MONITORING SENTENCING REFORM:

Survey of
Judges, Prosecutors, & Defense Attorneys
and
Code Simplification

A Sentencing Commission Staff Report

By David J. Diroll

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OHIO CRIMINAL SENTENCING COMMISSION
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INTRODUCTION

Background. Ohio Revised Code §§181.21 to 181.26 instructs the Ohio Criminal Sentencing Commission to study the criminal laws of the state, to develop and propose comprehensive sentencing plans to the General Assembly, to help implement those plans, and to monitor the impact of any of the Commission's proposals that are enacted.

In the dozen years since the first package of Sentencing Commission proposals were adopted (Senate Bill 2 of the 121st G.A., dealing with adult felons, effective 7.1.96), the General Assembly has debated numerous bills relating to criminal sentencing. Several major bills came from Sentencing Commission proposals, including changes in juvenile dispositions in 2000, traffic law in 2004, misdemeanor sentencing in 2004, and asset forfeitures in 2007. These bills affected several hundred sections of the Revised Code. Of course, scores of other bills touched on criminal penalties during the same period. In the felony area, major changes were enacted regarding predatory sexual offenses and impaired drivers.

Focus of this Report. Every biennium, the Commission reports on the impact of the sentencing reforms that grew out of Commission recommendations. This report focuses on felony sentencing. The Commission surveyed judges, prosecutors, and defense attorneys to get a feel for how well the felony sentencing statutes are working. This report recaps the S.B. 2 approach to felony sentencing, notes certain key changes since 1996, and presents practitioners' opinions on the statutes.

Simplification & *Colon*. Separately, the Commission continues to work on ways to streamline the Revised Code. In *A Plan for Simplifying the Revised Code*, released in May 2008, the Commission showed how the Code could be condensed by hundreds of thousands of words without changing any meaning. These proposals led to discussions with the Speaker's office and preliminary drafting by the Legislative Service Commission staff. Since that report, the Commission developed a template to simplify all of Chapter 2929, which covers criminal sentencing. The Commission hopes to pursue these ideas with the 128th General Assembly.

Also in 2008, the Ohio Supreme Court issued two rulings with substantive implications for drafting criminal statutes. In *State v. Colon* (118 Ohio St. 3d 26 and 119 Ohio St. 3d 204), the Court found a statute defective because it didn't clearly indicate the mental state (*mens rea*) needed for criminal culpability. While the second *Colon* decision made the first ruling prospective only, it remains clear that gaps in numerous Criminal Code provisions should be addressed. The Commission has worked to identify these and soon will make recommendations to the General Assembly.

EXECUTIVE SUMMARY

The Sentencing Survey

- More than half of the state's judges with felony jurisdiction, elected prosecuting attorneys, county public defenders, and targeted private defense attorneys responded to the Sentencing Commission's felony sentencing survey.

A Call for Reform

- While many aspects of S.B. 2 (the 1996 rewrite of the felony sentencing statutes based on the Commission's proposals) remain popular with practitioners, there was clear consensus from the judges, prosecutors, and defense bar that the felony sentencing statutes should be revised.

Simplify the Code

- A significant number of practitioners called for the General Assembly to simplify the Revised Code. This dovetails with a recent Sentencing Commission initiative.
- The Commission's May 2008 report suggested simple general rules that could shrink the Code by over one half million words--roughly the size of *War and Peace*--without changing the Code's scope or meaning.
- In addition, the Commission drafted non-substantive revisions to the main sentencing statutes (Chapter 2929) that could be used as a template to dramatically cut the Code's verbiage.

Retain Definite Sentences

- For most offenses, survey respondents overwhelmingly favor definite sentences, where the specific prison term is set by the judge, over indefinite terms, where the ultimate release date is decided by the Parole Board.

Comfort with Five Degrees of Felony

- Over 80% in each group said the five degrees of felony is "about right."

