentencing statutes. The "tough on crime" era began in the late '70s with the enactment of compulsory sentences for certain drug offenses.

1980's

In the '80s, the General Assembly added mandatory terms for a broader array of crimes. The signature bill of the era—SB199 (1984)—mandated longer terms for high level "aggravated" felons, especially on repeat offenses, and for those having guns while committing felonies. Similar legislation added longer mandatory terms to misdemeanor law, with increased penalties for impaired drivers. The end result was eight new sentencing ranges added to the original four ranges from the 1974 criminal code.[ii]

SB199 enacted the most sweeping mandatory terms in Ohio's modern history, the prison population was expected to hit new heights. That, in part, was the bill's intent. As of July 1, 1983, the prison population had risen to 18,030, which prompted Governor Richard Celeste to create the bipartisan Governor's Committee on Prison Crowding.

In its 1986 report, the Committee stalemated over whether the state should build more prisons to meet the challenge, rewrite the felony sentencing structure, or both. The Committee did make several proposals that were enacted or funded by the General Assembly with bipartisan support. Those included creating earned credit program(s), fostering more use of halfway houses, encouraging the adoption of parole guidelines, expanding community-based correctional facilities (CBCF's) and enacting provisions to govern sentencing reductions if an overcrowding emergency occurs (ORC 2967.19).

Ohio also began a half-billion-dollar prison construction program that significantly expanded the capacity of the system over the next decade. Despite a net gain of over 17,000 beds, as new prisons opened, the number of inmates grew to again exceed capacity.

1990's

Governor Celeste put together a second blue ribbon panel of judges, prosecutors, law enforcement officers, legislators, defense attorneys, and state and local officials. By the time the Governor's Committee on Prison and Jail Crowding reported in March 1990, the prison population had reached 31,268 in space designed for 19,848.

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In the '90s, the legislature made felonies out of offenses that were formerly misdemeanors (such as domestic violence, nonsupport and impaired driving) and there were dramatic new mandatory terms for sexual offenders. This was also the time of the "Crack Era". The saying was that officials have addressed 10 of the last one drug epidemics.

Mandatory sentencing bills targeted the worst criminals and even before the mandates, judges were routinely sentencing high percentages of these criminals to prison. This began a subtle shift in prison crowding, moving from prison intake (admitting new prisoners to prison) to length-of-stay in prison. Additionally, during this era, the Parole Board grew more cautious, releasing far fewer offenders at their first parole hearings, also contributing to longer length-of-stay in prison.

The number of prison inmates grew by nearly 400% in the 16 years between 1974 and 1990. The second Crowding Committee decided that systemic change was needed. It recommended that the General Assembly create a sentencing commission to develop comprehensive plans to deal with crowding and a range of other sentencing goals including public safety, consistency, and proportionality (punishment to fit the crime).

Acting on the task force's recommendation, the General Assembly created the Ohio Criminal Sentencing Commission later in 1990 as part of SB258. The Commission was created in response to four concerns: prison population and cost, overly complicated sentencing laws, racial disparity in sentencing, and lack of judicial discretion.

1993

The Commission's charge was to create a comprehensive sentencing structure that was proportionate, mindful of public safety, promoted uniformity across the state retained reasonable judicial discretion, incorporated a full range of criminal sanctions, and matched criminal penalties with available correctional resources.

Accordingly, the Commission's first report, a recommended overhaul of felony sentencing was completed on July 1, 1993. The Commission decided against the grid-style matrix recommended by sentencing commissions in other states and the federal system, in favor of a determinate system based on judicial discretion and the concept of "truth in sentencing."[iii]

The prison population on November 1, 1993, stood at 40,274. The state had spent $850 million on prison construction between 1982 and 1993, and the annual operating cost of the Department of Rehabilitation and Correction (DRC) was $750 million.[iv]

1996 – Truth in Sentencing

The truth in sentencing scheme in Ohio, known as Senate Bill 2[v] became effective July 1, 1996. The legislation established a type of determinate sentencing structure called a presumptive system that required minimum sentences with judicial discretion from a range of possible punishments. Many felt that SB2 was probably the most honest truth in sentencing scheme enacted in the country because most other states defined "truth" as 85% of the truth.

These changes grew out of:

→ A sense that the public found indeterminate sentencing confusing. In practice pre-SB2, "6 to 25" never meant 25 and often didn't mean 6, since parole eligibility came after about 4 years.

→ The knowledge that the inmate's actual time served was not determined by the elected judge in a public forum, but by the Parole Board—an unelected body meeting in private.

→ A sense that the Parole Board sometimes acted arbitrarily, as Board decisions varied widely.

→ A desire to give greater control over sentences to judges, so that all concerned—court, defendant, victims, and public—know that stated sentences equate more closely to time actually served.

→ A desire to foster a broader range of correctional alternatives; and

→ A desire to make prison populations more predictable for fairness and budgetary purposes.

1997

Shortly after SB2 was enacted, concerns emerged that the sentence ranges authorized for sexual assaults, particularly rape, were inadequate. SB2 set sentence ranges based on the average terms actually served at the time it was developed. But public attitudes regarding sexual offenders were getting tougher. Beginning with HB180, effective in 1997, the General Assembly responded with various measures, culminating in potentially long, indeterminate sentences for certain high-level sex offenders.

2000

As a disincentive for misbehavior in prison, SB2 had what was called "bad time". The Ohio Parole Board, upon recommendation of the prison's warden, could add bad time to a prisoner's sentence. It could only be imposed for behavior that would be a crime outside prison. The statute allowed the Parole Board to assess bad time in increments of 15 to 90 days per incident, up to a maximum of 50 percent of the offender's stated prison term.

In 2000, Ohio's bad time provision was found unconstitutional for appearing to permit an administrative body (the Parole Board) to augment a judge's definite sentence with additional time in prison for a crime.

Following that decision, proposals were drafted, but not enacted, to make clearer that bad time was part of the prison sentence by instructing judges to impose a basic prison term, then adding a disciplinary term that can include bad time and time for post-release control violations. The proposals generally redefined bad time violations to make clear they cover "serious misconduct" in violation of a prison rule, rather than "crimes".

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2006 – 2007

A series of United States Supreme Court decisions[vi] led to two 2006 decisions (*State v. Foster*, 109 Ohio St.3d 1 and *State v. Mathis*, 109 Ohio St.3d 54) by the Supreme Court of Ohio that dramatically changed the guidance given to judges by SB2. Generally, those decisions are credited with a steady rise in prison population.

SB2 retained fairly broad judicial discretion because Judges could choose a sanction from within a statutory range. However, the statute required judges to make certain factual findings before imposing more than the minimum sanction, imposing the maximum sanction, or imposing consecutive sentences.

The Supreme Court of Ohio held that the guidelines in SB2 were merely advisory and that judges have full discretion to impose any sentence falling within a statutory range for an offense and no longer need to make findings or give reasons for imposing any sanction falling within that range.

By 2007, "[T]he Ohio Department of Rehabilitation and Correction reported that the prison population was approaching 49,000; projections made before *Foster* were revised upward by 2,150 beds over the next decade and the dramatic cumulative effect of minor changes in individual sentences were highlighted,"[vii] as well as a surprising increase in female offenders and offenders from rural Ohio counties.

2008 – 2011

While prison crowding increased in the years since 1996, it wasn't until 2008 that the population began to exceed pre-SB2 levels. Ohio's prison population topped 50,000 for the first time in 2008.[viii]

For years, the prison population increased as prison intake grew. However, examination of the growth in Ohio's prison population revealed—even with mandatory sentences and scores of new laws that increased penalties for particular offenses—intake, or admitting new prisoners to prison, was not the primary driver (although a factor). Instead, the increasing prison population was and is largely fueled by increases in inmates' average length-of-stay,[ix] or the same prisoners staying in prison longer.

A decade into the implementation of SB2, prisons were crowded, there was a push toward a broader use of the former indeterminate sentences for high-level felons and there was resounding recognition that the felony sentencing code had become more, not less, complex.

As one commentator succinctly put it, "[E]xceptions often swallow rules and make it difficult to read and apply the basic statutes."[x] Individually, each change seems logical enough, but the complexity and cost increase significantly and generally reflect the heightened sensitivities of an individual interest group, rather than careful public policy analysis. During this same time, in 2008, the Commission proposed a simplification to the Ohio Revised Code – by thousands of words and miles of paper.

Also in 2008, to help address prison crowding and preserve scarce resources, Ohio joined a group of more than 28 states in the Justice Reinvestment Initiative (JRI).[xi] The goal was to develop strategies to improve public safety and control costs

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for taxpayers by prioritizing prison space for serious and repeat offenders and invest some of the savings in alternatives to incarceration that are effective at reducing recidivism among low-level offenders.

By 2011, Ohio faced record budget deficits and record prison populations. Ohio prisons were holding 50,500 inmates, which is 6.5 times the number held in 1974 and 31 percent over its rated capacity, with about 12,500 more inmates than the prisons were built to hold.[xii]

With the assistance of JRI and many other policy makers, legislative recommendations to manage non-violent offenders in the community were crafted while at the same time bills were enacted to increase penalties for violent and gun related crimes. The subject of length of stay and remedies to "fix *Foster*" were discussed and drafted but landed on the cutting room floor when the final package was delivered to the Ohio General Assembly.

The proposals in that final package were enacted in House Bill 86[xiii], effective September 30, 2011 and then later supplemented by revisions made in House Bill 487[xiv] (effective September 10, 2012) and by Senate Bill 337[xv] (effective September 28, 2012). A sampling of the provisions included were:

- → Raising felony theft thresholds;
- → Elimination of the disparity in criminal penalties between crack and powder cocaine offenses;
- → Capping sentence lengths for mid-level felony property and drug offenses;
- → Eliminating certain sentence enhancements for drug offenders;
- → Creating a "risk reduction" sentencing option that allows certain offenders to shorten their time behind bars if they complete assigned programming;
- → Expanding judicial release policies;
- → Requiring creation of administrative policies to prioritize intensive residential community correction programs for higher-risk offenders and those who otherwise would be sentenced to prison; and
- → Requiring courts to use a validated risk assessment tool at various points in the criminal justice process, including at sentencing.[xvi]

2015 - Present

The fiscal strain of burgeoning prisons and costs are pervasive. Between 1990 and 2010, corrections expenditures grew by 400 percent, with only Medicaid outpacing their growth in state budgets.[xvii] Ohio had the 7th fastest-growing prison population in the nation between 2005 and 2015. While at the same time, the Bureau of Justice statistics reported that Ohio ranked third in the nation for the number of people on probation – 1 in 48 adults on probation.

The state's criminal code has also become increasingly complex and fraught with provisions that are exceedingly difficult to administer. Consider that our quick reference guide for felony sentencing is seven pages long and remarkably isn't

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inclusive of all detail necessary for application. And further, one provision alone, 2929.14 Definite Prison Terms, is 13 pages long, 100 paragraphs, nearly 8,000 words and includes 85 'if's'. (credit Justice Center staff 11-09-17).

The Ohio Criminal Justice Recodification Committee (CJRC) was created by the 130th Ohio General Assembly in 2014 to study the state's existing criminal statutes. The CJRC's charge was to recommend a plan for a simplified criminal code, making efficient use of resources through flexible yet consistent statewide policies.[xviii]

The group began meeting in earnest in 2015 and in June 2017 recommended comprehensive changes to the sentencing code designed with three goals in mind: to prioritize prison for dangerous and violent offenders, to incentivize offenders to target and change their behavior and prepare them for reintegration into society, and to empower judges to exercise their discretion to fairly and proportionately sentence offenders, i.e. recommending an indeterminate sentencing structure.

While not explicitly referencing the CJRC's recommendations, legislation passed in 2018 included a partial return to an indeterminate sentencing structure. Prompted by the 2017 abduction, rape, and murder of Reagan Tokes by an offender on post-release control, the General Assembly passed Senate Bill 201 (SB 201) in December 2018. This legislation reintroduced indeterminate sentencing for only "qualifying F1 and F2 offenses"[xix] committed on or after the bill's effective date in March 2019, thus creating both an indeterminate and determinate sentencing structure for felonies in Ohio.

House Bill 1 (HB 1), effective March 2021, created a presumption of eligibility for intervention in lieu of conviction (ILC) for offenders alleging that drug or alcohol abuse was a factor leading to the commission of an F4 or F5 level crime and requires courts to hold a hearing to determine eligibility for ILC under such circumstances. In addition, HB1 expanded the opportunities for lower-level offenders to seal their conviction, thereby reducing barriers to employment, housing, public assistance, and education.

The main operating budget bill for Fiscal Year 2022—House Bill 110 (HB 110)—introduced several criminal justice changes, effective September 2021. These changes included addressing "technical violations" of community control and altering periods of post-release control (PRC) based on offense and allowing the Adult Parole Authority (APA) to review an offender's compliance with PRC and recommend less restrictive sanctions, a reduction in PRC, or termination of PRC.

HB 110 also established a Probation Workload Study Committee at the Supreme Court of Ohio. Recommendations of the committee, released in December 2021, included a number of changes to conditions of supervision, supervision program review, probation caseloads, and the use of a validated risk assessment tool.

During the lame duck period of the 134th General Assembly, the Senate passed Senate Bill 288,[xx] the "Criminal Justice Omnibus" bill. This bill addressed a number of criminal justice issues, many of which were proposed in past bill. Changes include: the creation of the offense of strangulation, repealing certain sanctions for illegal use or possession of marihuana drug paraphernalia, removing the statute of limitations for murder, imposition of a mandatory prison term for repeat OVI offenders, and further expands opportunities for sealing and expungement of criminal records, among others.

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As of October 2022, the DRC oversees 28 institutions, with a FY2023 budget of $2,160,139,177, and the number of people incarcerated was 43,826, which is nearly a 15 percent decrease from the 2008 all-time high population. A current number of those on probation is unavailable, as Ohio does not collect statewide probation data, but it is estimated that Ohio has one of the largest probation populations in the nation.

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[i]Much of the historical information from Diroll, David, Prison Crowding: The Long View with Suggestions, 2011, http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/sentencingRecs/MonitoringReport2011.pdf.
[ii]Rauschenberg, Fritz Sentencing Reform Proposals in Ohio *Federal Sentencing Reporter*, Vol. 6 No. 3, Nov. - Dec., 1993; (pp. 166-168)
[iii] Rauschenberg, Fritz Sentencing Reform Proposals in Ohio *Federal Sentencing Reporter*, Vol. 6 No. 3, Nov. - Dec., 1993; (pp. 166-168)
[iv] http://www.drc.ohio.gov/Portals/0/Reentry/Reports/Monthly/2017/July%202017%20Fact%20Sheet.pdf?ver=2017-07-17-095457-560
[v]Am.Sub.S.B. No. 2, 146 Ohio Laws, Part IV, 7163-7814
[vi] Blakely v. Washington, 111 Wn. App. 851 (2002) *rev'd*, 542 U.S. 296 (2004) and United States v. Booker, 375 F.3d 508 (2004) *aff'd*, 543 U.S. 220 (2005).
[vii] Diroll, David, A Decade of Sentence Reform – 2007, http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/monitorRpts/sentencingReform.pdf
[viii] Diroll, David, Survey of Judges, Prosecutors, & Defense Attorneys and Code Simplification – 2009 http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/monitorRpts/MonitoringRpt2009.pdf
[ix] Diroll, David, Prison Crowding: The Long View with Suggestions, 2011. http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/sentencingRecs/MonitoringReport2011.pdf
[x] Diroll, David. A Decade of Sentencing Reform – 2007 http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/monitorRpts/sentencingReform.pdf
[xi] JRI is a public-private partnership that includes the U.S. Justice Department's Bureau of Justice Assistance, Pew Charitable Trusts, Council of State Governments Justice Center, Crime and Justice Institute at Community Resources for Justice, Vera Institute of Justice, and other organizations.
[xii] Diroll, David, Prison Crowding: The Long View with Suggestions, 2011. http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/sentencingRecs/MonitoringReport2011.pdf
[xiii]http://archives.legislature.state.oh.us/bills.cfm?ID=129_HB_86
[xiv] http://archives.legislature.state.oh.us/bills.cfm?ID=129_HB_487
[xv] http://archives.legislature.state.oh.us/bills.cfm?ID=129_SB_337
[xvi] http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/01/states-modify-sentencing-laws-through-justice-reinvestment
[xvii]http://gppreview.com/2015/10/13/not-all-bad-on-the-criminal-justice-front-crime-sentencing-and-corrections-reform-gains-momentum-across-the-states/
[xviii] http://ocjrc.legislature.ohio.gov/

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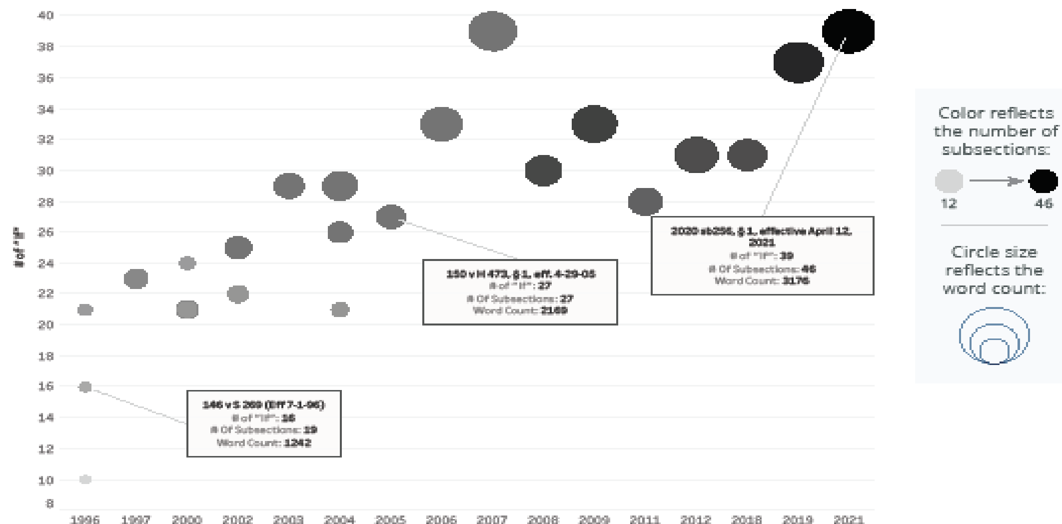
OHIO REVISED CODE §2929.19 SENTENCING HEARING
25 YEARS AND 3,000+ WORDS LATER



25 years ago, in July 1996, SB2 (Am. Sub. S.B. No. 2, 146 Ohio Laws, Part IV, 7163–7814) was enacted. The legislation established a type of determinate sentencing structure called a presumptive system, requiring minimum sentences with judicial discretion from a range of possible punishments.

A decade into the implementation of SB2, prisons were crowded, there was a push toward a broader use of the former indeterminate sentences for high-level felons and there was resounding recognition that the felony sentencing code had become more, not less, complex. Individually, each change seems logical enough, but the complexity and cost increase significantly and generally reflect the heightened sensitivities of an individual interest group, rather than careful public policy analysis. In other words, "[E]xceptions often swallow rules and make it difficult to read and apply the basic statutes."

Today, the reality is that we are suffering from the cumulative effect of tinkering with sentencing structure on limited data sources and a crime-by-crime basis. It is time to acknowledge the need for a realistic, dedicated and long-range evaluation of criminal sentencing.

The Commission has developed a Uniform Sentencing Entry and the Ohio Sentencing Data Platform (OSDP) to generate, for the first time, a standardized statewide felony sentencing entry template to ensure clear, comprehendible sentences and promote confidence in the system. This effort can be the catalyst to simplify the excessively complex sentencing structure we have amassed in Ohio. It will allow us to develop and implement wise, responsible legislation consistent with the fundamental purposes and principles of sentencing – to protect the public from future crime and punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.

August 2021 | sc.ohio.gov/boards/sentencing

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OHIO LEGISLATIVE SERVICE COMMISSION Wendy Zhan, Director Office of Research and Drafting www.lsc.ohio.gov Legislative Budget Office

R-134-0082
To: The Honorable Robert McColley
Ohio Senate
From: Dennis M. Papp, Attorney DMP
Date: February 12, 2021
Subject: Increase in number of felony offenses since 1974/1976

Introduction

You requested information regarding the increase in the number of felony offenses set forth in Title XXIX of the Revised Code over specified intervals occurring during a specified period of time. The starting point for the calculation of the increase is 1976 for controlled substance offenses in R.C. Chapter 2925, and is 1974 for all offenses located in Title XXIX outside of R.C. Chapter 2925. Those starting points were used because 1976 was the year of enactment of Am. Sub. H.B. 300 of the 111th General Assembly, which was the major legislation that completely revised Ohio's Drug Offense Law, and 1974 was the year of enactment of Am. Sub. H.B. 511 of the 109th General Assembly, which was the major legislation that completely revised Ohio's Criminal Code, other than the Drug Offense Law. The years chosen as the reporting intervals, after the starting point, were 1980, 1990, 2000, 2010, and 2020, with an additional category added that covers changes in the number of felonies that were made before December 31, 2020, and that take effect after December 31, 2020 (most of these changes were made during the "lame duck" session of the 133rd General Assembly; hereafter, this additional category is referred to as the post-2020 category). For the starting points and each reporting interval year other than the post-2020 category, the end of the year is used in determining the number of felonies during the year, and only felonies in existence at the end of the year were counted for the year. The post-2020 category considers only changes that were made before December 31, 2020, and that take effect after December 31, 2020.

To calculate the increase, it was necessary to develop rules for determining the number of felony offenses. The rules used in making the determinations applied fairly narrow, conservative parameters, to avoid having the research bogged down by the endless changes in the elements of felony offenses that each reasonably could be viewed as adding a new felony offense or as subtracting an existing felony offense. As such, the rules likely resulted in an undercounting of what reasonably could be considered as being felonies. The following rules were used in determining the number of felony offenses:

1. If a Revised Code section includes a type of prohibited conduct and has one felony penalty for a violation of the prohibition, that is counted as one felony. If a section includes two or more types of prohibited conduct and has a different felony penalty for violations of each of those types of prohibited conduct, each of those types of prohibited conduct and its penalty is counted as a separate felony.

2. If a section includes a type of prohibited conduct, has a standard felony penalty for a violation of the prohibition, and has a single escalated felony penalty that applies to a violation in one or more specified circumstances (e.g., when the offense is committed against a specified category of victims), the standard felony penalty is counted as one felony and the escalated felony penalty is counted as one felony. The single escalated penalty is counted as one felony even if it applies to violations in multiple specified circumstances (an example of this is the third degree felony penalty for the offense of gross sexual imposition under R.C. 2907.05(C)(1), which applies when the offense involves either of two specified circumstances). If the single escalated penalty subsequently is expanded to apply to violations in additional circumstances, it still counts as one felony (it would not be feasible, without an extensive amount of time and resources, to trace the additions and subtractions over the years).

3. If a section includes a type of prohibited conduct, has a standard misdemeanor penalty for a violation of the prohibition, and has a single escalated felony penalty that applies to a violation in one or more specified circumstances (e.g., when the offense is committed against a specified category of victims), the escalated felony penalty is counted as one felony. The single escalated penalty is counted as one felony even if it applies to violations in multiple specified circumstances (an example of this is the fifth degree felony penalty for the offense of assault under R.C. 2903.13, which applies when the victim is any of a list of different types of victims). If the single escalated penalty subsequently is expanded to apply to violations in additional circumstances, it still counts as one felony (again, it would not be feasible, without an extensive amount of time and resources, to trace the additions and subtractions over the years).

4. If a section includes a type of prohibited conduct, has either a standard felony penalty or a standard misdemeanor penalty for a violation, and has multiple escalated felony penalties of different degrees that apply to a violation of the prohibition in one or more specified circumstances, the rules described above in 2 and 3 apply regarding each of the escalated penalties (an example of this is the multiple felony penalties of different degrees for the offense of assault under R.C. 2903.13).

5. If a section includes several types of prohibited conduct that are included under one offense name and have the same felony penalty, this counts as one felony. If new prohibited conduct subsequently is added under the same name and same penalty, this still counts as one felony (again, it would not be feasible, without an extensive amount of time and resources, to trace the additions and subtractions over the years).

6. If a section includes several types of prohibited conduct that are included under one offense name but they have different felony degrees as a penalty, each different degree of felony counts as a separate felony.

7. If a section includes several types of prohibited conduct that are included under different offense names and the named crimes are felonies, each different named crime counts as a separate felony even if they have the same felony penalty.

8. If a section includes a felony offense and the degree of the offense is changed (such as when, in 1996, Am. Sub. S.B. 2 of the 121st General Assembly revised the felony offense classifications and realigned felony penalties for existing offenses with the new classifications), the change in degree does not count as a change in the number of felonies.

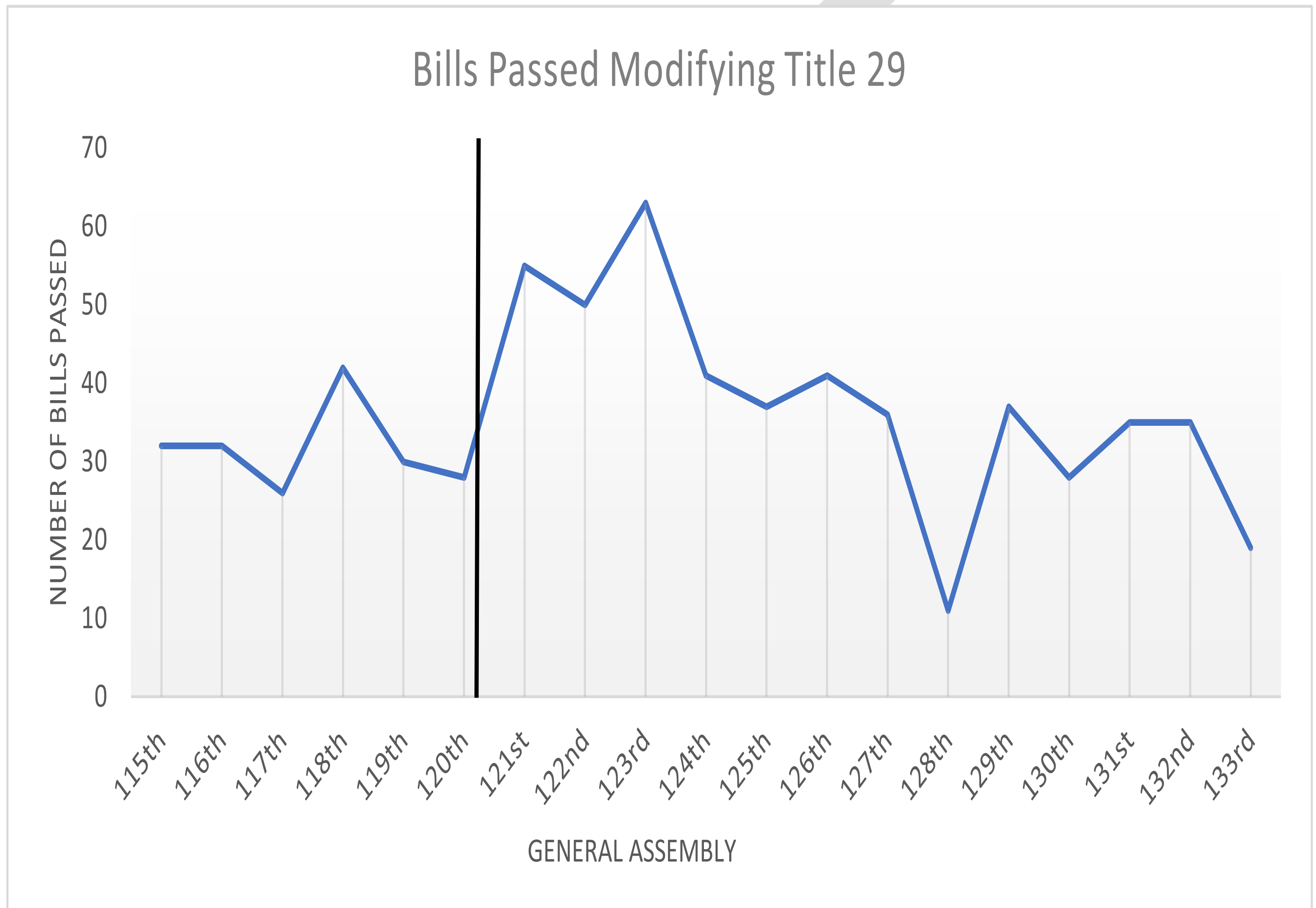
9. If a section includes a felony offense and a change is made to require a mandatory prison term for the offense (without any other changes), the addition of the mandatory term does not count as a change in the number of felonies.

10. If a section located outside of R.C. Title XXIX includes a felony offense and the offense then is moved to Title XXIX, the time when the felony offense was outside of Title XXIX does not count as a felony for purposes of the memorandum, and the first time the felony offense is counted for purposes of the memorandum is when it is moved to Title XXIX.

Changes in all of R.C. Title XXIX

Total number at each reporting interval	Number of F[illegible] Off[illegible] in All [illegible] XX[illegible]
Post-2020	755
2020	752
2010	667
2000	506
1990	265
1980	161
1976/1974	146

This chart reflects bills passed modifying Title 29 in each General Assembly (GA), beginning with the 115th GA (1983-1984), which is five sessions before term limits became effective in the 120th GA (1993-1994).



F1

(indicates life w/o parole, life with parole)

- ABORTION MANSLAUGHTER (2919.13)
- ARSON, AGGRAVATED (2909.02)
- ASSAULT, FELONIOUS (2903.11), victim is peace officer or an investigator of the bureau of criminal identification and investigation
- ATTEMPT (2923.02), 1 degree less than substantive crime murder, to commit
- BURGLARY, AGGRAVATED (2911.11)
- CHEMICAL WEAPON, BIOLOGICAL WEAPON, RADIOLOGICAL OR NUCLEAR WEAPON, OR EXPLOSIVE DEVICE, CRIMINAL USE (2909.27)
- CHILD ABUSE, PERMITTING (2903.15)
- CONSPIRACY aggravated murder or murder, to commit (2923.01)
- CONTAMINATING SUBSTANCE FOR HUMAN CONSUMPTION OR USE (2927.24)
- CONTAMINATING SUBSTANCE FOR HUMAN CONSUMPTION OR USE (2927.24), amount sufficient to cause death, F1 with life imprisonment with parole eligibility after 15 years
- CONTAMINATING SUBSTANCE FOR HUMAN CONSUMPTION OR USE (2927.24), resulting in serious physical harm, F1 with life imprisonment with parole eligibility after 15 years
- CONTAMINATION WITH A HAZARDOUS CHEMICAL, BIOLOGICAL, OR RADIOACTIVE SUBSTANCE (2927.24)
- CONTAMINATION WITH A HAZARDOUS CHEMICAL, BIOLOGICAL, OR RADIOACTIVE SUBSTANCE amount sufficient to cause death (2927.24), F1 with life imprisonment with parole eligibility after 15 years
- CONTAMINATION WITH A HAZARDOUS CHEMICAL, BIOLOGICAL, OR RADIOACTIVE SUBSTANCE resulting in serious physical harm (2927.24), F1 with life imprisonment with parole eligibility after 15 years
- CORRUPT ACTIVITY, PATTERN OF (2923.32)
- COUNTERFEITING (2913.30)
- DRUG ABUSE corrupting another with drugs – pregnant woman, schedule I or II substance (except marihuana) (2925.02)

DRAFT

- DRUG ABUSE corrupting another with drugs —schedule I or II substance (except marihuana) near school premises (2925.02)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—cocaine (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—heroin (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—LSD (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—schedule I or II substance (except marihuana, cocaine, LSD, heroin, and hashish) (2925.11)
- DRUG ABUSE methamphetamine, illegal manufacture (2925.04)
- DRUG ABUSE possession, aggravated (schedule I or II substance, except marihuana, cocaine, LSD, heroin, and hashish) (2925.11)
- DRUG ABUSE possession of cocaine (2925.11)
- DRUG ABUSE possession of controlled substance analog (2925.11)
- DRUG ABUSE possession of heroin (2925.11)
- DRUG ABUSE possession of LSD (2925.11)
- DRUG ABUSE trafficking, aggravated (schedule I or II substance, except marihuana, cocaine, LSD, heroin, and hashish)(2925.03)
- DRUG ABUSE trafficking, aggravated funding of (2925.05)
- DRUG ABUSE trafficking in cocaine (2925.03)
- DRUG ABUSE trafficking in controlled substance analog (2925.03)
- DRUG ABUSE trafficking in drugs (schedule III, IV or V substance)(2925.03)
- DRUG ABUSE trafficking in hashish (2925.03)
- DRUG ABUSE trafficking in heroin (2925.03)
- DRUG ABUSE trafficking in LSD (2925.03)
- DRUG ABUSE trafficking in marihuana (2925.03)
- IDENTITY FRAUD elderly, disabled victim, active duty service member, or spouse of an active duty service member (2913.49)
- INVOLUNTARY SERVITUDE, COMPULSION TO (2905.32)
- KIDNAPPING (2905.01)
- MANSLAUGHTER, INVOLUNTARY in felony commission/attempt (2903.04)
- MANSLAUGHTER, VOLUNTARY (2903.03)
- MURDER (2903.02)
- MURDER, AGGRAVATED (2903.01)

DRAFT

- OBSTRUCTING JUSTICE act of terrorism resulting in death of person who was not a participant (2921.32)
- PROSTITUTION compelling (2907.21)
- RAPE (2907.02)
- RAPE administering controlled substance to prevent resistance, by (2907.02), F1 with a prison term of not less than 5 years
- RAPE administering controlled substance to prevent resistance, by force or threat (2907.02)
- RAPE causing serious physical harm to victim (2907.02), F1 with life imprisonment without parole
- RAPE previous conviction or guilty plea to rape or substantially similar law (2907.02), F1 with life imprisonment without parole
- RAPE victim's ability to resist or consent is substantially impaired because of mental or physical condition or advanced age and offender knows, or has reasonable cause to believe the victim's ability to resist or consent is substantially impaired by such condition or advanced age (2907.02)
- RAPE victim's ability to resist or consent is substantially impaired because of mental or physical condition or advanced age and offender knows, or has reasonable cause to believe the victim's ability to resist or consent is substantially impaired by such condition or advanced age, force or threat, by (2907.02)
- RAPE victim under 13 years of age, life imprisonment, unless defendant under 16 years of age and victim 10 years of age or older and no serious physical harm caused and no prior conviction (2907.02)
- RAPE victim under 13 years of age, life imprisonment, unless defendant under 16 years of age and victim 10 years of age or older and no serious physical harm caused and no prior conviction, force or threat, by (2907.02), F1 with life imprisonment
- RAPE victim under 10 years of age (2907.02), F1 with life imprisonment
- ROBBERY, AGGRAVATED (2911.01)
- TELECOMMUNICATIONS FRAUD (2913.05) value more than $1,000,000
- THEFT firearm from dealer (2913.02)
- THEFT from person in a protected class or active duty service member, or spouse of an active duty service member—$150,000 or more (2913.02)
- THEFT value—$1,500,000 or more (2913.02)

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- VEHICULAR HOMICIDE, AGGRAVATED (2903.06(A)(1), (2)), proximate result of a violation of 4511.19, 1547.11(A), or 4561.15(A), or substantial equivalent ordinance, at time of offense driving under suspension or previous conviction or guilty plea to offense or offenses listed in statute
- WEAPONS OFFENSES possession of a deadly weapon while under detention (2923.13.1)

F2

- ABDUCTION (2905.02)
- AIRCRAFT, AIRPORTS interference with operation by laser (2909.081)
- ARSON, AGGRAVATED (2909.02)
- ASSAULT, FELONIOUS (2903.11)
- ATTEMPT (2923.02), 1 degree less than substantive crime murder, to commit
- BURGLARY (2911.12)
- CHEMICAL WEAPON, BIOLOGICAL WEAPON, RADIOLOGICAL OR NUCLEAR WEAPON, OR EXPLOSIVE DEVICE, CRIMINAL POSSESSION (2909.26)
- CHEMICAL WEAPON, BIOLOGICAL WEAPON, RADIOLOGICAL OR NUCLEAR WEAPON, OR EXPLOSIVE DEVICE, CRIMINAL USE (2909.27)
- CHILD ABUSE, FEMALE GENITAL MUTILATION (2902.32)
- CHILD ENDANGERING (2919.22) abuse or neglect resulting in serious physical harm
- CHILD ENDANGERING (2919.22) administering extreme and cruel abuse or discipline prior conviction or resulting in serious physical harm
- CHILD ENDANGERING permitting/encouraging child to act/participate in pornography (2919.22)
- CORRUPT ACTIVITY, PATTERN OF (2923.32)
- COUNTERFEITING (2913.30)
- CREDIT CARD, MISUSE OF (2913.21)
- CREDIT CARD, MISUSE OF victim elderly person or disabled adult—$37,500 or more (2913.21)
- DECEPTION TO SECURE WRITINGS victim elderly person or disabled adult—$37,500 or more (2913.43)
- DRUG ABUSE corrupting another with drugs – pregnant woman, schedule III, IV, or V (2925.02)

DRAFT

- DRUG ABUSE corrupting another with drugs —schedule I or II substance (except marihuana) (2925.02)
- DRUG ABUSE corrupting another with drugs —schedule III, IV, or V (2925.02)
- DRUG ABUSE corrupting another with drugs —schedule III, IV, or V near school premises (2925.02)
- DRUG ABUSE cultivation of marihuana, illegal (2925.04)
- DRUG ABUSE hidden compartment in vehicle (2923.241)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—cocaine (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—hashish (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—heroin (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—LSD (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—marihuana (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance— schedule I or II substance (except marihuana, cocaine, LSD, heroin, and hashish) (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance— schedule III, IV or V substance (2925.11)
- DRUG ABUSE manufacture of drugs, illegal (2925.04)
- DRUG ABUSE possession, aggravated (schedule I or II substance, except marihuana, cocaine, LSD, heroin, and hashish) (2925.11)
- DRUG ABUSE possession of cocaine (2925.11)
- DRUG ABUSE possession of controlled substance analog (2925.11)
- DRUG ABUSE possession of drugs (schedule III, IV, or V substance) (2925.11)
- DRUG ABUSE possession of hashish (2925.11)
- DRUG ABUSE possession of heroin (2925.11)
- DRUG ABUSE possession of LSD (2925.11)
- DRUG ABUSE possession of marihuana (2925.11)
- DRUG ABUSE possession of schedule III, IV, or V compound, (2925.11)
- DRUG ABUSE tampering with drugs (2925.24)
- DRUG ABUSE trafficking, aggravated (schedule I or II substance, except marihuana, cocaine, LSD, heroin, and hashish)(2925.03)
- DRUG ABUSE trafficking, aggravated funding of (2925.05)
- DRUG ABUSE trafficking, funding of (2925.05)