Budget Priorities

- A majority of the prosecutors and judges felt that prison construction should be a high priority, although relatively few of them made the recommendation strongly.
- Respondents generally had stronger feelings about prioritizing community corrections. Over 85% of each group said Ohio should make expanding non-prison sanctions a high budget priority.
- A majority in each group felt that the statutory lists of community control sanctions were adequate, although they could be improved by adding specific mental health options and expanding drug treatment tools.
- However, there is some concern about the *availability* of the options in each jurisdiction, which, ultimately, becomes a budgetary issue.
- There was little interest in restricting eligibility for Community-Based Correctional Facilities (CBCFs). Most judges and defense attorneys would expand eligibility. Most prosecutors would keep eligibility the same.

Mixed Feelings About Mandatory Sentences

- Since 1996, the number of crimes and circumstances carrying mandatory prison terms has grown. A majority of the respondents in each group does not believe that Ohioans are safer as a result of the post-S.B. 2 penalty increases.
- Most respondents favor or tolerate the current mandatory sentences, but do not favor adding to the list.

Provocative Thoughts on Drug Sentencing

- The worst offense committed by about 30% of the offenders who enter Ohio prisons is a drug crime. Given the need for assuring adequate prison space for more violent offenders, many practitioners believe the time is right to revisit drug sentencing laws.
- The statutes tend to treat drug offenders more severely than non-drug offenders at the same felony levels. A rough consensus emerged that these distinctions may be obsolete.
- There is strong sentiment in the defense bar for reducing drug penalties. Judges and prosecutors tended to favor current practice, although many judges would prefer that more drug sentences be made non-mandatory. Relatively few respondents would increase penalties.

- Offenses involving all common street drugs other than marijuana must be prosecuted as felonies. Surprisingly, given its political sensitivity, 61% of the judges joined 95% of the defense bar in favoring misdemeanor levels for possession of street drugs. Only about a quarter of the prosecutors agree.
- One tool used to divert drug offenders from the prison system and toward treatment programs is "intervention-in-lieu" of conviction. A majority of the judges and all defense attorneys would expand eligibility for this intervention. A substantial majority of prosecutors disagrees.
- When asked if certain drug possession offenses should be treated as public health matters rather than as crimes, generally the elected respondents favor keeping the cases within the criminal justice system, but a significant minority of the judges (43%) and a large majority of defense attorneys favor the public health model.

Concerns with OVI Sentencing

- While nominally classified as M-1s, F-4s, and F-3s, impaired drivers face numerous mandatory penalties atypical of those offense levels. Over 2/3rds of each group believe that OVI sentencing should more closely mirror that for other offenses of the same degree. While almost no one suggested eliminating penalties, many favored simplifying the law and making an effort to determine which of the myriad penalties are most effective.
- When asked whether OVI cases should remain in misdemeanor courts, the verdict was split. A solid majority of the prosecutors said no and an equally substantial majority of defenders said yes. Judges were more evenly divided.

Discomfort with the Felony Theft Threshold

- For a theft offense to be a felony, the value of goods stolen must be at least $500. Most respondents suggested increasing the threshold amount. Some would keep it the same, but very few would reduce it.

Sentencing Guidelines

- A majority of each group expressed a need for some statutory guidance—beyond the basic ranges of prison terms and lists of non-prison options—in sentencing. However, the overwhelming majority of judges and prosecutors who favor guidance prefer voluntary guidelines over the S.B. 2's reviewable approach. Conversely, a majority of defense attorneys favored guidelines monitored by appellate review.
- Practitioners generally supported the current statutory lists of seriousness and recidivism factors. A majority in each group also would retain guidance in favor of imposing a prison term for some felons, but the groups divided on whether to retain guidance against imposing prison terms for certain other felons.
- Judges and prosecutors generally would not revive the guidelines that reserved the maximum sentence for those who committed the worst offenses and encouraged minimum terms for offenders who haven't been to prison before. Each of these was struck by the Ohio Supreme Court in 2006. The defense bar would like the General Assembly to revisit both issues.
- Neither judges nor prosecutors favor crafting sentencing statutes that are sensitive to prison population levels. This is dramatically different from the defense bar, where 90% believe sentencing statutes should be responsive to prison crowding.

Dealing with Recidivism

- When asked which sentencing goals were most important, all three groups agreed that reducing recidivism should be a priority. Only punishment and public safety were ranked higher by prosecutors and judges and only rehabilitation was ranked higher by defenders. While valued, cost effectiveness, sentencing consistency, and general deterrence are not paramount sentencing concerns for any group.
- To varying extents, each group favored treating recidivism as either one factor in deciding the sentence or as a factor that increases the penalty within the same felony level. Only a minority of each group favored having recidivism increase the degree of the offense or result in mandatory prison terms.

Actual Felony Sentences

- Generally, practitioners were comfortable with the ranges of years and months in prison set by S.B. 2 for each felony level. However, a significant majority of prosecutors and a majority

of judges believe the determinate 10 year maximum should increase for F-1s. Almost no defense attorneys agreed.

- Judges and defense attorneys were comfortable with felony sentences of less than one year for lower level felons. Prosecutors split on the issue.
- The overwhelming majority of prosecutors and judges would keep the current felony fine schedule. A solid majority of defense attorneys would decrease fines in felony cases.

Consecutive and Concurrent Sentences

- There was broad agreement among judges, defense attorneys, and prosecutors that consecutive sentencing should turn more on the overall course of the defendant's conduct than on the particular offenses charged.
- Otherwise, the groups were not in accord regarding how to approach consecutive sentences. Many were comfortable with having some statutory guidance on consecutive terms. The defense and prosecutors generally favored guidance, while a small majority of judges leaned against statutory guidelines on consecutive sentences.
- In keeping with the preference for voluntary rather than mandatory guidelines, judges and prosecutors generally opposed returning to S.B. 2-like appellate review of consecutive sentences. The defense bar dramatically disagreed.
- Similarly, prosecutors and judges disagreed with reviving the cap on consecutive terms that was repealed by S.B. 2, while defense attorneys favored resuscitating the cap.
- Regarding the *Rance* decision, which makes stacking multiple counts fairly easy in Ohio, only defense attorneys strongly favored statutorily addressing the issue. A majority of prosecutors and judges disagreed.

Prison Management Tools

- Each group surveyed seemed comfortable with an administrative release mechanism for aged and infirm inmates, although the majority of prosecutors supporting the concept was smaller than that of defense attorneys and judges.
- A large majority of judges and prosecutors would revive the "bad time" concept to allow prisons to extend sentences to punish misconduct by inmates. Relatively few defense attorneys agreed.
- Only defense lawyers strongly supported expanding the system of earned credits for participating in prison programs. Judges were fairly split while prosecutors overwhelmingly disagreed.
- When asked whether prison officials should have limited authority to review and release the terms of long term inmates who are ineligible for parole, the idea was rejected by judges and prosecutors, but embraced by defenders.
- When asked whether the process for placing inmates in "boot camps" and other intensive prison settings should change, simple majorities of prosecutors and defense attorneys agreed, while judges disagreed.

Role of the Sentencing Commission

- Significant majorities of judges, prosecutors, and defense attorneys feel that the Sentencing Commission should play a prominent role if sentencing statutes are revised.

THE SENTENCING SURVEY

By enacting S.B. 2 of the 121st G.A. (sponsored by Sen. Tim Greenwood), the General Assembly adopted the Sentencing Commission's proposals for sentencing adult felons. The bill took effect July 1, 1996. While the General Assembly has changed penalties on many individual offenses in the intervening 12 years, the S.B. 2 template remains largely intact. S.B. 2 continues to govern most felony sentences in Ohio. Perhaps the most significant legislative changes occurred regarding sexual predators and impaired drivers. In addition, a handful of court decisions have limited aspects of S.B. 2.

The Commission surveyed practitioners to get a feel for how well Ohio's felony sentencing statutes are working. The same questions were asked of each of the state's common pleas court judges with felony jurisdiction, every elected county prosecuting attorney, all 34 county public defenders, and the 60 members of the board of the Ohio Association of Criminal Defense Lawyers. The survey was conducted by mail in September 2008.

Over half of the practitioners responded. The good response rate indicates a strong interest in the questions and a sense that they are timely. Here is how the responses broke down.