DRAFT

- DRUG ABUSE trafficking in cocaine (2925.03)
- DRUG ABUSE trafficking in controlled substance analog (2925.03)
- DRUG ABUSE trafficking in drugs (schedule III, IV or V substance)(2925.03)
- DRUG ABUSE trafficking in hashish (2925.03)
- DRUG ABUSE trafficking in heroin (2925.03)
- DRUG ABUSE trafficking in LSD (2925.03)
- DRUG ABUSE trafficking in marihuana (2925.03)
- ESCAPE (2921.34)
- EXPLOSIVES, ILLEGALLY MANUFACTURING OR PROCESSING (2923.17)
- FEMALE GENITAL MUTILATION (2902.32)
- FETICIDE, PARTIAL BIRTH (2919.15.1)
- FOOD STAMPS OR COUPONS illegal use (2913.46)—value $150,000 or more
- FORGERY victim elderly person or disabled adult—$37,500 or more (2913.31)
- GANGS, PARTICIPATING IN CRIMINAL (2923.42)
- IDENTITY FRAUD elderly, disabled victim, active duty service member, or spouse of an active duty service member (2913.49)
- IDENTITY FRAUD value more than $150,000 (2913.49)
- IMPORTUNING telecommunications solicitation—under age 13 (2907.07)
- IMPORTUNING under age 13 (2907.07)
- KIDNAPPING safe release (2905.01)
- MINORS illegal use of in nudity oriented material or performance (2907.32.3)
- MINORS pandering obscenity involving (2907.32.1)
- MINORS pandering sexually oriented matter involving (2907.32.2)
- MINORS unlawful sexual conduct with, previous conviction of RC § 2907.02, 2907.03, 2907.04, or former RC § 2907.12 (2907.04)
- MONEY LAUNDERING IN SUPPORT OF TERRORISM (2909.29)
- MOTOR VEHICLES/TRAFFIC LAWS victim as elderly person or disabled adult— $37,500 or more (2913.03)
- OBSCENITY disseminating, harmful to minors, illegal use of minor is nudity oriented material or performance (2907.32.3)
- OBSCENITY pandering sexually oriented matter involving minor (2907.32.2)
- OBSTRUCTING JUSTICE (2921.32), act of terrorism

- PANIC, INDUCING violation of public place involved in (A)(l) is a school and violation pertains to purported, threatened or actual use of a weapon of mass destruction— resulting in economic harm of $150,000 or more (2917.31)
- PANIC, INDUCING violation of public place involved in (A)(l) is a school and violation pertains to purported, threatened or actual use of a weapon of mass destruction—resulting in physical harm to a person (2917.31)
- PROSTITUTION compelling (2907.21)
- RAILROADS grade crossing device vandalism, (2909.101)
- RAILROADS interference with operation, (2909.10)
- RAILROADS trespass—vehicle, (2909.10)
- RAILROADS vandalism, (2909.10)
- ROBBERY (2911.02)
- TELECOMMUNICATIONS FRAUD (2913.05) value $150,000 or more but less than $1,000,000
- THEFT from person in a protected class or active duty service member, or spouse of an active duty service member—$37,500 or more, less than $150,000 (2913.02)
- THEFT value—$750,000 or more, less than $1,500,000 (2913.02)
- UNAUTHORIZED USE OF PROPERTY (2913.04)
- VANDALISM railroad (2909.10)
- VANDALISM vehicular, (2909.09)
- VEHICULAR ASSAULT, AGGRAVATED (2903.08(A)(1)), at time of offense driving under suspension or previous conviction or guilty plea to offense or offenses listed in statute
- VEHICULAR HOMICIDE, AGGRAVATED (2903.06(A)(1), (2)), proximate result of a violation of 4511.19, 1547.11(A), or 4561.15(A), or substantial equivalent ordinance
- VEHICULAR HOMICIDE, AGGRAVATED (2903.06(A)(1), (2)), reckless, at time of offense driving under suspension or cancellation or without a license, or previous conviction under this section or any traffic related homicide, manslaughter or assault offense
- WEAPONS OFFENSES firearms, improperly discharging at or into habitation or in a school safety zone (2923.16.1)
- WEAPONS OFFENSES possession of a deadly weapon while under detention (2923.13.1)

DRAFT

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F3

(5 year penalties -- also Robbery 2911.02 and Burglary 2911.12 if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of section 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code)

- ABDUCTION (2905.02)
- ABORTION, UNLAWFUL DISTRIBUTION OF INDUCING DRUG (2919.123), prior conviction
- ARSON hire, for (2909.03)
- ASSAULT (2903.13)
- ASSAULT, AGGRAVATED victim is peace officer (2903.12)
- ATTEMPT (2923.02), 1 degree less than substantive crime murder, to commit
- BRIBERY (2921.02)
- BURGLARY (2911.12)
- CARRYING CONCEALED WEAPONS aboard aircraft (2923.12)
- CARRYING CONCEALED WEAPONS violation committed at a D permit premises (2923.12)
- CHEMICAL WEAPON, BIOLOGICAL WEAPON, RADIOLOGICAL OR NUCLEAR WEAPON, OR EXPLOSIVE DEVICE, CRIMINAL POSSESSION (2909.26)
- CHECKS, passing bad— value of $150,000 or more (2913.11)
- CHILD ABUSE, PERMITTING (2903.15)
- CHILD ENDANGERING (2919.22) abuse or neglect resulting in serious physical harm
- CHILD ENDANGERING (2919.22) administering extreme and cruel abuse or discipline
- COMPUTER, UNAUTHORIZED ACCESS OF (2913.421)
- COUNTERFEITING (2913.30)
- CREDIT CARD, MISUSE OF (2913.21)
- CREDIT CARD, MISUSE OF value of $150,000 or more within 90 days (2913.21)
- CREDIT CARD, MISUSE OF victim elderly person or disabled adult— $7,500 or more but less than $37,500 (2913.21)
- CRIMINAL SIMULATION (2913.32),value more than $150,000
- DECEPTION TO SECURE WRITINGS value of $150,000 or more (2913.43)
- DECEPTION TO SECURE WRITINGS victim elderly person or disabled adult— $7,500 or more and less than $37,500 (2913.43)
- DEFRAUDING CREDITORS (2913.45), value of $150,000 or more

- DESECRATION (2927.11)
- DRUG ABUSE conveyance of drug of abuse onto the grounds of detention, etc., facility (2921.36)
- DRUG ABUSE corrupting another with drugs —marihuana near school premises (2925.02)
- DRUG ABUSE corrupting another with drugs – pregnant woman, marihuana (2925.02)
- DRUG ABUSE cultivation of marihuana, illegal (2925.04)
- DRUG ABUSE hidden compartment in vehicle (2923.241)
- DRUG ABUSE illegal assembly or possession of chemicals for the manufacture of drugs (2925.04.1)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—cocaine (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—hashish (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—heroin (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—LSD (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—marihuana (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance— schedule I or II substance (except marihuana, cocaine, LSD, heroin, and hashish) (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance— schedule III, IV or V substance (2925.11)
- DRUG ABUSE manufacture of drugs, illegal (2925.04)
- DRUG ABUSE marihuana trafficking, funding of (2925.05)
- DRUG ABUSE possession, aggravated (schedule I or II substance, except marihuana, cocaine, LSD, heroin, and hashish) (2925.11)
- DRUG ABUSE possession of cocaine (2925.11)
- DRUG ABUSE possession of controlled substance analog (2925.11)
- DRUG ABUSE possession of drugs (schedule III, IV, or V substance) (2925.11)
- DRUG ABUSE possession of hashish (2925.11)
- DRUG ABUSE possession of heroin (2925.11)
- DRUG ABUSE possession of LSD (2925.11)
- DRUG ABUSE possession of marihuana (2925.11)
- DRUG ABUSE possession of schedule III, IV, or V compound, (2925.11)
- DRUG ABUSE tampering with drugs (2925.24)

- DRUG ABUSE trafficking, aggravated (schedule I or II substance, except marihuana, cocaine, LSD, heroin, and hashish)(2925.03)
- DRUG ABUSE trafficking in cocaine (2925.03)
- DRUG ABUSE trafficking in controlled substance analog (2925.03)
- DRUG ABUSE trafficking in drugs (schedule III, IV or V substance)(2925.03)
- DRUG ABUSE trafficking in hashish (2925.03)
- DRUG ABUSE trafficking in heroin (2925.03)
- DRUG ABUSE trafficking in LSD (2925.03)
- DRUG ABUSE trafficking in marihuana (2925.03)
- EMAIL, ILLEGALLY TRANSMITTING MULTIPLE COMMERCIAL MESSAGES (2913.421)
- ESCAPE (2921.34)
- EXTORTION (2905.11)
- FALSE ALARMS violation pertains to purported, threatened or actual use of a weapon of mass destruction (2917.32)
- FALSE ALARMS violation resulting in economic harm of $150,000 or more (2917.32)
- FALSIFICATION IN A THEFT OFFENSE value of $150,000 or more, (2921.13)
- FALSIFICATION REGARDING A REMOVEL PROCEEDING (2921.13)
- FLEEING OR ELUDING OFFICER (2921.33.1)
- FOOD STAMPS OR COUPONS illegal use (2913.46)— value $7,500 but less than $150,000
- FORGERY loss value over $150,000 (2913.31)
- FORGERY victim elderly person or disabled adult—$7,500 or more and less than $37,500 (2913.31)
- HARASSMENT WITH BODILY SUBSTANCE (2921.38)
- IDENTITY FRAUD elderly, disabled victim, active duty service member, or spouse of an active duty service member (2913.49)
- IDENTITY FRAUD value $7,500 or more but less than $150,000 (2913.49)
- ILLEGAL BAIL BOND AGENT PRACTICES (2927.27)
- ILLEGAL CONVEYANCE OF WEAPONS OR PROHIBITED ITEMS ONTO DETENTION FACILITY OR INSTITUTION (2921.36)
- IMPERSONATING PEACE OFFICER commit felony while impersonating (2921.51)
- IMPORTUNING telecommunications solicitation—under age 13 (2907.07)
- IMPORTUNING under age 13 (2907.07)

- INSURANCE FRAUD (2913.47)
- INTIMIDATION (2921.03)
- INTIMIDATION attorney, victim or witness in a criminal case (2921.04), force or threat of harm
- MANSLAUGHTER, INVOLUNTARY in misdemeanor commission/attempt (2903.04)
- MEDICAID ELIGIBILITY FRAUD (2913.40.1)
- MEDICAID FRAUD (2913.40) value of $100,000 or more
- MINORS pandering obscenity involving (2907.32.1)
- MINORS pandering sexually oriented matter involving (2907.32.2)
- MINORS unlawful sexual conduct with, ten or more years difference (2907.04)
- MONEY LAUNDERING IN SUPPORT OF TERRORISM (2909.29)
- MOTOR VEHICLES/TRAFFIC LAWS air bag, improper placement (4549.20)
- MOTOR VEHICLES/TRAFFIC LAWS driver's (operator's) license—driving under specified lifetime suspension (4510.18)
- MOTOR VEHICLES/TRAFFIC LAWS D.U.I. (driving under the influence of alcohol or drug of abuse or both) (4511.19)
- MOTOR VEHICLES/TRAFFIC LAWS resisting traffic officer, fleeing after signal to stop (2921.33.1)
- MOTOR VEHICLES/TRAFFIC LAWS victim as elderly person or disabled adult—$7,500 or more, less than $37,500 (2913.03)
- OBSCENITY pandering sexually oriented matter involving minor (2907.32.2), prior conviction
- OBSTRUCTING JUSTICE (2921.32) aid in commission of aggravated murder, murder, or a felony of the 1st or 2nd degree
- PANIC, INDUCING violation of public place involved in (A)(l) is a school and violation pertains to purported, threatened or actual use of a weapon of mass destruction—resulting in economic harm of $7,500 or more but less than $150,000 (2917.31)
- PANIC, INDUCING violation pertains to purported, threatened or actual use of a weapon of mass destruction resulting in economic harm of $150,000 or more (2917.31)
- PANIC, INDUCING violation pertains to purported, threatened or actual use of a weapon of mass destruction resulting in physical harm to a person (2917.31)
- PANIC, INDUCING violation resulting in economic harm of $150,000 or more (2917.31)
- PATIENTS abuse of (2903.34), prior conviction
- PATIENTS endangerment (2903.341), serious physical harm
- PERJURY (2921.11)

DRAFT

- PROSTITUTION after positive HIV test (2907.25)
- PROSTITUTION compelling (2907.21)
- PROSTITUTION promoting, minor (2907.22)
- PROSTITUTION soliciting (2907.24)
- PROSTITUTION soliciting after positive HIV test (2907.24)
- RAILROADS grade crossing device vandalism, (2909.101)
- RAILROADS interference with operation, (2909.10)
- RAILROADS trespass—vehicle, (2909.10)
- RAILROADS vandalism, (2909.10)
- RECEIVING STOLEN PROPERTY value of $150,000 or more (2913.51)
- RECKLESS HOMICIDE (2903.04.1)
- RETALIATION (2921.05)
- RIOT inciting to violence (2917.01)
- RIOT inmate, by (2917.02)
- RIOT, AGGRAVATED (2917.02)
- ROBBERY (2911.02)
- SEXUAL BATTERY (2907.03)
- SEXUAL IMPOSITION, GROSS (2907.05) substantially impairs judgment or control with controlled substance
- SEXUAL IMPOSITION, GROSS (2907.05) touching genitalia of victim under 12 years of age
- SEXUAL IMPOSITION, GROSS (2907.05) victim under 13 years of age
- SHAM LEGAL PROCESS, USING (2921.52)
- TAMPERING WITH EVIDENCE (2921.12)
- TAMPERING WITH RECORDS (2913.42)
- TELECOMMUNICATIONS FRAUD (2913.05) value $7,500 or more but less than $150,000
- TELECOMMUNICATIONS HARASSMENT (2917.21) violation resulting in economic harm of $150,000 or more
- TERRORISM making a terroristic threat (2909.23)
- TERRORISM soliciting or providing support for an act of terrorism (2909.22)
- THEFT drugs, dangerous—prior felony drug abuse conviction (2913.02)
- THEFT firearm (2913.02)

DRAFT

- THEFT from person in a protected class or active duty service member, or spouse of an active duty service member—$7,500 or more, less than $37,500 (2913.02)
- THEFT ordnance, dangerous (2913.02)
- THEFT value—$150,000 or more, less than $750,000 (2913.02)
- THEFT IN OFFICE (2921.41)
- TRADEMARK COUNTERFEITING (2913.34)
- UNAUTHORIZED USE OF PROPERTY (2913.04)
- UNLAWFUL CONDUCT WITH RESPECT TO DOCUMENTS (2905.33)
- VANDALISM value $150,000 or more (2909.05)
- VANDALISM, railroad (2909.10)
- VANDALISM vehicular, (2909.09)
- VEHICULAR ASSAULT (2903.08(A)(2)), at time of offense driving under suspension or revocation previous conviction under this section or any traffic related homicide, manslaughter or assault offense
- VEHICULAR ASSAULT, AGGRAVATED (2903.08(A)(1))
- VEHICULAR HOMICIDE, AGGRAVATED (2903.06(A)(1), (2)), reckless
- WEAPONS OFFENSES— drug dependent person/chronic alcoholic, use of weapon by (2923.13)
- WEAPONS OFFENSES having while under disability (2923.13)
- WEAPONS OFFENSES possession of a deadly weapon while under detention (2923.13.1)
- WORKERS' COMPENSATION FRAUD (2913.48)

F4

- ABORTION, DISMEMBERMENT FETICIDE (2919.15)
- ABORTION, PERFORMING OR INDUCING WITHOUT INFORMED CONSENT WHENTHERE IS A DETECTABLE FETAL HEARTBEAT (2919.192)
- ABORTION, UNLAWFUL (2919.12, 2919.121), prior conviction
- ABORTION, UNLAWFUL DISTRIBUTION OF INDUCING DRUG (2919.123)
- ABORTION WHEN PROBABLE POST-FERTILIZATION AGE OF THE UNBORN CHILD IS 20 WEEKS OR GREATER (2919.201)
- ADULT CABARETS, OFFENSES CONCERNING (503.53, 503.59)

DRAFT

- AIDS blood, contaminated, selling or donating (2927.13)
- AIRCRAFT, AIRPORTS endangering aircraft (2909.08)
- AIRCRAFT, AIRPORTS endangering airport operations (2909.08)
- ARSON defraud, to (2909.03)
- ARSON public buildings (2909.03)
- ARSON public parks (2909.03)
- ARSON harm or property more than $500 (2909.03)
- ASSAULT (2903.13)
- ASSAULT, AGGRAVATED (2903.12)
- ASSAULTING OR HARASSING POLICE DOG OR HORSE OR HANDICAPPED ASSISTANCE DOG (2921.32.1)
- ATTEMPT (2923.02), 1 degree less than substantive crime murder, to commit
- BINGO illegally conducting (2915.09)
- BINGO without license (2915.07)
- BLOOD, CONTAMINATED, SELLING OR DONATING (2927.13)
- BURGLARY (2911.12)
- CABLE TELEVISION, POSSESSION OR SALE OF UNAUTHORIZED DEVICES (2913.04.1)
- CARRYING CONCEALED WEAPONS loaded or dangerous ordnance (2923.12)
- CARRYING CONCEALED WEAPONS prior conviction (2923.12)
- CHEMICALS OR SUBSTANCES FOR THE MANUFACTURE OF CHEMICAL WEAPON,BIOLOGICAL WEAPON, RADIOLOGICAL OR NUCLEAR WEAPON, OR EXPLOSIVE DEVICE, ILLEGAL ASSEMBLY OR POSSESSION (2909.28)
- CHECKS, passing bad—value of $7,500 but under $150,000 (2913.11)
- CHILD ENDANGERING (2919.22) abuse or neglect, prior conviction
- CHILD ENDANGERING operate motor vehicle in violation of 4511.19(A) with child under 18 in vehicle (2919.22), prior conviction or resulting in serious physical harm
- COMPUTER, UNAUTHORIZED ACCESS OF (2913.421)
- CORRUPTING SPORTS prior conviction (2915.05)
- COUNTERFEITING (2913.30)
- CREDIT CARD, MISUSE OF (2913.21)
- CREDIT CARD, MISUSE OF value of $7,500 but under $150,000 within 90 days (2913.21)

- CREDIT CARD, MISUSE OF victim elderly person or disabled adult— $1,000 or more but less than $7,500 (2913.21)
- CREDIT PRACTICES, UNLAWFUL extortionate credit extension, criminal usury (2905.22)
- CRIMINAL DAMAGING OR ENDANGERING (2909.06), occupied aircraft, involving
- CRIMINAL MISCHIEF (2909.07), occupied aircraft, involving
- CRIMINAL SIMULATION (2913.32), value between $7,500 and $150,000
- CUSTODY, INTERFERENCE WITH (2919.23)
- DECEPTION TO SECURE WRITINGS value of $7,500 but under $150,000 (2913.43)
- DECEPTION TO SECURE WRITINGS victim elderly person or disabled adult—
- $1,000 or more and less than $7,500 (2913.43)
- DEFRAUDING CREDITORS (2913.45), value of $7,500 but under $150,000
- DESECRATION (2927.11)
- DISRUPTING PUBLIC SERVICES (2909.04)
- DOMESTIC VIOLENCE prior conviction (2919.25),
- DRUG ABUSE anabolic steroids, illegal administration or distribution of (2925.06)
- DRUG ABUSE corrupting another with drugs —marihuana (2925.02)
- DRUG ABUSE counterfeit controlled substances—aggravated trafficking (2925.37)
- DRUG ABUSE counterfeit controlled substances—fraudulent advertising, offense committed in the vicinity of school or juvenile (2925.37)
- DRUG ABUSE counterfeit controlled substances—promoting drug abuse (2925.37), offense committed in the vicinity of school or juvenile
- DRUG ABUSE counterfeit controlled substances—trafficking, offense committed in the vicinity of school or juvenile (2925.37)
- DRUG ABUSE deception to obtain dangerous drugs schedule I or II substance (except marihuana) (2925.22)
- DRUG ABUSE drug documents, illegal processing of dangerous drug, schedule I or II substance (except marihuana) (2925.23)
- DRUG ABUSE drug samples, illegal dispensing of schedule I or II substance (except marihuana) (2925.23) offense committed in the vicinity of school or juvenile
- DRUG ABUSE hidden compartment in vehicle (2923.241)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—cocaine (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—heroin (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—LSD (2925.11)

DRAFT

- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—
  schedule III, IV or V substance (2925.11)
- DRUG ABUSE livestock, offenses involving (2925.09)
- DRUG ABUSE possession of cocaine (2925.11)
- DRUG ABUSE possession of controlled substance analog (2925.11)
- DRUG ABUSE possession of drugs (schedule III, IV, or V substance) (2925.11)
- DRUG ABUSE possession of heroin (2925.11)
- DRUG ABUSE possession of LSD (2925.11)
- DRUG ABUSE possession of schedule III, IV, or V compound, (2925.11)
- DRUG ABUSE trafficking, aggravated (schedule I or II substance, except marihuana, cocaine, LSD, heroin, and hashish)(2925.03)
- DRUG ABUSE trafficking in cocaine (2925.03)
- DRUG ABUSE trafficking in controlled substance analog (2925.03)
- DRUG ABUSE trafficking in drugs (schedule III, IV or V substance)(2925.03)
- DRUG ABUSE trafficking in harmful intoxicants (2925.32)
- DRUG ABUSE trafficking in hashish (2925.03)
- DRUG ABUSE trafficking in heroin (2925.03)
- DRUG ABUSE trafficking in LSD (2925.03)
- DRUG ABUSE trafficking in marihuana (2925.03)
- EMAIL, ILLEGALLY TRANSMITTING MULTIPLE COMMERCIAL MESSAGES (2913.421)
- ESCAPE aiding (2921.35)
- FALSE ALARMS (2917.32) violation resulting in economic harm of $7,500 or more but less than $150,000
- FALSIFICATION IN A THEFT OFFENSE value of $7,500 but under $150,000 (2921.13)
- FALSIFICATION TO OBTAIN A CONCEALED HANDGUN LICENSE (2923.1211)
- FLEEING OR ELUDING OFFICER (2921.33.1)
- FOOD STAMPS OR COUPONS illegal use (2913.46)—value of $1,000 but less than $7,500
- FORGERY (2913.31) loss value between $7,500 and $150,000
- FORGERY victim elderly person or disabled adult—$1,000 or more and less than $7,500 (2913.31)
- FUNCTIONALLY IMPAIRED PERSON, FAILING TO PROVIDE FOR (2903.16)
- HOAX WEAPON OF MASS DESTRUCTION, UNLAWFUL POSSESSION OR USE (2917.33)

DRAFT

- IDENTITY FRAUD value $1,000 or more but less than $7,500 (2913.49)
- ILLEGAL CONVEYANCE OF DEADLY WEAPON OR DANGEROUS ORDNANCE INTO COURTHOUSE; ILLEGAL POSSESSION OR CONTROL IN COURTHOUSE (2923.12.3)
- ILLEGAL CONVEYANCE OF WEAPONS OR PROHIBITED ITEMS ONTO DETENTION FACILITY OR INSTITUTION (2921.36)
- ILLEGAL CONVEYANCE OR POSSESSION OF A DEADLY WEAPON OR DANGEROUS ORDNANCE OR ILLEGAL POSSESSION OF AN OBJECT INDISTINGUISHABLE FROM A FIREARM IN SCHOOL SAFETY ZONE (2923.12.2)
- IMPERSONATING PEACE OFFICER to commit felony (2921.51)
- IMPORTUNING between 13 and 16 (2907.07)
- IMPORTUNING telecommunications solicitation—between 13 and 16 (2907.07)
- INSURANCE FRAUD (2913.47)
- INTERCEPTION OF WIRE OR ORAL COMMUNICATION (2933.52)
- MASSAGE ESTABLISHMENTS, OFFENSES CONCERNING (503.42, 503.59, 2927.17)
- MEDICAID ELIGIBILITY FRAUD (2913.40.1)
- MEDICAID FRAUD (2913.40) value of between $5,000 and $100,000
- MENACING prior conviction, where victim was officer or employee of public children services agency or private child placing agency, and prior offense related to officer's or employee's performance or anticipated performance of official responsibilities or duties (2903.21)
- MENACING stalking, by (2903.211)
- MINORS disseminating matter harmful to juveniles, obscene and juvenile under 13 (2907.31)
- MINORS illegal use of in nudity oriented material or performance (2907.32.3), prior conviction
- MINORS pandering obscenity involving (2907.32.1)
- MINORS pandering sexually oriented matter involving (2907.32.2)
- MINORS unlawful sexual conduct with (2907.04)
- MONEY LAUNDERING IN SUPPORT OF TERRORISM (2909.29)
- MOTOR VEHICLES/TRAFFIC LAWS D.U.I. (driving under the influence of alcohol or drug of abuse or both) (4511.19)
- MOTOR VEHICLES/TRAFFIC LAWS odometer tampering, subsequent offense (4549.42)
- MOTOR VEHICLES/TRAFFIC LAWS resisting traffic officer, fleeing after signal to stop (2921.33.1)
- MOTOR VEHICLES/TRAFFIC LAWS victim as elderly person or disabled adult— $1,000 or more, less than $7,500 (2913.03)

DRAFT

- MOTOR VEHICLES/TRAFFIC LAWS vehicle identification number or derivative, offenses re (4549.62)
- NONSUPPORT OR CONTRIBUTING TO NONSUPPORT OF DEPENDENTS (2919.21)
- OBSECENTIY disseminating, harmful to minors (2907.31), prior conviction
- OBSCENITY obscene and juvenile under 13 (2907.31)
- OBSCENITY pandering (2907.32), prior conviction
- PANIC, INDUCING physical harm to any person (2917.31)
- PANIC, INDUCING violation of public place involved in (A)(1) is a school or institution of higher learning (2917.31)
- PANIC, INDUCING violation pertains to purported, threatened or actual use of a weapon of mass destruction (2917.31)
- PANIC, INDUCING violation resulting in economic harm of $7,500 or more but less than $150,000 (2917.31)
- PATIENTS abuse of (2903.34)
- PATIENTS endangerment (2903.341), serious physical harm, prior conviction
- PROSTITUTION promoting (2907.22)
- PUBLIC CONTRACT, UNLAWFUL INTEREST IN authorize/influence public contract for investment for own interest (2921.42)
- RAILROADS grade crossing device vandalism, (2909.101)
- RAILROADS interference with operation, (2909.10)
- RAILROADS trespass—vehicle, (2909.10)
- RAILROADS vandalism, (2909.10)
- RECEIVING STOLEN PROPERTY value of $7,500 or more but less than $150,000; or motor vehicle; or dangerous drug; or firearm or dangerous ordnance (2913.51)
- RECOGNIZANCE, FAILURE TO APPEAR original charge, felony (2937.29, 2937.99)
- RESISTING ARREST (2921.33)
- RIOT inmate, by (2917.02)
- RIOT, AGGRAVATED (2917.02)
- SAFECRACKING (2911.31)
- SEXUAL IMPOSITION, GROSS (2907.05)
- SHAM LEGAL PROCESS, USING (2921.52)
- SPREADING A FALSE REPORT OF CONTAMINATION (2927.24)

DRAFT

- STALKING, MENACING BY (2903.211)
- TAMPERING WITH RECORDS (2913.42)
- TELECOMMUNICATIONS FRAUD (2913.05) value $1,500 or more but less than $7,500
- TELECOMMUNICATIONS HARASSMENT (2913.05) violation resulting in economic harm of $7,500 or more but less than $150,000
- TERMINATING OR ATTEMPTING TO TERMINATE HUMAN PREGNANCY AFTER VIABILITY (2919.17)
- THEFT drugs, dangerous—no prior felony drug abuse conviction (2913.02)
- THEFT from person in a protected class or active duty service member, or spouse of an active duty service member—$1,000 or more, less than $7,500 (2913.02)
- THEFT motor vehicle (2913.02)
- THEFT value—$7,500 or more, less than $150,000 (2913.02)
- THEFT IN OFFICE (2921.41)
- TRADEMARK COUNTERFEITING (2913.34)
- UNAUTHORIZED USE OF PROPERTY (2913.04)
- VANDALISM value $7,500 but less than $150,000 (2909.05)
- VANDALISM vehicular, (2909.09)
- VEHICULAR ASSAULT (2903.08(A)(2))
- VEHICULAR HOMICIDE (2903.06(A)(3)), at time of offense driving under suspension or revocation or cancellation or without a license, or previous conviction under this section or any traffic related homicide, manslaughter or assault offense
- WEAPONS OFFENSES— conveyance into detention facility or institution (2921.36)
- WEAPONS OFFENSES— firearms in motor vehicle, knowingly discharge (2923.16)
- WEAPONS OFFENSES firearms, defacing identification marks (2923.201)
- WEAPONS OFFENSES possession of a deadly weapon while under detention (2923.13.1)
- WEAPONS OFFENSES school premises or activities (2923.12.2)
- WEAPONS OFFENSES unlawful transaction in (2923.20)
- WORKERS' COMPENSATION FRAUD (2913.48)

DRAFT

F5

- ABORTION, UNLAWFUL (2919.12, 2919.121), prior conviction
- AIRCRAFT, AIRPORTS endangering aircraft (2909.08)
- AIRCRAFT, AIRPORTS endangering airport operations (2909.08)
- ARSON failure to register (2909.15)
- ASSAULT (2903.13)
- ASSAULTING OR HARASSING POLICE DOG OR HORSE OR HANDICAPPED ASSISTANCE DOG (2921.32.1)
- ATTEMPT (2923.02), 1 degree less than substantive crime murder, to commit
- BINGO illegal conduct of a raffle (2915.092)
- BINGO illegal instant bingo conduct (2915.091, 2915.094)
- BINGO illegally operating as distributor (2915.081)
- BINGO illegally operating as manufacturer (2915.082)
- BREAKING AND ENTERING (2911.13)
- CABLE TELEVISION, POSSESSION OR SALE OF UNAUTHORIZED DEVICES (2913.04.1)
- CARRYING CONCEALED WEAPONS handgun, failure to keep hands in plain sight (2923.12)
- CARRYING CONCEALED WEAPONS handgun, removing or grasping (2923.12)
- CARRYING CONCEALED WEAPONS handgun, failure to comply with lawful order (2923.12)
- CHEATING value of $1,000 or more, or prior theft or gambling offense (2915.05)
- CHECKS, passing bad—value of $1,000 but under $7,500 (2913.11)
- CHILD, CRIMINAL ENTICEMENT (2905.05), prior conviction
- CHILD ENDANGERING operate motor vehicle in violation of 4511.19(A) with child under 18 in vehicle (2919.22), prior conviction or resulting in serious physical harm
- COMPUTER, CABLE OR TELECOMMUNICATIONS PROPERTY, UNAUTHORIZED USE OF (2913.04)
- CORPSE, ABUSE OF gross abuse (2927.01)
- CORRUPTING SPORTS (2915.05)
- CREDIT CARD, MISUSE OF (2913.21)
- CREDIT CARD, MISUSE OF value of $1,000 but under $7,500 within 90 days (2913.21)
- CREDIT CARD, MISUSE OF victim elderly person or disabled adult— less than $1,000 (2913.21)
- CRIMINAL CHILD ENTICEMENT (2905.05), prior conviction

- CRIMINAL DAMAGING OR ENDANGERING (2909.06), aircraft, involving
- CRIMINAL MISCHIEF (2909.07), aircraft, involving
- CRIMINAL SIMULATION (2913.32),value between $1,000 and $7,500
- CRIMINAL TOOLS, POSSESSING (2923.24)
- CUSTODY, INTERFERENCE WITH (2919.23)
- DECEPTION TO SECURE WRITINGS value of $1,000 but under $7,500 (2913.43)
- DECEPTION TO SECURE WRITINGS victim elderly person or disabled adult—less than $1,000 (2913.43)
- DEFRAUDING CREDITORS (2913.45), value of $1,000 but under $7,500
- DESECRATION (2927.11)
- DRUG ABUSE counterfeit controlled substances—fraudulent advertising (2925.37)
- DRUG ABUSE counterfeit controlled substances—promoting drug abuse (2925.37)
- DRUG ABUSE counterfeit controlled substances—trafficking (2925.37)
- DRUG ABUSE cultivation of marihuana, illegal (2925.04)
- DRUG ABUSE deception to obtain dangerous drugs schedule III, IV or V substance or marihuana (2925.22)
- DRUG ABUSE drug documents, illegal processing of dangerous drug, schedule III, IV, or V substance, or marihuana (2925.23)
- DRUG ABUSE drug samples, illegal dispensing of schedule I or II substance (except marihuana) (2925.23)
- DRUG ABUSE harmful intoxicants, abusing, prior conviction (2925.31)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—cocaine (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—hashish (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—heroin (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—LSD (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—marihuana (2925.11)
- DRUG ABUSE knowingly obtain, possess, or use a controlled substance—schedule I or II substance (except marihuana, cocaine, LSD, heroin, and hashish) (2925.11)
- DRUG ABUSE livestock, offenses involving (2925.09)
- DRUG ABUSE permitting drug abuse (2925.13)
- DRUG ABUSE possession, aggravated (schedule I or II substance, except marihuana, cocaine, LSD, heroin, and hashish) (2925.11)

- DRUG ABUSE possession of cocaine (2925.11)
- DRUG ABUSE possession of controlled substance analog (2925.11)
- DRUG ABUSE possession of hashish (2925.11)
- DRUG ABUSE possession of heroin (2925.11)
- DRUG ABUSE possession of LSD (2925.11)
- DRUG ABUSE possession of marihuana (2925.11)
- DRUG ABUSE trafficking in cocaine (2925.03)
- DRUG ABUSE trafficking in controlled substance analog (2925.03)
- DRUG ABUSE trafficking in drugs (schedule III, IV or V substance)(2925.03)
- DRUG ABUSE trafficking in harmful intoxicants (2925.32)
- DRUG ABUSE trafficking in hashish (2925.03)
- DRUG ABUSE trafficking in heroin (2925.03)
- DRUG ABUSE trafficking in LSD (2925.03)
- DRUG ABUSE trafficking in marihuana (2925.03)
- EMAIL, ILLEGALLY TRANSMITTING MULTIPLE COMMERCIAL MESSAGES (2913.421)
- ESCAPE (2921.34)
- FALSE ALARMS (2917.32) violation resulting in economic harm of $1,000 or more but less than $7,500
- FALSIFICATION IN A THEFT OFFENSE value of $1,000 but under $7,500 (2921.13)
- FALSIFICATION TO PURCHASE FIREARM (2921.13)
- FOOD STAMPS OR COUPONS illegal use (2913.46)—value under $1,000
- FORGERY (2913.31[A])
- FORGERY victim elderly person or disabled adult—less than $1,000 (2913.31)
- GAMBLING prior conviction (2915.02)
- GAMBLING HOUSE, OPERATING prior conviction (2915.03)
- HARASSMENT WITH BODILY SUBSTANCE (2921.38)
- IDENTITY FRAUD elderly, disabled victim, active duty service member, or spouse of an active duty service member (2913.49)
- IDENTITY FRAUD value less than $1,000 (2913.49)
- ILLEGAL CONVEYANCE OF DEADLY WEAPON OR DANGEROUS ORDNANCE INTO COURTHOUSE; ILLEGAL POSSESSION OR CONTROL IN COURTHOUSE (2923.12.3)

DRAFT

- ILLEGAL CONVEYANCE OF WEAPONS OR PROHIBITED ITEMS ONTO DETENTION FACILITY OR INSTITUTION (2921.36)
- ILLEGAL CONVEYANCE OR POSSESSION OF A DEADLY WEAPON OR DANGEROUS ORDNANCE OR ILLEGAL POSSESSION OF AN OBJECT INDISTINGUISHABLE FROM A FIREARM IN SCHOOL SAFETY ZONE (2923.12.2)
- IMPORTUNING between 13 and 16 (2907.07)
- IMPORTUNING telecommunications solicitation—between 13 and 16 (2907.07)
- INSURANCE FRAUD (2913.47)
- INTERFERING WITH ACTION TO ISSUE OR MODIFY SUPPORT ORDER (2919.23.1)
- LAW ENFORCEMENT AUTOMATED DATABASE SYSTEM, UNAUTHORIZED USE (2913.04)
- MEDICAID ELIGIBILITY FRAUD (2913.40.1)
- MEDICAID FRAUD (2913.40) value of between $500 and $5,000
- MENACING victim is officer or employee of a public children services agency or a private child placing agency and offense relates to officer's or employee's performance or anticipated performance of official responsibilities or duties (2903.21)
- MENACING stalking, by (2903.211)
- MINORS disseminating matter harmful to juveniles, obscene (2907.31)
- MINORS firearms, improperly furnishing to (2923.21)
- MINORS illegal use of in nudity oriented material or performance (2907.32.3)
- MONEY LAUNDERING IN SUPPORT OF TERRORISM (2909.29)
- MOTION PICTURE PIRACY (2913.07)
- MOTOR VEHICLES/TRAFFIC LAWS accident, failure to stop after injury to person or property, when (4549.02.1)
- MOTOR VEHICLES/TRAFFIC LAWS air bag, improper placement (4549.20)
- MOTOR VEHICLES/TRAFFIC LAWS air bag, improper placement, subsequent offenses (4549.20)
- MOTOR VEHICLES/TRAFFIC LAWS odometer tampering (4549.42)
- MOTOR VEHICLES/TRAFFIC LAWS unauthorized use of vehicle, removal from state or for 48 hours or longer (2913.03)
- MOTOR VEHICLES/TRAFFIC LAWS victim as elderly person or disabled adult— less than $1,000 (2913.03)
- MOTOR VEHICLES/TRAFFIC LAWS vehicle identification number or derivative, offenses re (4549.62)
- NONSUPPORT OR CONTRIBUTING TO NONSUPPORT OF DEPENDENTS (2919.21)

DRAFT

- OBSCENITY disseminating, harmful to minors, illegal use of minor is nudity oriented material or performance (2907.32.3)
- OBSCENITY objectionable matter, compelling acceptance of (2907.34)
- OBSCENITY pandering (2907.32)
- OBSTRUCTING JUSTICE aid to felon (2921.32)
- OBSTRUCTING OFFICIAL BUSINESS (2921.31)
- PANIC, INDUCING violation resulting in economic harm of $1,000 or more but less than $7,500 (2917.31)
- PATIENTS gross neglect of (2903.34), prior conviction
- PATIENTS neglect of (2903.34), prior conviction
- PROSTITUTION loitering to engage in solicitation after positive HIV test (2907.24.1)
- PROSTITUTION soliciting (2907.24)
- PROTECTION ORDER, VIOLATING anti-stalking (2919.27), two or more prior convictions, same subject
- PROTECTION ORDER, VIOLATING (2919.27), two or more prior convictions
- PUBLIC INDECENCY (2907.09)
- RECEIVING STOLEN PROPERTY value of $1,000 or more but less than $7,500, or special property of R.C. § 2913.71 (2913.51)
- RIOT, AGGRAVATED (2917.02)
- TAMPERING WITH COIN MACHINES prior conviction (2911.32)
- TAMPERING WITH RECORDS (2913.42)
- TELECOMMUNICATIONS DEVICE, UNLAWFUL USE OF (2913.06)
- TELECOMMUNICATIONS FRAUD (2913.05)
- TELECOMMUNICATIONS HARASSMENT prior conviction (2917.21)
- TELECOMMUNICATIONS HARASSMENT violation resulting in economic harm of $1,000 or more but less than $7,500 (2917.21)
- TELECOMMUNICATIONS PROPERTY, UNAUTHORIZED USE OF (2913.04)
- THEFT from person in a protected class or active duty service member, or spouse of an active duty service member—less than $1,000 (2913.02)
- THEFT motion picture piracy, (2913.07)
- THEFT value—$1,000 or more, less than $7,500 (2913.02)
- THEFT IN OFFICE (2921.41)

- TRADEMARK COUNTERFEITING (2913.34)
- UNAUTHORIZED USE OF PROPERTY (2913.04)
- UNLAWFUL COLLECTION OF BODILY SUBSTANCE (2927.15)
- VANDALISM value less than $7,500 (2909.05)
- VOYEURISM to photograph the other person in a state of nudity if the other person is minor and (2907.08), the offender is the minor's natural or adoptive parent, stepparent, guardian, or custodian, or person in loco parentis to the minor
  (or)
  the minor is in the custody of law or is a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the minor
  (or)
  the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to RC § 3301.07(D), the minor is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school
  (or)
  the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the minor is enrolled in or attends that institution
  (or)
  the offender is a caregiver, administrator, or other person in authority employed by or serving in a child daycare center, Type A family daycare home, or Type B family daycare home, and the minor is enrolled in or attends that center or home
  (or)
  the offender is the minor's athletic or other type of coach, is the minor's instructor, is the leader of the scouting troop or which the minor is a member, provided babysitting care for the minor, or is a person with temporary or occasional disciplinary control over the minor
- WEAPONS OFFENSES— dangerous ordnance, unlawful possession (2923.17)
- WEAPONS OFFENSES— firearms in motor vehicle, loaded (2923.16)

- WEAPONS OFFENSES firearms, improperly furnishing to minor (2923.21)
- WEAPONS OFFENSES handgun, failure to keep hands in plain sight (2923.12)
- WEAPONS OFFENSES handgun, removing or grasping (2923.12)

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- WEAPONS OFFENSES handgun, failure to comply with lawful order (2923.12)
- WEAPONS OFFENSES liquor permit premises, possession of firearm in (2923.12.1)
- WEAPONS OFFENSES possessing criminal tools (2923.24)
- WEAPONS OFFENSES possession of a deadly weapon while under detention (2923.13.1)
- WEAPONS OFFENSES possession of an object indistinguishable from a firearm on school premises (2923.12.2)
- WEAPONS OFFENSES school premises or activities (2923.12.2)
- WEAPONS OFFENSES traffic stop, concealed weapon (2923.16)
- WORKERS' COMPENSATION FRAUD (2913.48)

Unclassified

- CONSPIRACY (2923.01), 1 degree less than substantive offense
- ETHNIC INTIMIDATION (2927.12), offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation
- SEX OFFENDERS, HABITUAL registration offenses (2950.99), may depend on degree of underlying offense necessitating registration
- TERRORISM (2909.24), 1 degree higher than the most serious underlying specified offense

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SENTENCING COMMISSION | ROUNDTABLE DISCUSSION | September 16, 2021

I. Purpose

The Commission has long discussed the need for common sense changes to modernize and refine the provisions of Revised Code. Call to action from the Commission to advocate specific recommendations to reduce complexity of sentencing.