Respondents	Total Sent	Replies	Response Rate
Common Pleas Judges	240	134	55.8%
Prosecutors	88	38	43.2%
Defense Attorneys	94	41	43.6%
Total	422	213	50.5%

Throughout the survey, respondents generally were asked to strongly agree, agree, disagree, or strongly disagree with a series of statements. Practitioners were promised that their individual responses would remain anonymous.

The Commission tried to phrase the questions neutrally. The tables in this report present each statement as it appeared in the survey, so you can judge whether you perceive bias with any question. We segregated the responses by occupation so that any one group's responses did not skew the results. This also gives a clearer sense of where judges, prosecutors, and defenders differ.

While the respondents aren't the only voices in the criminal justice system, their opinions matter since they have the day-to-day knowledge of hundreds of cases.

A CALL FOR REFORM

As you will see, much of S.B. 2 remains popular with practitioners. Yet there were disquieting murmurs about many of the topics surveyed. This may explain the broad consensus from the judges, prosecutors, and defense bar that the felony sentencing

statutes should be revised. 67.5% of the judges, 66.6% of the prosecutors, and 84.6% of the defense bar called for changing the statutes.

The felony sentencing statutes (§§2929.11-2929.20) should be revised.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=117)	16.2%	51.3%	25.6%	6.8%
Prosecutors (N=36)	22.2%	44.4%	27.8%	5.6%
Defense Attys (N=39)	56.4%	28.2%	12.8%	2.6%

SIMPLIFY THE CODE

While there are substantive concerns with varying sentencing statutes, as you will see, it is noteworthy that individual comments from respondents indicate that the basic Sentencing Code (RC Ch. 2929) has grown too complicated. The General Assembly could win favor with judges, prosecutors, and defenders by streamlining these statutes even if no substantive changes are made. Presumably, simplification would also help crime victims, those charged with offenses, the media, and curious citizens to better understand the law.

To this end, the Commission drafted a streamlined version of Revised Code Chapter 2929, which covers both felony and misdemeanor sentencing for adult offenders. The last section of this report discusses the topic.

KEEP DEFINITE SENTENCES

Rather than sentence in a range ("3 to 15 years") with the Parole Board determining the actual release date, S.B. 2 instructed judges to select a definite sentence ("7 years"). As a result, the prison term imposed in open court reflects the time actually served for most felons. Indefinite sentences were retained only for murders.

The determinate system has remained intact since 1996 with one significant exception. The General Assembly made sentences for "sexually violent predators" indeterminate in 1997 and later expanded the list to include child rapists.

The survey indicates strong philosophical support for determinate sentences, with at least 80% of each group surveyed preferring them over indeterminate terms.

Which best reflects your philosophy (check one)? Generally, prison sentences should be determinate, with the judge setting the actual time to be served; Generally, prison sentences should be indeterminate, with the Parole Board deciding when the offender is ready for release within the range imposed by the judge.		
Respondent	**Generally Determinate**	**Generally Indeterminate**
Judges (N=132)	89.4%	10.6%
Prosecutors (N=37)	81.1%	18.9%
Defense Attorneys (N=41)	87.8%	12.2%

To get a more nuanced sense of the relative popularity of definite versus indefinite sentences, the survey then asked whether changes should be made to the current indeterminate sentences for murder and sexual predators. Defense attorneys favor making these determinate as well. Judges and prosecutors leaned toward keeping the current indeterminate terms, but not expanding indeterminate sentencing beyond them.

Currently, indeterminate sentences exist for murders and certain sexual offenses. The General Assembly should: Replace these with determinate sentences, if feasible; Not expand indeterminate sentences beyond these; Expand indeterminate sentences to all felonies; Expand indeterminate sentences to selected types of felonies.				
Respondent	**Make Determinate**	**Keep, Don't Expand**	**Expand to All**	**Expand to Some**
Judges (N=131)	19.8%	59.5%	6.1%	14.5%
Prosecutors (N=38)	13.2%	52.6%	10.5%	23.7%
Defense Attys (N=41)	48.8%	34.1%	9.8%	7.3%

COMFORT WITH THE FIVE DEGREES OF FELONY

Before S.B. 2, Ohio had only four degrees of felony offenses, but many different rules applied within the classes, leaving the state with a dozen sentencing schemes. S.B. 2 compressed the 12 into five felony levels ranging from the most serious non-murder offenses (first degree felonies) to the least serious (fifth degree felons).