II. Goal

Develop recommendations to achieve clarity and reduce the complexity of felony sentencing consistent with the Commission's **Vision:** To enhance justice and its **Mission:** To ensure fair sentencing in the state of Ohio.

III. Background – Justice Donnelly & Judge Zmuda

25 years ago, in July 1996, SB2 was enacted. The legislation established a type of determinate sentencing structure called a presumptive system, that required minimum sentences with judicial discretion from a range of possible punishments.

A decade into the implementation of SB2, prisons were crowded, there was a push toward a broader use of the former indeterminate sentences for high-level felons and there was resounding recognition that the felony sentencing code had become more, not less, complex.

Individually, each change seems logical enough, but the complexity and cost increase significantly and generally reflect the heightened sensitivities of an individual interest group, rather than careful public policy analysis. In other words, "[E]xceptions often swallow rules and make it difficult to read and apply the basic statutes".

A Decade of Sentencing Reform (March 2007)

A Plan for Simplifying the Ohio Revised Code Felony Sentencing Statutes (May 2008)

Today, the reality is that we are suffering from the cumulative effect of tinkering with sentencing structure on limited data sources and a crime-by-crime basis. It's time to acknowledge the need for a realistic, dedicated and long-range evaluation of criminal sentencing.

2929.19 and 2929.13 graphics (attachments)

Felony Sentencing Reference Guide (Updated July 2021)
Reagan Tokes Law Challenges and Opportunities (27 months into the law) (June 2021)
Supreme Court of Ohio Criminal Justice Opinion Summary (May 2021)

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The Commission has developed a Uniform Sentencing Entry and the Ohio Sentencing Data Platform (OSDP) to generate, for the first time, a standardized statewide felony sentencing entry template to ensure clear, comprehendible sentences and promote confidence in the system.

This effort further provides the leverage to implement wise, responsible legislation to protect the public at a pivotal time for criminal justice and sentence reform in Ohio.

IV. **Observations & Recommendations** – Justice Donnelly, Judge Gallagher, Judge Routson

V. **Common themes & Priorities** – All

Short term & Fast Starts

Long term

VI. **Political climate & Vehicles for Change** – Senator Manning

VII. **Next steps & action items**

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Lived Experience, Perspective, & the Sentencing Roundtable Workgroup

Judge Bob Nichols, Retired

Our Nation has labored under an unabated cultural upheaval since the 1960s that has sorely tested faith in our foundational values upon which national unity rests. In the separation of powers, the criminal justice system has not been spared critical public and institutional scrutiny from police practices to criminal sentencing.

The tensions between crime and punishment, between "law and order" and "mass incarceration," between protest riots and police tactics, and between acts of anarchy and insurrection all seek resolution in a system of justice charged with serving as the fulcrum upon which to balance the Constitutional demand for social order and the Bill of Rights protection of individual liberty.

The criminal justice system is not monolithic. It has many moving parts from arrest to sentencing. And although it is constitutionally based, it is influenced by many cultural, political, social, and geographical demands.

Notwithstanding those influences, since the Warren Supreme Court Rights Revolution of the 1960s and 70s, Ohio and the other 49 states have been brought under the umbrella of the federal Bill of Rights standards for arrests, searches, seizures, confessions, procedural due process surrounding trial practice, conviction, and sentencing.

A quick review of Ohio's sentencing history reflects penological best practices in the context of times relevant.

- From 1884 to 1996, Ohio and most of the nation relied on the rehabilitative model of criminal sentencing in the administration of justice. In that model, judges had broad and unfettered discretion to impose sentences intended to rehabilitate convicted offenders.

- Crime was considered pathological, subject to treatment either through probation or imprisonment. Prison sentences were indeterminate to provide time in which to treat the pathogen and rehabilitate the offender. Parole was utilized to supervise eligible offenders released from prison.

- Asymmetrical sentencing, uncertainty in prison time, a geometric increase in violent crime, a destructive drug culture, and a demand for "law and order" combined to create a public call for retributive reforms.

- Congress passed the Federal Sentencing Reform Act of 1984 that rejected rehabilitation, stated that punishment should serve retributive, educational, deterrent, and incapacitative goals, created a sentencing commission to determine punishment exposure, and established determinate sentencing.

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- Ohio followed suit in 1996 with adoption of SB2 that replaced the rehabilitative model with "truth in sentencing" intended to promote certainty and proportionality in felony sentencing under the direction of detailed purposes and principles. Although it adopted many of the features of the federal model, it retained rehabilitation as a sentencing principle and continued to employ the Community Corrections Act to divert offenders from prison into state funded local sanctions. It established a set of sentencing purposes and principles: protect the public and punish the offender.

- For a variety of reasons, SB2 produced a substantial increase in incarceration rates and an accompanying financial burden. The Ohio Supreme Court pushed an agenda to shift the administration of criminal justice from a retributive model to restorative justice with holistic therapeutic modalities. By the early 2000s, those modalities became incorporated into specialized dockets for drug, mental health, and veterans' criminal issues. They became a mechanism to divert those classifications of offenders out of the traditional adversarial process.

- In 2011, the General Assembly passed HB86 as a "Sentencing-overhaul law to reduce Ohio's prison population." The law represented an integration of retributive and restorative sentencing. The retributive function generally remains in the incarceration and management of felony prisoners by the Ohio Department of Rehabilitation and Correction (ODRC). The restorative function is legislated into local county correction boards for amenable felons and misdemeanants.

- When HB86 failed to substantially reduce Ohio's prison population, the General Assembly explored other modalities to remove pressure that strained ODRC and impacted state finances. To further its objective, imprisonment options were statutorily reduced to keep low level, non-violent felons out of state prisons and into county-based probation programs funded in large part by ODRC through probation and incentive grants geared to diversion and quotas.

- As a result of the Reagan Tokes tragedy, the General Assembly reintroduced indeterminate sentences to provide a vehicle to retain dangerous inmates in prison up to the maximum sentence. It has resulted in inconsistent and confusing sentencing at the trial level, and it has overburdened the appellate courts on frivolous issues.

- It has become apparent that criminal sentencing in Ohio needs to be restructured to achieve fair, proportional, congruent sentencing that is predictable, consistent, and deterrent incorporating the reasonable use of correctional facilities, programs and services.

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In 1996, SB2 was a dramatic shift away from the rehabilitative model of criminal sentencing to retributive sentencing that claimed there would be "Truth in Sentencing," where a prisoner would serve the sentence imposed, less nominal good time and subject to judicial release controlled by the sentencing judge.

Controls within SB2 were intended to maintain a stable prison census, but *State v. Foster* nullified the controls and the exercise of somewhat unfettered judicial discretion drove the prison population and costs of detention to unacceptable levels. From 2006 to Reagan Tokes, criminal sentencing, reduction of judicial discretion, and limitations on penitentiary sentences appear driven by costs rather that penological best practices.

We have arrived at the point where the statutory regimen that governs criminal justice, from the criminal statutes themselves to the sentencing structure they support, is onerous, unworkable, unpredictable, internally inconsistent, and cumbersome. This results in uneven and incongruent sentences, costly and frivolous appeals, and lack of finality in the disposition of individual cases.

It has been 26 years since systemic changes to the criminal justice system moved sentencing from the rehabilitative to retributive model during which best practices have changed and evidence-based practices have substantially improved rehabilitation through diversion, within prisons, under the direction of specialized dockets and in probation outcomes.

The General Assembly has directed the Ohio Criminal Sentencing Commission to promulgate a sentencing regimen that enhances public safety, that promotes deterrence, reasonable uses of correctional facilities, programs and services, and is designed to achieve fair sentencing that is symmetrical, congruent, and proportional. Under such a regime, sentencing must be predictable, consistent, and punishment and rehabilitation must be consequential and effective.

The Ohio Criminal Sentencing Commission directed that a Sentencing Roundtable Workgroup be established to explore sentencing options that would reduce complexity, achieve clarity, enhance justice, and ensure fairness in sentencing. The Workgroup exercised due diligence in studying and reviewing sentencing options, listening to presentations on best practices, considering expert opinions, studying sentencing practices in other states, and examining deficiencies in Ohio's present sentencing structure.

After deliberations, a consensus was reached that the principles and purposes of sentencing enumerated in R.C. 2929.11 best stated the sentencing rationale that should be applied in Ohio: protect the public, punish the offender, and promote rehabilitation applying incapacitation, deterrence, rehabilitation, and restitution. Proportionality would be required in a sentence commensurate with and not demeaning to the seriousness of offender's conduct, victim's impact, and consistent with similarly situated defendants.

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We further find that the seriousness and recidivism factors enumerated in R.C. 2929.12 provide the sentencing court sufficient guidance in which to make a qualitative judgment based on relevant factors to exercise informed discretion in sentencing. There were suggestions that the seriousness and recidivism factors could be quantified. Doing so would reduce discretion without algorithmic guidance.

The Workgroup studied rehabilitative, retributive, restorative, and therapeutic sentencing and reached a consensus that a modified and modernized rehabilitative model, utilizing indeterminate sentences, probation and parole would best promote the objectives of the purposes and principles of sentencing.

Re-organization of Criminal Statutes

Re-codification of Ohio's criminal statutes was completed in 2017 by the Ohio Criminal Justice Recodification Committee. The product of re-codification has not been acted upon; nor is its present status known. It should be reviewed generally to see if it or any part can constructively be incorporated into indeterminate sentencing.

There is merit in considering the classification of crime used by the FBI in its Uniform Crime Reports, *Crime in the United States.* Using 2018 as an example, the FBI classified crimes from 12,212 reporting agencies, representing 247,752, 515 persons out of a total population of 328.3 million, presumably from all 50 states, representing diverse charging statutes, and fit them into 30 different offense categories.

Mala in se offenses involve acts or omissions that are universally recognized as intrinsically wrong involving moral turpitude, and, for our purposes, a high degree of culpability. The FBI, in its uniform crime reporting program, suggests those offenses include the violent crimes of murder and non-negligent manslaughter, rape, robbery, and aggravated assault and property crimes that include burglary, larceny-theft, motor vehicle theft, and arson. Each of those offenses requires the offender to have acted purposely or knowingly; and each offense has a corresponding victim who has been physically and/or economically harmed in some degree or whose property has been the object of the offense. The degree of turpitude diminishes as offenses move from violence to property.

Outside the eight violent and property crimes just described, there are a series of additional *mala in se* offenses of lesser gravity, lesser impact, and lower culpability but of the same nature and with victims' impact: assaults; forgery and counterfeiting; fraud; embezzlement; buying, possessing, receiving stolen property; and offenses against family and children.

Mala prohibita offenses include conduct criminalized because in the exercise of police powers, state and local governments have constitutional authority proscribe particular conduct to protect health, safety and morals. Many of the offenses that fall within this category are those that support the "broken windows theory" of policing.

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FBI classification suggests that those offenses include vandalism; carrying and possessing weapons; prostitution and commercialized vice; sex offenses except rape and prostitution; drug abuse violations; gambling; driving under the influence; liquor laws; drunk and disorderly conduct; vagrancy; suspicion; curfew and loitering law violations; all other offenses but traffic.

Mala probibita offenses usually carry a lower degree of criminal culpability: recklessness, a heedless indifference to consequences while disregarding a substantial and unjustifiable risk that the offender's conduct is likely to cause a certain result; and criminal negligence because of a substantial lapse of due care, the offender fails to perceive or avoid a risk that the offender's conduct may cause a certain result.

Often *mala prohibita* offenses are described as victimless, particularly in the area of drug use and abuse, but the fact is that all those so designated have negative impact on the offenders, on their families, on the economics of the communities where they occur. Because these offenses generally do not involve fundamental rights or suspect classifications, their constitutionality is measured by the rational basis test where the statute or ordinance must have a legitimate state interest, and there is a rational connection between the statute's or ordinance's means and goals: health, safety, and morals: Police Powers.

It would simplify and clarify criminal law dramatically to reduce hundreds of variations of criminal charges into the categories that the FBI uses for reporting purposes. And such a reduction in the number of crimes available would simplify sentencing proportionally.

Indeterminate, Rehabilitative Sentencing

Ohio's first encounter with indeterminate sentencing lasted from 1884 to 1996. It was predicated upon the belief that crime was pathogenic, was treatable as a disease, and judges were given broad discretion on how to address sentencing to best accomplish rehabilitation either through probation or an indeterminate sentence during which prison authorities had flexible time in which to achieve rehabilitation. For those who became eligible, the executive parole board had broad discretion whether to grant parole or not and to set terms of parole and when granted.

The system fell into disrepute, very little rehabilitation was accomplished; disparate sentencing became the norm; inconsistencies in parole practices resulted in unpredictable terms of actual confinement regardless of the actual sentence. Additionally, between 1960 and 1984, serious crime rose 354%, and the rehabilitative model was unable to keep pace with the crush of cases.

There is a consensus within the Workgroup that the rehabilitative model can be restructured to overcome its past deficiencies, and deliver fair and consistent punishment, protect the public and deliver rehabilitation. We are informed that evidence-based placement into relevant programs will promote rehabilitation whether in an institutional setting, or in specialized dockets, serving diversion, probation, or parole.

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As presently written, R.C. 2929.13 directs that sanctions should be imposed by the degree of the offense to which the offender pled or was convicted. R.C. 2929.14 is entitled "Definite prison terms." This section bridges determinate S.B. 2 sentences for offenses that occurred before the effective date of the statute and indeterminate and determinate sentences to be applied after the effective date.

These two sections demonstrate how legislation can encumber the administration of justice by being both complicated and prolix. R.C. 2929.13 contains 4,989 words. R.C. 2929.14 contains 10,074 words. The United States Constitution contains 4,543 words. We have been told to reduce complexity and achieve clarity. At this stage we can only acknowledge the problem, but the mechanism by which these goals would be accomplished remains elusive.

R.C. 2929.14 sets out five felony tiers, each with different sentencing options descending in severity from a felony of the first degree through a felony of the fifth degree:

- For a felony of the first degree, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of three, four, five, six, seven, eight, nine, ten, or eleven years and a maximum term calculated according to law.
- For a felony of the second degree, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years and a maximum term calculated according to law.
- For a felony of the third degree, the statute recognized two tiers based on the nature of the crime, both of which are determinate, the higher tier carrying a minimum of twelve month with six month increments to a maximum of sixty months; the lower tier carrying a minimum of six months with six month increments to a maximum of thirty-six months.
- For a felony of the fourth degree, the prison term shall be a definite term of six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.
- For a felony of the fifth degree, the prison term shall be a definite term of six, seven, eight, nine, ten, eleven, or twelve months.

A consensus was reached that future third degree felonies should carry indeterminate sentences. No consensus was reached on the management of fourth- and fifth-degree felonies.

We were informed that determinate sentences disincentivized prisoners from engaging in rehabilitation because they knew that they would be released at the end of their term, if not before. The tail attached to indefinite sentences improves prisoner deportment and encourages rehabilitation because a prisoner may be required to serve a maximum sentence based on bad behavior.

Within the Workgroup there were differing views on whether low level, non-violent felonies should be reduced to misdemeanors, and if not, whether the commission of such offenses should expose the offender to a prison sentence.

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We should be mindful that two years ago, Ohio rejected by a wide margin Issue 1., *The Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment,* that would have dramatically reduced prosecution of low level, non-violent offenders, essentially decriminalizing drug use and abuse, restricting consequential management of probationers, and creating multiple exits from prison.

Under SB2, there has been a dramatic shift of non-prison sanctions from the ODRC to local jurisdictions, many of which are ill-equipped to manage probationers with the degree of sophisticated professionalism required in rehabilitation modalities. In most cases, the most effective tool in the toolbox to achieve some level of rehabilitation is the coercive threat of imprisonment. Dilution of that threat will undermine deterrence at the street level and compliance in the management of rehabilitation.

We are at a unique period of time where public confidence in the administration of justice is subject to criticism from the right and left, law and order versus police misconduct and mass incarceration. How we balance those tensions in sentencing will either erode confidence further or restore confidence that the system will protect, punish, and rehabilitate.

If the Workgroup is unable to reach a consensus on the management of 4th and 5th degree felonious conduct, either in appropriate sentencing, or in the level of crime the act should be classified as, the Ohio Criminal Sentencing Commission will have to address the matter *de novo*.

Felonies of the first, second and third degrees are serious offenses, or the underlying criminal activity would not be so classified. They would generally rise to the level of *malum in se* offenses for which there should be no exit ramp from prison available until a minimum sentence is served. It would represent a facet of "Truth in Sentencing."

R.C. 2929.14 (B) describes firearm specifications and penalties for every conceivable circumstance in which a gun was possessed, brandished, displayed, used, or equipped using a mere 5,554 words to describe "if this then that." We have been unable to determine the number of specifications found throughout the code, but we believe that the micromanagement of gun spec sentences can be handled in a far more efficient and less redundant way.

R.C. 2929.14 (C) redundantly requires mandatory firearm specification conviction be served consecutively to sentences for the underlying or other felony sentences; convictions for felonies committed while imprisoned or on escape must be served consecutively to other sentences; and a conviction for theft of a firearm must be served consecutively to other sentences.

R.C. 2929.14(C)(4) permits consecutive sentences for multiple convictions "…if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public,

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and…" the court makes at least one additional finding.

In discussions surrounding consecutive sentencing, our attention was called to two broadly differing sentences for offenders similarly charged with multiple counts of sexual battery, one in Cuyahoga County and one in Lake County.

In Cuyahoga County, the offender was charged with 20 counts of sexual battery, pled to 8 counts of attempted sexual battery, and was sentenced to 4.5 years. In Lake County, the offender was charged with 58 counts of sexual battery and two counts of gross sexual imposition for which no reductions were offered, pled to 6 counts of sexual battery and both counts of gross sexual imposition and was sentenced to 33 years of imprisonment. On appeal and remand, the sentence was reduced to 29 years and 10 months.

The different treatment of similarly situated offenders raised issues of proportionality: did the sentences fit the crimes; congruence, were those disparities tolerable; and perhaps equal protection if certain classification is discernible. These issues are significant because they involve both prosecutorial discretion, the plea bargain and recommendations, and judicial discretion generally within the parameters of the purposes and principles of sentencing and specifically within the scope of R.C. 2929.12 (A) discretion.

There was a call for guardrails on judicial discretion in imposing consecutive sentences. Some support a view that sentences of certain duration should be reviewed after 15 years, and others who simply suggested that some offenses are egregious enough to explain the Cuyahoga/Lake County dichotomy and should be tolerated.

When these issues were debated, it became clear that there are two, and possibly three, divergent interpretations of how the administration of justice should be applied. These are regional differences. In rural Ohio, there is a strong belief that from investigation of crime to arrest, to charge, and to conviction it is the responsibility of the state to protect the public and punish the offender: a constitutional right to social order.

In metropolitan Ohio, there is a strong belief that the administration of justice should be directed toward restorative and therapeutic results; protect the public from police overreach, and support rights of protest in the context of the Bill of Rights: individual liberty.

We did not fully explore the views in suburbia, but there is reason to believe that both views find their way into areas surrounding major metropolitan centers.

It also came to our attention that a relatively new phenomena has arisen in which some prosecutors run for office suggesting that there are classes of cases that will not be prosecuted. How that factors into proportional and congruent sentencing needs to be addressed.

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In adopting indeterminate sentencing and using parts of Reagan Tokes as a guide, we are not bound to five felony classifications. But using the present sentencing range for first degree felonies of three, four, five, six, seven, eight, nine, ten, or eleven years and a maximum calculated term, it is apparent that a judge, in the exercise of discretion, could impose any minimum sentence within the range thereby diluting predictable congruence. And that discretion is guided by the seriousness and recidivism factors, victims' impact and congruency statutorily described as a sentence imposed that is consistent with similarly situated defendants.

Discretion cannot be measured with mathematical or statistical certainty. As *McClesky v. Kemp* suggests, empiricism, statistical analysis, may meet certain scientific standards in interpreting criminal law and procedure generally, but as to individual sentencing and the application of discretion, particular results ought not be measured through social science methods but rather be recognized as a component of moral philosophy circumscribed by due process constraints.

Truth in Sentencing, promoted to gain public support of retributive sentencing in the mid-1990s, has gradually been undermined because of rising prisoner censuses and increased costs of confinement. Administrative releases are not public, transparent, or accountable. As such, historically, in combination with parole, they have tended to erode public confidence in sentencing. Today there are a myriad of exit ramps over which prisoners can be released from confinement. Those releases include court recommended risk reduction sentence 80%; ODRC 80% release; earned credit up to 8% for programing and 10% for participation in specific programing; transitional control for the final 180 days of sentence; earned reduction of minimum term by 5 to 15% of indefinite non-life sentence; community-based substance abuse treatment programs; medical release for terminally ill, medically incapacitated or in imminent danger of death.

Such policies have eroded public confidence in a regimen intended to protect the public and punish the offender. Judicial release and transitional control are the largest contributors to early release. The irony is that judicial discretion in judicial release decisions has been replaced by laws that tend to compel release and create avenues for appeal.

If minimum sentences are to be enforced, there should be no exit ramps available during that finite time. And there should be a menu of offenses for which no form of early release would apply. There was a consensus reached that a good faith effort by a prisoner, guided by risk assessment such as the Ohio Risk Assessment System (ORAS), to participate in rehabilitation programs within his or her capabilities that result in reasonably attainable improvements with the scope of rehabilitation ought to be rewarded with an avenue for early release beyond the minimum sentence.

There were discussions regarding incentivizing early release. Assuming that indeterminate sentencing would continue for F1s & 2s and be extended to F3s, it was suggested that the minimum times of actual incarceration would be the stated minimum sentence imposed which could not be reduced.

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Parole

An effective parole system is a necessary component of indeterminate sentencing. Its failures under the previous rehabilitative model - inconsistent and unpredictable practices resulting in disparate or incongruent decision in part based on unfettered discretion - undermined public confidence in the ability of the justice system to protect the public.

In separation of powers, it is an executive function within the administration justice that must complement the punishment and rehabilitation functions of imprisonment. That requires limitations on parole board discretion through both oversight and accountability. Oversight should be designed to improve fairness and equity in parole decision-making by restricting the board's discretion and measurably improving the exercise of that discretion.

To fulfill its obligations, the parole board should employ an objective standard for rehabilitation tailored to the modality of rehabilitation employed that embraces a good faith and substantial effort on the part of the offender to become socialized through reasonably attainable improvements over which he or she has control post-conviction.

A consensus within the Workgroup supported the creation of an incentive system within institutional rehabilitation that allows an eligible prisoner to demonstrate that he or she has reached improvements that would allow him or her to be considered for parole or some other form of early release understanding that eligibility for release does not ensure release.

Risk Assessment: ORAS

HB 86 places the ORAS as a core feature of the local board's comprehensive plan for the development, implementation, and operation of corrections services in the county. It subordinates community-based correctional facilities and programs to the ORAS. In the final analysis, utilization of ORAS is now the common denominator in matters of policy, practice and procedure surrounding the administration of criminal justice in matters of pretrial release, sentencing, community control sanctions, imprisonment, post-release control and re-entry of criminal offenders.

There is a view within the Workgroup, but not a consensus, that clear lines should be drawn between sentencing discretion, which statutorily places emphasis on the offense, the victim, and recidivism from the standpoint of the offenders past conduct, and the post-sentence predictive benefits to rehabilitation modalities embedded in the ORAS. Sentencing is backward looking at a series of factors from which the sentencing judge can exercise discretion in arriving at a sentence that conforms to the purposes and principles of sentencing.
Since projected sentencing parameters would likely require indeterminate penitentiary sentences at the felony one, two and three level, a quantitative prediction of likely successful remediation would not be helpful until after the sentence is imposed: either rehabilitation in probation on within the penitentiary programs.

We are informed that although actuarial risk assessment tools are being integrated into sentencing decisions, they were designed to assist corrections officers with a specific task of how to administer punishment in a way that advances

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rehabilitation. "***these tools emerged and evolved to address a very specific problem: how to administer punishment efficiently and effectively. It then demonstrates that these same tools are now being asked to serve a very different purpose, and one that their creator specifically warned against – to determine how much punishment is due." They are a quantitative analysis of criminogenic factors.

They are intended to be used after a judge has imposed the sentence. They are based on the Risk-Need-Responsivity principle, according to which recidivism risk is identified so that it can be reduced through programming, treatment and security classifications that are responsive to the individual's "criminogenic needs."

As noted above, at the Local Correction Planning Board level, and within individual probation departments, ORAS implementation is mandatory to receive funding.

The United States Department of Justice, Criminal Division, stated in its annual letter to the United States Sentencing Commission, on July 29, 2014:

[The] use of risk assessments to determine sentences erodes certainty in sentencing, thus diminishing the deterrent value of a strong, consistent sentencing system that is seen by the community as fair and tough. Our brothers and sisters in the defense and research communities have repeatedly cited research to the Commission about the value and efficacy of certainty of apprehension and certainty of punishment in deterring crime. Swift, certain and fair sanctions are what work to deter crime, both individually and across society. We know that certainty in sentencing - certainty in the imposition of a particular sentence for a particular crime, and certainty in the time to be served for a sentence imposed - simultaneously improves public safety and reduces unwarranted sentencing disparities. We are concerned that excessive reliance on risk tools will greatly undermine what has been achieved around certainty of sentencing in the federal system.

Certainty, deterrence and fairness are the very values that the Ohio Criminal Sentencing Commission is statutorily required to support in its proposals.

The Three Pillars of Diversion: Specialized Dockets; Prosecutorial Diversion and Probation

Specialized Dockets

For diversion of criminals from incarceration, there must be an established amenability and some threat level of consequential coercion as a mechanism of enforcement. As just mentioned above, deterrence is a cornerstone to the protection of the public and statutorily enumerated in R.C. 181.23. As will be seen in the following paragraphs, specialized dockets operate more as treatment centers and not courts. It must be kept in mind that every person referred to a drug court is there because he or she committed an offense. And failure of the offender to conform to the requirements of rehabilitation can result in punishment.

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Because our constitutional history has its roots in the English tradition, adjudication by jury has been the legal process of resolving disputes, deciding cases, and determining criminal liability in both state and federal systems. The Bill of Rights ensures that American justice has at its heart a fault-based, adversarial, common law, precedent bound system played out in the crucible of a jury of peers.

The National Center for State Courts is an advocate of sociological jurisprudence by which the judiciary is encouraged to deliver some yet undefined form of social justice. A component of sociological jurisprudence is to adopt alternative dispute resolution modalities that ignore traditional concepts of civil liability.

In criminal law, sociological jurisprudence downplays criminal responsibility and culpability in favor of focusing wholly on the circumstances of the defendant by application of restorative and therapeutic modalities of rehabilitation. It is accomplished through holistic and collaborative practices bringing to bear multidiscipline expertise. It is analogous to the pathogenic concepts that prevailed in penology until roughly 1984 at the federal level. Instead of pathogens, we look at static criminogenic factors that, dependent on algorithm interpretation, predict behavior and risk with some degree of probability.

Since the early 2000s, legislative retributive justice and judicially established restorative justice have competed for a place in the sentencing calculus applied by common pleas court judges to the disposition of criminal cases.

Restorative Justice: Specialized Dockets

In 1997, the Ohio Chief Justice and Ohio State Bar Association introduced restorative justice to Ohio through the National State Courts Futures program that sought systemic changes in the structure and organization of Ohio's judiciary and modification of our fault-based, adversarial system in the direction of sociological jurisprudence.

At the behest of the Ohio Judicial Conference (OJC), in 2007 the Conference conducted a "Judge's Symposium" to explore the emerging role of the judiciary in a holistic, therapeutic, collaborative approach to restorative justice. Judges were told that the "train had left the station." Across the country, judges were accepting a more direct role in the management of probationers with evidence-based sentencing modalities.

Ohio now has a twenty-year experience with specialized dockets including drug, mental health, veterans, environmental, reentry and prostitution. Their value is anecdotally accepted. And for those judges who preside over their operations, their reported experiences are generally favorable.

Drug courts radically transformed the traditional courtroom roles of the judge, defense counsel and prosecutor. The judge abandoned his/her role as neutral arbiter and became the leader of a "treatment team" consisting of the judge, defense counsel, the prosecutor, and a drug treatment specialist. The primary goal of this team was and is to help the drug offender overcome his/her addiction through behavior modification and medically assisted treatment.

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Drug courts also, by their very nature, seek to redefine what is considered "justice" in the context of drug crimes. The therapeutic justice movement, like the therapeutic community, rejects fairness inquiries as irrelevant, dispenses with the concept of guilt or fault and regards coerced treatment as a valuable tool in the fight against addiction. To that end, the drug court "clients" are often asked to waive their constitutional rights to a fair trial and other due process protections to facilitate the functioning of the court according to this model. Because a preoccupation with being consistent or fair, establishing fault, or convincing an addict to seek treatment voluntarily all get in the way of helping that person overcome addiction, these are not important issues in a treatment regime.

Consistency, fairness, proof of guilt and protection from governmental intrusion are foundational to the traditional justice system. Nevertheless, drug courts are considered an innovative response to the perception that the traditional justice system cannot deal effectively with drug related offenses.

In a 2013 SMU Law Review article entitled *Against Neorehabilitation,* Jessica M. Eaglin warns that that current rehabilitation-guided sentencing reforms—with their emphasis on evidence-based programming and the use of predictive tools—have several inherent flaws that will limit the efforts to downsize prison populations beyond mere budget-cut crises. Specifically, the neorehabilitative model stands to institutionalize a focus on the wrong offenders, exacerbate racial disparities, and distort perceptions of justice.

Drug courts provide an excellent example of institutionalizing the rehabilitation of the wrong offenders…First, drug courts are typically over-inclusive. They frequently admit offenders who are not actually serious drug addicts in need of rehabilitative intervention. One study indicates that "55 per- cent of [all offenders] . . . referred to treatment by a court program had used their primary drug of abuse less than three times in the month before they entered into treatment." Second, drug courts are typically under-inclusive because those individuals most in need of the drug treatment programs are not being diverted to drug courts. They may be excluded formally as a result of a prior conviction, informally because a prosecutor or probation officer refuses to recommend diversion, or purposefully by their defense attorneys who advise against the offenders' entrance into the program for fear that they will fail and subsequently be incarcerated…

*** Drug courts have a strong interest in accepting large numbers of non-addicted clients because 'drug courts rely on funding that is contingent, implicitly or explicitly, upon demonstrating results and treating a sufficient number of defend- ants.' Evidence indicates that drug courts 'cherry pick' low-risk offenders and 'skim' high-risk clients to boost their success rates. Additionally, low-risk offenders cost less to treat than truly addicted offenders.' Thus, where programs are designed with a focus on cost-effectiveness and evidence-based results—as they would be if states adopted neorehabilitation as the guiding theory of reform—these inefficiencies are likely to be institutionalized and expanded…

Actuarial tools potentially exacerbate racial disparities because the typical risk factors used to screen offenders for rehabilitative programming are often proxies for structural inequities disproportionately plaguing historically disadvantaged populations.

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For the 2007 "Judge's Symposium," I presented a paper entitled *Restorative Justice and its Implications in Ohio* in which I said:

> As it stands today, Ohio drug courts have never been the subject of open debate or public scrutiny. Most evaluations made of the efficacy and success of drug courts are those published by the proponents, who have a vested interest in proving their worth due to the large amount of funding received. Even independent studies must be viewed critically as the information used to generate results is supplied by the very people operating the programs. Also, any meaningful appraisal of the costs and benefits of drug courts must seek to quantify a relevant measure of "success" and employ a suitable methodology. In the context of what drug courts seek to achieve, success can be (and is) defined differently in different programs. Moreover, a proper study would have to isolate and account for all competing variables which could influence results. It is not clear whether such a study of drug courts is even feasible, because the factors which contribute to relapse and recidivism are numerous and subject to legitimate dispute.
>
> The most serious problem with the lack of critical examination of drug court programs is not the mere fact that they are operating throughout Ohio without any statutory basis for their authority or sufficient evidence that they do what they claim, although these are important concerns. These issues are overshadowed however by the more disturbing fact that drug courts are so operating, and no one has bothered to consider the extent of harm they may be causing. Far from being the efficient, money saving, life changing panacea they have been characterized as, drug courts bring more people under more invasive court supervision than was present under the traditional court system.
>
> Drug court clients are exposed to a court-like meta-theater wherein the constitution has no role and defense counsel subordinate the duty they owe their clients in favor of helping them "get well." By substituting treatment for justice, drug court judges' step well outside the bounds of the traditional role of the judiciary. Ultimately this role confusion offends the constitution, encourages paternalistic extra-judicial conduct by judges, and results in arbitrary and inconsistent sentences for drug offenders.

With drug courts gaining popularity across the nation and in Ohio, the time has come to seriously consider the implications of these untested innovations.

In 2005, the GAO issued another report on adult drug courts. In this study, the GAO looked at 117 evaluations of drug court programs in the U.S. that were published between May 1997 and January 2004. The 2005 GAO report reviewed evaluations which claimed to demonstrate different measures of drug court "success" including incidents of recidivism, relapse, drug court completion rates, and cost benefit analysis. Only 27 of these studies, produced by the drug courts themselves or independent researchers compiled from drug court data, were selected as meeting "additional criteria for methodological soundness." ***

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Evaluations for 23 of the programs showed the following: lower percentages of participants than control group members were rearrested, and participants had fewer recidivism events than control group members. However, 'evidence about the effectiveness of adult drug court programs in reducing participants' substance abuse use relapse is limited to data from eight…programs,' and 'these eight reported mixed results.' Inasmuch as drug courts are being sold on their ability to cure addiction, rather than general decreases in recidivism, there does not seem to be an evidentiary basis that they do so.

In 2021, the American Civil Liberties Union (ACLU) of Ohio raised more questions than it answered in a report entitled *Are Drug Courts the Answer? In Ohio, it's Hard to Tell: A Snapshot of the System.* It noted "…That Ohio spends so much time, money, and energy on drug courts as the answer, with so little inquiry into their actual effectiveness, is troubling. We believe it is fair to say drug courts collectively help some, while leaving others behind."

It underscores the necessity of gathering relevant statistics to answer questions of efficacy. We believe that support for the neutral collection of data by an arm of the Ohio Sentencing Commission should be conveyed to the General Assembly. "Without uniform data collection and reporting, it is difficult to comprehend the strengths and/or weaknesses that may exist within a drug court as the solution to treating substance use disorders in Ohio. Before continuing down the path of further drug court expansions, Ohioans deserve to have a better understanding of the outcomes of these courts."

With the paucity of information, the ACLU reported in 2017-2018, the total graduation rate reported from 53 dockets, "…was 35.47 percent, with 36.06 percent of adult participants graduating and 29.91 percent of juvenile participants graduating." During the same period, "There were a total of 2,150 drug court participants on…32 dockets during 2017-2018, and 335 reoffended while participating (15.58 percent)."

We were told in 2007 that the train had left the station bearing restorative and therapeutic modalities intended to divert appropriate offenders and rehabilitate them. But from the first days of drug court restorative justice through the ACLU report there is no clear empirical evidence of overall efficacy in a day when every decision in criminal justice is subject to evidence-based analysis. If empirical evidence establishes their efficacy and cost effectiveness, then uniformity and standardization should become the norm. If shortcomings are identified and correctible, they should be addressed. If the problems identified above prove intractable, then the Sentencing Commission should look for alternatives.

Prosecutor Diversion, R.C. 2935.36

A county prosecutor has discretion to establish or reject a pre-trial diversion program in which to funnel minor offenders who are unlikely to reoffend. Dangerous offenders and persons charged with specific offenses are ineligible to participate. The prosecutor establishes fees, testing and compliance standards that must be approved by the local common pleas court judge.

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To enter the diversion, an offender must waive enumerated procedural rights. If he or she satisfactorily completes established standards, the underlying offense is dismissed. If the offender's performance fails to meet those standards, the case proceeds on the trial docket.

Programs of this nature work because the amenability to rehabilitation is pre-screened determined, and the threat of prosecution and punishment is usually coercive enough to drive compliance meaningful rehabilitation.

The was a consensus that the utilization of prosecutor discretion serves as an appropriate and effective mechanism to divert low level offenders from trial or plea and potential incarceration. It was suggested the program might be expanded to all 88 counties. To that end, revenue issues should be explored.

Probation

To the extent that there was rehabilitation under Ohio's former "Rehabilitative Model," it was managed through probation under general terms and conditions. *State ex rel. Gordon v. Zangerle* created a constitutional exception to separation of powers where the extra-judicial use of probation authority merely augmented the exercise of a judicial function. The *Zangerle* court found that the statutory authorization for courts of common pleas to create county probation departments constituted an constitutional delegation of powers.

Zangerle did not speak to the constitutionality of present judicial oversight of an executed sentence that imposes community control sanctions. The Court noted that under the Ohio Constitution, trial judges could either suspend imposition of sentence or suspend execution of sentence, but under the statute then in force, the trial court was limited to the former. "In the final analysis the judge or magistrate in suspending imposition of a sentence or granting probation merely makes an order in a pending case."

In 1979, Ohio became the sixth state to pass a community corrections act. This act was designed to divert felony offenders from the prison system. The original legislation created Community-Based Correctional Facilities (CBCFs) and prison subsidy programs, and in 1990 the act was amended to allow for jail diversion as well. The subsidy program helped fund local probation, and diversion was not strictly enforced by ODRC. This began a long term financial and oversight entanglement between ODRC and local probation.

There was a paradigm shift from the old rehabilitative model of sentencing to retributive sentencing established by SB2. Ohio's retributive justice separated itself from the federal system by maintaining rehabilitation as a principle of sentencing.

SB2 altered traditional probation. R.C. 2929.15 through 2929.18 authorized a range of sanctions other than imprisonment, allowing a sentencing judge to choose a combination of punishments that will best serve the overriding

purposes of felony sentencing. If a court is authorized to grant community control in a particular case, it may consider residential sanctions, nonresidential sanctions, and financial sanctions, including mandatory fines for certain offenses.

In furtherance of rehabilitation, ODRC funded local probation departments through a variety of grants to community correction boards conditioned on prison and jail diversions. By statute, common pleas judges were assigned to sit as participating members of local corrections planning boards, judicial CBCF corrections boards and multi county jail boards.

There was a paradigm shift under SB2 synoptically described in *State v. Foster:* "…R.C. 2929.13(B) creates a preference for (but not a presumption in favor of) community control (formerly probation) for lower level felonies. R.C. 2929.13(B) allows, but does not mandate, findings before imprisonment for felonies of the fourth or fifth degree, unless the offense involves mandatory terms. Certain findings require a prison sentence; a lack of specified findings, in combination with other considerations, requires community control."

After 1996, ODRC used grants to encourage local probation departments to divert felons from prison and misdemeanants from jail. It funded local probation programs through a variety of grants to local corrections planning boards. Such grants were conditioned on prison and jail diversions.

Moreover, judges entered financial assistance agreements with the Division of Parole and Community Services (a Division within ODRC) which, at the time, required 15% of eligible felons be diverted to CBCFs. Funding was tied to a percentage of persons committed or referred. Failure to meet certain defined diversion quotas resulted in financial consequences to the local board and the judge who served as a board member and also who made the decisions that resulted in the grant default.

Under the Rehabilitation model, indeterminate sentences created an avenue for ODRC to maintain prisoner discipline by threat of extending imprisonment for misconduct within the bounds of the original sentence. In recognition that the change to determinate sentences removed the threat of additional imprisonment for institutional and parole violations, SB2 provided other means to assist ODRC in maintaining institutional discipline and control over offenders subject to post-release supervision through a "bad time" provision: "… the parole board may punish a violation committed by the prisoner by extending the prisoner's stated prison term…"

In 2000, the court considered the constitutionality of "bad time" in *State ex rel. Bray v. Russell.* The court found that under R.C. 2967.11 the General Assembly was impermissibly allowing the Adult Parole Authority to act as judge, prosecutor, and jury, and this intruded beyond the defined role of the executive branch as set forth in our Constitution. "In our constitutional scheme, the judicial power resides in the judicial branch. * * * The determination of guilt in a criminal matter and the sentencing of a defendant convicted of a crime are solely the province of the judiciary."

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The court further explained that "… none of branches of government ought to possess directly or indirectly an overruling influence over the others." Implications to ODRC's plenary authority over common peas judges in the management of probation grants, and its authority to withhold funding for non-compliance were not then recognized.

Three years later, however, The Board of Commissioners on Grievances and Discipline held in *BCGD Op. No. 2003-9* that under Canon 4(C)(2), Canon 2(B) and Canon 2(A) of the Ohio Code of Judicial Conduct, common pleas court judges should not serve on judicial corrections boards for community-based correctional facilities and programs: "Because judges must make sentencing decisions, judges involvement in applying for funding tied to the number of persons committed to prisons casts doubt on impartiality."

The probation improvement grants clearly demonstrated the ethical conundrum previously described. Judges are paid to reduce imprisonments; judges are paid a bounty when they exceed their "Performance Measures"; and judges are penalized through loss of grants if they fail to meet the number of diversions the grant provided for.

It is the overruling influence that ODRC holds over the trial court's discretion to impose a sentence that breaches the quota requirement that allows ODRC to withhold funding or terminate the grant. It is that overruling influence that falls squarely within the *Bray* rational. I have raised the constitutional issue in several fora over several years with no traction at all.

The General Assembly resolved the ethical conundrum by removing common pleas judges from the CBCF boards and moving them to an advisory board, a distinction without a substantive difference. What board members are going to ignore advice from their respective judges?

HB86 created probation and incentive grants to support local probation programs directed by ODRC with its unconditional authority to defund and revoke grants for diversion failures. "The bill tied eligibility for grants to the court's compliance with statutory probation duties and its implementation of ORAS. The tool is to be applied and integrated into the operation, supervision, and case planning of virtually every sector of the criminal justice system, including by judges, at sentencing."

Aside from constitutional constrains on ODRC's authority over judges sitting on boards and exercising sentencing discretion under potential defunding, readers are reminded that the trial court has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, the court shall consider***[seriousness and recidivism factors] ***"

When asked to apply *BCGD Op. No. 2003-9* to local correction planning boards, the Board of Commissioners wrote on April 9, 2014:

The Committee concluded that Opinion 2003-9 evaluates the role of judges under a statutory scheme the General Assembly has since amended. The Committee also noted that the opinion applies the former Code of Judicial Conduct. Because the opinion is no longer current and arguably impacts constitutional issues that are not within the Board's advisory authority, the Committee determined that it must conduct a comprehensive analysis of the opinion, the present-day statutory provisions, and the Code of Judicial Conduct adopted in 2009 before making a presentation to the full Board.
***

On March 3, 2015, the Board of Professional Conduct wrote:

Opinion 2003-9 was issued on December 5, 2003, under the former Code of Judicial Conduct, and stated that common pleas judges should not serve on judicial corrections boards for community-based correction facilities and programs prescribed by R.C. 2301.51. On October 12, 2006, Am. Sub. H.B. No. 162 became effective and amended R.C. 2301.51. The amendments essentially removed common pleas judges from the operations of community-based corrections facilities and placed them in an advisory role. On March 1, 2009, the Code of Judicial Conduct became effective, and on November 18, 2014, was amended. Opinion 2003-9 was premised on the former Code of Judicial Conduct and on a statute that has been amended to remove the judiciary from serving on any meaningful capacity on judicial corrections boards. As a result, Advisory Opinion 2003-09 is now effectively moot, and the committee will recommend at the April Board Meeting that the opinion be formally withdrawn.

Nevertheless, the committee is sympathetic to your concerns regarding the statutory expansion of the judiciary in extrajudicial activities that may undermine a judge's independence, integrity, or impartiality. Ideally, the laws would not prescribe that judges serve in any capacity with community-based correction facilities and programs, but the Board lacks the jurisdiction to determine the constitutionality of state laws or to opine on issues involving the separation of powers, even though ethical rules are implicated. The remedy you seek is one specifically designated for the courts and the legislature.

The constitutional issue remains unaddressed and unresolved. The ethical conundrum is moot because the Code of Ethics has changed, although relevant operational language under both Canons is essentially the same. *BCGD Op. No. 2003-9* is apparently inapplicable because judges were removed from the operational board to an advisory board. However, common pleas judges continue to serve on the local correction planning boards. Precedent is usually not so circumscribed.

In the name of separation of powers and in recognition judicial independence, a wall of separation needs to be constructed between common pleas judges and their local correction planning boards so that judges can exercise neutral judgment and not be encumbered by ODRC override. It is fair to ask the Ohio Criminal Sentencing Commission to consider recommending canonical and constitutional remediation to the role of the judiciary in matters of sentencing.

Controlled Substances

There was a leaning among both the Workgroup and the Drafting Committee toward easing the criminalization of drugs of abuse. We are in the middle of a drug epidemic which has overtaken the ability of government to adequately respond. Reduced availability of prescription opiates has driven many opiate dependent and addicted users to heroin. On the streets, heroin, cocaine, meth, and pot are now mixed with fentanyl and carfentanil with deadly consequences.

For over fifty years, I have heard that we cannot incarcerate our way out of drug abuse, the War on Drugs has failed. It should be perfectly obvious that we cannot treat our way out either. As the opiate epidemic geometrically expands, we suffered 107,000 drug overdose deaths in the United States last year. Hundreds of thousands of lives will be permanently impacted. In my opinion, the War on Drugs is a war worth fighting. That fight involves both treatment and prevention. Prevention includes education of deterrence. Deterrence is dependent upon a robust ability to incapacitate.

Next year the State of Ohio will probably be faced with the legalization of recreational marijuana, the gateway to a lifetime of drug abuse and addiction. In my 52-year experience on the bench, marijuana was and is the gateway drug to abuse and addiction. “With 70% of today’s illicit drug users having started with marijuana, not prescription drugs (nor Dad’s Blatz beer), according to the National Institute on Drug Abuse, this is exactly the wrong time to legalize pot.”

We have discussed dealing with convicted offenders under the age of 26, and whether they should generally be placed on a different track than those over 26 because of immature brains, diminished culpability, and the significant influence of criminogenic factors which they are likely unable to escape from in formative years. We were told that as a group, they may be the most difficult to rehabilitate, and perhaps some are “irreparably corrupt” and not amenable to any form of rehabilitation.

If those considerations are focused on legalization of pot or decriminalization of other drugs of abuse, the appropriateness of such policies most certainly must be scrutinized.

One standard unit of THC is 5 milligrams, as defined by the National Institute on Drug Abuse. But one candy bar or cookie could include 10 doses, says Staci Gruber, director of the Marijuana Investigations for Neuroscientific Discovery (MIND) program at McLean Hospital in Massachusetts. And the way that eaten THC is processed by the liver increases its psychoactive properties, Dr. Gruber says. The high also lasts longer than from inhaling.

Doctors and schools cite the growing body of research showing the negative impact of THC on the developing brain. Studies have found that the regular use of marijuana by teens is linked to poor performance in school and deficits in attention and memory, says Nora Volkow, director of the National Institute on Drug Abuse.

Research is finding that THC seems to particularly affect the development of the hippocampus, which is involved in memory; the amygdala, which is involved in processing emotion; and the cerebellum, which is involved in motor coordination and the perception of time. Beginning marijuana use before the age of 18 doubles your odds of developing cannabis-use disorder, notes Dr. Avery, which is characterized by craving cannabis and an inability to cut down on use, among other things. Other research has found a link between marijuana consumption by teens and the development of depression and suicidal thoughts.

Our sentiment is to withhold our collective judgment of how to manage drug use, abuse, dependency, and addiction with recognition that the latter is an intractable lifetime impediment to normalcy that should be treated as a disease. These different classifications are simply matters of degree, but to such an extent that different consequences should attach to them.

Ultimately, drugs of abuse infect every aspect of the administration of criminal justice from investigation to arrest, to charge, to prosecution, to diversion, to trial, to conviction or plea and to sentence. I believe that it is appropriate for the Ohio Criminal Sentencing Commission to weigh in now rather that react to what the General Assembly might or might not do.

We do not know across the state how many people are in voluntary drug treatment and how many are in treatment under some level of criminal sanction. If criminal sanctions are diminished or removed, how likely is it that those who now find themselves in some form of coerced rehabilitation will voluntarily surrender to private or health clinic treatment? One can only speculate, but likely very few.

Director Wilkinson says that 80% of the inmates in Ohio's prison have some substance abuse or mental health overlay. I do not know how that translates to probation at the local level, but I would be surprised if there is not some symmetry in percentages.

When we dealt with the Neighborhood Safety Amendment two years ago, we understood that it was a derivative of Prop 47 that was passed in California, and in the second year thereafter: Violent and property crime up. Drug arrests down by 15,000; police don't arrest where there is no consequence; drug court participation down 59%; homelessness up; prison census dropped only 1,500 fewer. What we hear now from Seattle, through Portland and through San Francisco to San Diego is a deluge of petty crime, lax arrests, little prosecution, and drug use and abuse rampant.

We do not want Ohioans to be left in similar situations by failing to constructively address the deadly and disruptive nature of a drug culture that infects every corner of our society.

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Elephant in the Room

The net effect of statutory changes since SB2 has been directed to reduction of penitentiary incarceration and decentralizing the management of low level, non-violent (but often with significant criminal histories) offenders in jurisdictions without the means to address the scope of drug and mental health overlays and without the means of meaningful rehabilitation found in larger jurisdictions or at the state level.

ODRC's Targeted Community Alternatives to Prison (T-CAP) subordinate the local sheriff or jailer to reporting and compliance responsibilities while commandeering jail cells. Local probation is simply now an extension of ODRC, its policies and grant requirements; local jails are subject to state rules and regulations; Community Based Correctional Facilities (CBCF) are wholly subject to state regulation with a parochial board; and the scope judge's discretion in sentencing is circumscribed.

We previously mentioned that there are regional differences in public expectations of what the responsibilities of the criminal justice system should provide. We answer that with "protect the public, punish and rehabilitate the offender." The depth of that expectation should be measured in the context of the public safety concerns in Ohio's November 8th bail reform measure that passed by 75%.

Within its constitutional lanes, the administration of criminal justice has a responsibility to apply the law fairly and equitably in a manner that objectively promotes public confidence, maintains social order and respects matters of liberty. Our Workgroup should make recommendations that assure those aspirations.

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Sentencing Commission Overview, including the Ohio Sentencing Data Platform Pilot Project

Authorized under Sections 181.23 to 181.26 and 181.27 of the Ohio Revised Code, the Ohio Criminal Sentencing Commission (Commission) is an affiliated office of the Supreme Court of Ohio. Consistent with any permanent commission, it is critical to have both qualified staff and adequate funding to successfully complete its designated tasks and duties. Effective sentencing commissions are often required to focus on multiple complex duties from database development to policy analysis to specific sentencing related research projects. Since its inception, the Ohio Criminal Sentencing Commission has provided an impartial and consensus-driven platform for the analysis and development of policies and practices that maximize public safety and reduce recidivism in a cost-effective manner.

The Ohio Criminal Sentencing Commission began meeting in 1991 and is the only long-standing state agency designed, by statute, to bring judges, prosecutors, and defense attorneys together with members of the General Assembly, state and local officials, victims, and law enforcement officers. The work of the Commission is dedicated to enhancing justice and ensuring fair sentencing in the State of Ohio through impartial and consensus-driven analysis [of criminal justice policy, laws and sentencing trends in Ohio] and development of policies and practices that maximize public safety, reduce recidivism, and equalize justice.

The Commission believes in an evidence-based, data informed approach to criminal justice issues, one in which policy and statutes can evolve as understanding of best practices grows. To that end it has put forth significant effort on improving and to effect positive change Ohio's sentencing laws, which are myriad and complex.

The Commission's vision is to enhance justice and its mission is to ensure fair sentencing in the state of Ohio. Accordingly, to fulfill its vision, the Commission develops and recommends sentencing policy to the General Assembly that is designed to

- Advance public safety
- Realize fairness in sentencing
- Preserve meaningful judicial discretion
- Distinguish the most efficient and effective use of correctional resources
- Provide a meaningful array of sentencing options

And to achieve its mission, the Commission

- Analyzes current adult and juvenile criminal statutes and law in Ohio and other states
- Studies sentencing patterns and outcomes
- Evaluates balancing the needs of criminal sentencing and available correctional resources
- Researches and recommends evidence-based approaches to reducing recidivism
- Recommends reasonable and specific criminal justice reforms

The impact and contribution of the Commission to criminal justice and sentencing legislative enactments as well as policy development and implementation is demonstrated in several ways such as the 133rd General Assembly assigned the Commission to perform specific duties when it enacted HB1-133.[xviii] It has further been given direction and assigned duties in task force reports such as the Supreme Court of Ohio Task Force on Conviction Integrity and Postconviction Review[xviii], the Governor's Working Group on Post Release Control[xviii] and the Commission has duties in pending bills such as HB166[xviii] and HB708.[xviii]

Because of its broad and diverse membership, the Commission is well positioned to bridge the information gap among criminal justice system partners.

Recognizing that felony sentencing in Ohio is a complex, intricate process, and ensuring clear, comprehendible sentences is of the utmost import for the administration of justice and promoting confidence in the system in September 2019, the Commission convened a Uniform Sentencing Entry Ad Hoc Committee to develop a model, uniform felony sentencing entry with the minimum language necessary to comply with Criminal Rule 32 and the Ohio Revised Code. Giving Judges a uniform sentencing entry template would ensure the entry always includes the most recent requirements, either based on statute or case law and improve system efficiency.

Accordingly, the Commission has assumed the responsibility of monitoring legislation and Supreme Court case law to keep the Uniform Sentencing Entry template current with any necessary changes, notifying practitioners of those changes, and working with jurisdictions to provide training as the uniform entry template is implemented.

In addition to providing a method of minimizing appealable errors or omissions in entries, the development of a uniform entry template offered a solution for collecting criminal sentencing data in a way that is efficient, reduces duplication and does not fiscally burden local government. The Commission conducted extensive research to identify a partner with the definitive knowledge, skills, and expertise to complete the numerous tasks required for the creation of the Ohio Sentencing Data Platform. As a portion of its research, the Commission engaged several programs and colleges within The Ohio State University, Case Western Reserve University, and the University of Cincinnati. It was determined the University of Cincinnati School of Information & Technology Solutions Center (ITSC) was by far the best suited partner for this project. ITSC staff assigned to the project are equipped with the experience, subject matter expertise, and demonstrated ability to scale a complex statewide project needed to accomplish the goal at hand evidenced by agreements with other state agencies.

Thus, the Commission contracted with the University of Cincinnati ITSC to create a web-based application of the uniform entry template and establish a pilot project – the Ohio Sentencing Data Platform (OSDP).[xviii] The project began in 2020 and continues to be an "iterative" model – we adjust as we learn.

Judges participating in the pilot project log-in to the OSDP and create their sentencing entry using the electronic version of the uniform entry template, which includes easily accessible options for the many categories required for felony sentencing. The uniform entry template is then exported into a Word document, where it can be further customized, printed, signed, and filed with the Clerk of Court just as it is currently done today. The information in the uniform entry

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template is saved as datapoints in a database and anonymized, thereby collecting data without increasing reporting requirements on courts or identifying the individual judge, defendant, or county.

The focus of the OSDP sentencing database is on the criminal justice system, not individuals. The identity of the defendant, the judge, the prosecutor, the defense attorney, and the county originating the case will all be anonymized. The anonymization is critical to the success of the project as it will provide focus on the criminal justice system and its outcomes rather than on individuals. Further, elements that could be easily traced back to a case will be anonymized to ensure the integrity and stability of the data to be collected and the success of the pilot project.

All the aspects of the mission and goals of the Commission are system-focused not individual-focused. While we, as people, manage and lead processes within the system, it is the systemic processes, and outcomes that these processes produce, that will lead to sustainable "advancement in the public safety, in realizing fairness in sentencing, in preserving meaningful judicial discretion, in distinguishing the most efficient and effective use of correction resources, and in providing meaningful array of sentencing options".

This systemic approach is designed to build public trust in the justice system and will serve the citizens of Ohio by allowing the Commission to achieve its mission to "analyze" the impact of "current criminal statues and law in Ohio", "study sentencing patterns and outcomes", "researching and recommending evidence-based approaches to reducing recidivism", and "recommending reasonable and specific criminal justice reforms".

The OSDP pilot project is a system of portals.

ENTRY GENERATION PORTAL
Participation in the pilot project is voluntary, not mandated. If courts use the OSDP Entry Generation portal to complete their entries, there will be no additional burden on courts. The system replicates current court processes.

The Entry Generation portal provides the web-based version of the uniform sentencing entry template and disposition form templates giving judges the ability to generate accurate, up-to-date, and comprehensive entries. As a result, data about the disposition of the case will be retained in the system for the use of the judges and counties to advance their own processes and systems. To assist the courts with generating entries, additional data will be entered manually or through system-to-system integration with the Ohio Courts Network[xviii] and local case management systems to provide depth to each data element included in the uniform entry templates.

OHIO CRIMINAL OFFENSE CODE PORTAL
The Ohio Criminal Offense Code (OCOC) portal will provide, for the first time in Ohio, a non-proprietary software-based digital version of the felony criminal sections of the Ohio Revised Code. This OCOC portal will enable approved software to receive up-to-date, accurate, and comprehensive information about the criminal offense code to ensure that all systems that support the criminal justice process are documenting the felony criminal offense codes accurately and consistently.

PUBLIC PORTAL

The Public Portal, when developed, will allow public consumption of sentencing information in an aggregate way – more than we know today. It is envisioned to be a system-focused representation of data to inform the public of the story of felony sentencing in Ohio – in other words, a web-based application (or website) that includes dashboards that display semi-real-live anonymized data (likely 3-4 days delay) as well as downloads of this data.

The dashboards will be designed to address common questions and once developed, provide contextual explanation to sentencing information to answer questions such as:

1. How many people were convicted of felonies in Ohio in a given time period?
2. What percent of convictions for each offense level is sentenced to prison versus community control?
3. What were the range of sentences for defendants convicted of violating 2925.11(A) and 2925.11(C)(1)(b)?
4. What percent of offenders sentenced to prison versus community control for the same offense had prior felony convictions?
5. For people with similar criminal history and convicted of similar crimes, what percent were sentenced to prison versus community control?

The Ohio Sentencing Data Platform (OSDP) will, for the first time, provide standardized statewide felony sentencing entry templates to ensure clear, comprehendible sentences and promote confidence in the system. This effort further provides the leverage to implement wise, responsible legislation to protect the public at a pivotal time for criminal justice and sentence reform in Ohio.

The Commission is accountable for proposing, vetting, and advancing the best and most impactful interests for fair sentencing and sound public policy. The expectation is, simply stated, proactive recommendations that change lives and deliver on the fundamental purposes and principles of sentencing.

The obvious strategy to meet the challenges of today is to corral the courage and leadership to manage expectations, allow voices to be heard, seize opportunities, and achieve meaningful outcomes by crafting genuine, real world, and measurable reform. We must rebuff bureaucratic paralysis – everyone doing something and nothing getting done.

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SENTENCING ROUNDTABLE WORKGROUP DRAFT REPORT & RECOMMENDATIONS

Presented December 15, 2022

I. INTRODUCTION AND OVERVIEW OF CRIMINAL SENTENCING IN OHIO

Felony sentencing in Ohio has become a highly complex procedure that is perceived to produce disparate results of similarly situated defendants. On the 25TH anniversary of the passage of Senate Bill 2 (SB 2), the "Truth in Sentencing" bill, the Ohio Criminal Sentencing Commission conducted a roundtable discussion led by Reginald Wilkinson, EdD. This roundtable discussion prompted the creation of an ad hoc group, Sentencing Roundtable Workgroup (Workgroup). The goal of the workgroup was to examine the sentencing system in Ohio and develop recommendations to improve the clarity and reduce the complexity of felony sentencing. These recommendations were created consistent with the Commission's vision to enhance justice and its mission to ensure fair sentencing in the State of Ohio.

The Workgroup exercised due diligence in studying and reviewing sentencing options, listening to presentations on best practices, considering expert opinions, studying sentencing practices in other states, and examining deficiencies in Ohio's present sentencing structure. The Workgroup studied rehabilitative, retributive, and restorative models of sentencing and reached a consensus that a modified and modernized rehabilitative model, utilizing indeterminate sentences, probation and parole would best promote the objectives of the purposes and principles of sentencing.

The General Assembly created the Sentencing Commission in 1990 as part of SB258. The Commission is directed to develop a sentencing policy that enhances public safety by achieving certainty in sentencing, deterrence, and a reasonable use of correctional facilities, programs, and services.[xviii] Additionally, the sentencing policy shall be designed to achieve fairness in sentencing. The Commission was also directed to evaluate the effectiveness of the sentencing structure of the state.[xviii] After over 25 years of modifying and amending SB2's sentencing structure, the Commission recognizes that it is time for an overhaul of Ohio's criminal sentencing structure starting with sentencing policy.

What follows is a simplified and brief explanation of sentencing, but under current law the hearing is much more involved and complex.

After a defendant is convicted by plea or trial, the court conducts a sentencing hearing. At the sentencing hearing the judge will hear from the prosecutor, the victim or victims, the defense attorney, and the defendant. The judge will consider the purposes and principles of sentencing pursuant to Revised Code (R.C.) 2929.11 as well as consider and weigh the factors regarding seriousness and recidivism pursuant to R.C. 2929.12.

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The sentencing judge must also give notices and consider numerous other statutory requirements, such as mandatory sentences, prison presumption, merger, sex offender registration, and many more. The judge will then impose a sentence; that sentence may include community control, prison, fines, restitution, driver's license suspension, mandatory time for specifications, and several other sentencing options.

Once the judge has determined the sentence, a litany of notices must be given to the defendant prior to imposition of the sentence. At the conclusion of the sentencing hearing the defendant may be taken or retained in custody or may begin any community sanction that has been imposed. For a view of the complexity of sentencing in Ohio please see the Felony Sentencing Quick Reference Guide, prepared by the Ohio Sentencing Commission and available on the Commissions website.

The purposes and principles of sentencing as enumerated in R.C. 2929.11 best state the sentencing rationale that should be applied in Ohio: protect the public from future crime by the offender and others, punish the offender, and promote rehabilitation by applying incapacitation, deterrence, and restitution. Sentences are required to be commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim and must be consistent with the sentences of similarly situated defendants. Combining those purposes and principles with the seriousness and recidivism factors enumerated in R.C. 2929.12 provides the sentencing courts with guidance to make qualitative judgments based on relevant factors to exercise informed discretion in sentencing.

Ohio and most of the nation was operating under a rehabilitative model from 1884 to 1996. Under that model, judges had broad and unfettered discretion to impose sentences intended to both punish and rehabilitate convicted offenders. Prison sentences were indeterminate to provide time in which to treat and rehabilitate the offender. Under a rehabilitative model, offenders are incentivized to participate in and successfully complete rehabilitative programming while incarcerated. When eligible, a parole board periodically reviews these offenders progress and allows for earlier release if sufficient rehabilitation is demonstrated. In return, society benefits from successful reentry, reduced recidivism rates, and a decrease in the financial burdens associated with criminality.

Despite the long tenure of the rehabilitative model, calls for retributive reform began in the early 1990s. The legislature in Ohio responded with the adoption of a "truth in sentencing" scheme. Known as Senate Bill 2, this new sentencing model became effective July 1, 1996. The legislation established a type of determinate sentencing structure, called a presumptive system, that required minimum sentences with judicial discretion from a range of possible punishments. Retributive sentencing was the model upon which SB2 was based. Retributive sentencing focuses solely on punishing the offender for the wrong that was committed.

The restorative justice sentencing model is an additional sentencing scheme that has been adopted in the United States that emphasizes compensation and reconciliation between victims and offenders. A restorative model focuses less on punishment and more on the proportionality of the sentence imposed. Some restorative concepts are usually implemented in both retributive and rehabilitative models of sentencing, such as victim impact panels.

II. MEMBERSHIP ROSTERS*

Sentencing Roundtable Workgroup

Reginald Wilkinson, Ed.D., President – Connecting the Dots, LLC
Paula Brown, Defense Attorney
Patrick Clark, Ohio Public Defender's Office
Michael Donnelly, Associate Justice, Supreme Court of Ohio
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Kate Huffman, Judge, Montgomery County Court of Common Pleas
Marta Mudri, Legislative Counsel, Ohio Judicial Conference
Robert Nichols, Retired Judge
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Liz Poprocki, Ohio Department of Mental Health and Addiction Services
Nathan Manning, State Senator
Reggie Routson, Judge, Hancock County Court of Common Pleas
John Russo, Judge, Cuyahoga County Court of Common Pleas
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Todd Ives, Researcher
Michael Crofford, Researcher

*** List includes those invited. Member participation is not unqualified endorsement of the final report or recommendations.***

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III. SUMMARY OF RECOMMENDATIONS

Criminal sentencing in Ohio needs to be restructured to achieve fair, proportional, congruent sentencing that is predictable, consistent, and deterrent which incorporates the reasonable use of correction facilities, programs and services.

The recommendations presented here are purposefully general – a first step in what will likely be a long, arduous process to achieve, within constitutional lanes, the application of the fair and equitable application of the law in a manner that objectively promotes public confidence, maintains social order, and respects matters of liberty. Further, it is understood each recommendation must be fully vetted, evaluated, and its details developed – we hope that this report, recommendations, and our effort to seek public engagement will drive long term, meaningful change to improve the clarity and reduce the complexity of felony sentencing in Ohio.

Implementation of each recommendation and the adoption of a modernized and modified rehabilitative model, that utilizes indeterminate sentences, probation, and parole, is necessary to create a fair and effective criminal justice system. The adoption of a rehabilitative model of sentencing would meet these goals and would allow for the just punishment of offenders while providing tangible incentives for robust and meaningful rehabilitation.

1. Establish a modified and modernized rehabilitative model of criminal sentencing.

The General Assembly reimplemented broader indeterminate sentencing through the passage of SB201, the Reagan Tokes Act, which went into effect in 2019. The benefit of an indeterminate sentencing model is that it incentivizes good behavior and participation in rehabilitative programs through opportunities for release, and simultaneously ensures that unrehabilitated offenders remain incarcerated. In a determinate system the prisoner knows that they will be released on a certain date, whether they are a model prisoner or not.

The indeterminate model is flexible and can accomplish a global sense of consistency and proportionality, while retaining the distinction between jurisdictions. With the Reagan Tokes Act the legislature created formulas for the sentencing judge to use to determine the range of the indeterminate sentence. The indeterminate sentence is added on to the sentence that the judge imposes on the underlying count, and the Department of Rehabilitation and Correction (DRC) holds a hearing to extend the sentence up to the maximum as determined by the formula. For example, if the defendant received an 8-year sentence on an applicable count, then the formula would determine that an additional 4 years would be imposed so that the defendant would be serving a sentence of 8 to 12 years. In this example, at the conclusion of the 8-year sentence, DRC holds a hearing and if they find it appropriate the defendant can stay in prison up to 4 more years. A more straightforward range of sentences that a sentencing judge would choose from in conjunction with the R.C. 2929.12 weighting of sentencing factors, to be discussed in the second recommendation below, would streamline the sentencing process, reduce errors and ensure fair sentencing.

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2. Seriousness and recidivism factors, contained in R.C. 2929.12[xviii], to be weighted to provide context and distinction to sentences.

The seriousness and recidivism factors listed in R.C. 2929.12, advise the court of considerations that should be made prior to imposing sentence upon an offender. Perceived disparities in sentencing are often the result of lack of information regarding the consideration or weight that was given to those sentencing factors. The seriousness and recidivism factors give great guidance to sentencing decisions and provide context or distinction to sentences for defendants that on the surface appear to be similarly situated. If the factors considered were weighted or prioritized in some way and noted, distinctions between cases and defendants that appear similarly situated would be revealed.

3. Expand indeterminate sentencing to apply to felonies of the third degree and eliminate the bifurcated structure of felonies of the third degree.

Felonies of the third degree are currently excluded from the indeterminate model introduced by the passage of SB201. By including these offenses, the benefits of the indeterminate structure will apply to offenses which currently carry up to five years in prison. The benefits include incentivizing good behavior and participation in rehabilitative programs through opportunities for release and ensuring that unrehabilitated offenders remain incarcerated.

Under current law, the felonies of the third degree are bifurcated. Certain offenses carry up to 36 months in prison while other offenses carry up to 60 months. As part of the expansion of indeterminate sentencing, third degree felonies should be punishable by up to 60 months in prison. The offenses that are currently classified as felonies of the third degree will need to be analyzed and reclassified between the felony of the fourth-degree level and felony of the third-degree level.

4. Implement a definite minimum time that a prisoner must serve before release options become available.

Currently there are a dozen or so options for a prisoner to be released from prison prior to the completion of the prison sentence. By implementing a definite minimum time, the indeterminate sentencing model will maintain the "Truth in Sentencing" ambitions of SB2. The definite minimum time is set by the judge from the ranges available for the felony committed, a felony of the first or second degree, and no release options are available to the defendant until that time has been served. Additionally, the release options available today should be evaluated for function, utility, overlap, and clarity – ultimately, there should be fewer, more meaningful release options.

For clarification, this is not a mandatory minimum that is set by statute for all defendants. Instead, the sentencing judge would exercise discretion in choosing a minimum time within the statutory range that the defendant would be required to serve.

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5. Modify consecutive sentence statutes to provide proportionality more effectively between similarly situated offenders.

A sentencing court must make certain findings before it may impose a consecutive sentence. Pursuant to R.C. 2929.14(C)(4)[xviii] the court must find that the consecutive sentence is necessary to protect the public or to punish the offender AND not disproportionate to the seriousness of the offenders conduct and to the danger the offender poses to the public. Additionally, the court must find one of the following:

1. Crimes committed while awaiting trial/sentencing, under sanction, or under post-release control; or
2. Two or more of the multiple offenses committed as a single course of conduct and the harm so great or unusual that a single term does not adequately reflect the seriousness of the conduct; or
3. Offender's criminal history shows that consecutive terms are needed to protect the public.

Members of the Workgroup discussed ways to reform consecutive sentencing. There is a perception that consecutive sentencing in Ohio is applied inconsistently between similarly situated offenders. Modification to consecutive sentencing guidance would allow parole eligibility for offenders after serving a specified time of the total prison term imposed. Parole eligibility does not mean granting of parole, just that the defendant could apply for parole consideration or hearing. As an example of what could be proposed, make the offender eligible to apply for parole consideration after 18 years for non-homicide offenses and 30 years for parole eligible homicide offenses.

6. Expand responsibility of parole system to implement the proposed indeterminate model of sentencing.

An effective parole system is a necessary component of indeterminate sentencing. Criticisms of the parole board under the previous rehabilitative model included inconsistent and unpredictable practices resulting in disparate or incongruent decisions which undermined public confidence in the ability of the justice system to protect the public. Currently, the parole board hears cases of prisoners that have indeterminate sentences or violations prior to the enactment of SB2 and life sentences imposed after SB2 and HB86.

With the expansive indeterminate model of sentencing being proposed, the parole system will help accomplish the goals of rehabilitation. Enacting statutory limitations on the parole board's discretion with oversight and accountability will help to dispel criticism and achieve transparency.

An active, transparent, and focused parole system supplements and strengthens the rehabilitative incentives of the indeterminate model of sentencing and ultimately restores the confidence of the public while ensuring public safety.

7. Support the Commission's efforts to promote the adoption of uniform entry templates.

The value of statewide uniform entry templates that a court regularly uses cannot be overstated. The greatest value in the use of these uniform entry templates is through a web-based application, currently a pilot project of the Commission – the Ohio Sentencing Data Platform (OSDP).[xviii] Expanding the use of these uniform entry templates and the web-based platform ensures courts always have the most recent requirements, either based on statute or case law, in their entries and improves system efficiency. The uniform entry templates also create a standardize language across the State for sentencing. The Court speaks through its entry. If all courts are using the uniform entry templates, they will all be speaking the same language which will, among other things, promote confidence in the system and (hopefully) improve understanding of the exceedingly complex sentencing structure. In addition to speaking the same language, the Court will have the ability to generate accurate, up-to-date, and comprehensive entries.

The Commission, as part of the work being done for the OSDP, is also in the process of digitizing the entirety of the criminal code in Ohio in collaboration with the Ohio Judicial Conference and the Ohio Legislative Services Commission. The effort is partially funded through a Bureau of Justice Assistance grant awarded to the Commission by the Office of Criminal Justice Services, Ohio Department of Public Safety. The Ohio Criminal Offense Code portal will be a game-changer for criminal justice collaboration, communication, and information sharing in Ohio – a non-proprietary, accessible digitized version of the Ohio Revised Code.

The Ohio Criminal Offense Code portal will enable approved software to receive up-to-date, accurate, and comprehensive information about the criminal offense code to ensure that all systems that support the criminal justice process are documenting the felony criminal offense codes accurately and consistently. In other words, it will be a standardized, comprehensive presentation of criminal code sections which will create a common language to allow interagency connectivity – law enforcement, prosecutors, clerks, courts, probation departments, corrections departments, or any other agency that uses the Revised Code in their day-to-day operations.

8. Standardize Presentence Investigation Reports.[xviii]

Currently in the State of Ohio, presentence investigations (PSI) are only required when the sentencing court is going to place the defendant on community control.[xviii] Additionally, there is no standard to which the written report must adhere. The Committee discussed the value of a standardized presentence report. Much like the uniform entry templates, a standardized PSI would create a common language across the State that would better communicate what is occurring and the information considered in sentencing. Creating a standardized PSI allows courts to utilize their resources in implementing rehabilitation more effectively. It also permits courts to utilize staff more efficiently in terms of the presentence investigation and the writing of the report.

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9. Reorganize and simplify criminal statutes.

The criminal code should be simplified for the purpose of making it easier to understand and administer. Shortly after the enactment of SB2, the General Assembly began passing changes to the law. Individually, each change seems logical enough. However, collectively, these changes have resulted in compounding complexities and significant cost increases. These separate changes are commonly made to satisfy individual interest groups, not as the product of careful public policy analyses. Simplifying the criminal code will reduce errors in sentencing and make the process easier for defendants, victims, practitioners, and the public to understand. Any simplification of the code adds to the transparency of the criminal justice system.

There have been previous reports and recently recommendations from the Ohio Criminal Justice Recodification Committee toward simplification. There is opportunity to consider and constructively incorporate some or all of those efforts into an indeterminate sentencing model.

Criminal Codes are made stronger by review and analysis of proposed changes prior to enactment – like the process used for bill analysis by the Ohio Legislative Services Commission. Currently, though, there isn't a dedicated process for analysis of specific criminal justice or sentencing impact and the Commission's existing R.C. 181.25(A)(3) duty to review and analyze introduced legislation is underutilized. The Criminal Sentencing Commission is in a unique position with the expertise to conduct such analysis. The Commission should be expressly authorized to review potential legislation. As part of this review, the Commission should determine if the existing code already covers the proposed legislation and should ensure there is internal consistency of definitions and language. This work could be done in consultation with other appropriate agencies, such as the Legislative Services Commission.

10. Authorize an existing agency or create one to act as a clearing house for professional notifications.

Members of the Workgroup discussed the burden to prosecutors' offices of the formal notifications they are required to provide regarding defendants who hold professional licenses. Statutory amendments should be made to allow the prosecutor to notify a central source of arrest or indictment, and it would then be the obligation of this central source to track the case and inform applicable licensing agencies of any restrictions to that license due to those charges.

11. Expand the use of, and resources for, prosecutor diversion programs and specialized dockets.[xviii]

Utilization of prosecutor diversion serves as an appropriate and effective mechanism to divert low-level offenders from trial or plea and potential incarceration. The enabling statutes for prosecutor diversion programs are broad in authority. However, there is not a consistent adoption of these programs from county to county. Expanding resources and increasing knowledge to county prosecutors, would greatly help the intent and effect these programs would have on low-level, non-violent offenders.

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Specialized dockets create an avenue of diversion through drug, alcohol, mental health, veteran, and reentry program emphasis. These programs employ holistic restorative and therapeutic qualities to help guide defendants through recovery and successful exit from the criminal justice system. Research, analysis, and evaluation of the specialized docket programs could inform recommendations regarding participation, resources, and support of these rehabilitation efforts.

12. The drug epidemic in Ohio needs special attention to ultimately address a solution.

The Workgroup acknowledged that drug offenses are a recurring debate for reform while also recognizing the practical reality that the comprehensive review of the laws guiding drug prosecutions and the resources that can be directed to combating the drug problem in Ohio would consume the totality of its work. However, should the proposed recommendations in this report be supported, they will provide Ohio courts with more options for dealing with drug offenders, which is one step (of many) toward long term resolution.

Before any comprehensive look at Ohio's drug statutes is conducted, there must be guidance from the General Assembly and other state leaders regarding drug addiction; for instance, is it a public health concern, a criminal offense, or mental health issue? Once we know more about and understand how to categorize or define drug addiction, then we can begin to address the consequences of relapse, how community supervision should operate, and what type of facilities or treatment options are best suited for programming or monitoring drug offenders.

[xix] "Qualifying offenses" include all F1 and F2 offenses not subject to life imprisonment and committed on or after March 22, 2019. https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/SB201/SB201FCCP.pdf
[xx] Information current as of December 6, 2022.