The five-tier system has held firm since 1996. Even when exceptional sentences were enacted by the General Assembly—drunken driving for instance—efforts were made to shoehorn the unusual sentences into the five classes.

In the survey, over 80% in each group said the five degrees of felony is "about right."

Currently there are five degrees of felony. That is (circle one):			
Respondent	**Too Many**	**About Right**	**Too Few**
Judges (N=133)	12.8%	85.7%	1.5%
Prosecutors (N=38)	18.4%	81.6%	0.0%
Defense Attorneys (N=41)	12.2%	80.5%	7.3%

BUDGET PRIORITIES

Two of the purposes of S.B. 2 were to manage prison population levels and to standardize and expand community sanctions. Ohio's prison population topped 50,000 for the first time in 2008. While prison crowding increased in the years since 1996, it was only in the last biennium that the population exceeded pre-S.B. 2 levels. Certainly a dip in the crime rate and various demographic factors help to explain the relatively limited prison population growth in the first ten years after S.B. 2 took effect. But S.B. 2 deserves some credit for keeping prison population increases relatively flat in that first decade. The bill diverted some thieves to the misdemeanor

system, encouraged non-prison sanctions for lower-level felons, and fostered expanded community sentencing options.

While ultimate decisions about Ohio's budgetary priorities falls on the Governor and the General Assembly, judges, prosecutors, and defenders have an intuitive understanding of which sanctions are effective for felons. They were asked about the importance of prison construction and expanded community sanctions. They were also asked about the adequacy of sentencing options in the statutes and in their communities.

Prison Construction. A majority of the prosecutors and judges felt that prison construction should be a high priority, although relatively few of them made the recommendation strongly.

Ohio should make building more prisons a high budget priority.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=128)	7.0%	46.5%	36.3%	10.2%
Prosecutors (N=37)	18.9%	56.8%	21.6%	2.7%
Defense Attys (N=41)	0.0%	2.4%	34.1%	63.4%

Non-Prison Sanctions. Compare those responses with the replies to a similar question about prioritizing community corrections. A clear consensus emerged with over 85% of each group saying that Ohio should make expanding non-prison sanctions a high budget priority.

Ohio should make expanded funding for sanctions other than prison a high budget priority.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=130)	35.4%	53.8%	10.0%	0.8%
Prosecutors (N=35)	25.7%	60.0%	11.4%	2.9%
Defense Attys (N=41)	61.0%	34.1%	4.9%	0.0%

S.B. 2 expanded the list of permissible non-prison sanctions and made any felon not facing a mandatory prison term eligible for most of them. These changes remained popular in the survey. A majority in each group felt that the statutory lists of community control sanctions were adequate. Judges (78%) and prosecutors (73%) were most likely to concur. About 54% of the defense attorneys agreed.

The lists of residential, non-residential, and financial sanctions (§§2929.16, 2929.17, & 2929.18) adequately cover alternatives to prison.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=127)	9.4%	78.0%	11.0%	1.6%
Prosecutors (N=37)	5.4%	73.0%	13.5%	8.1%
Defense Attys (N=37)	10.8%	54.1%	16.2%	18.9%

In fact, when asked whether any sentencing alternatives should be removed from the lists or restricted, very few respondents listed any, and there was no consensus among them. There was greater accord when practitioners were asked to comment on whether any options should be added to the lists. Many respondents suggested

adding specific mental health options (the statutes are largely silent on them today) and expanding drug treatment tools. In general, besides better addressing mentally ill offenders, the S.B. 2 lists seem to be holding up well.

However, the relative contentment with the statutory sentencing options masks some discontent regarding the *availability* of the options in each jurisdiction. While a majority in each group said the sanctions available in their jurisdictions were adequate, the majority was smaller than for the adequacy of the statutory lists *per se*. Addressing this, of course, becomes a budgetary question.

The sentencing options available in my jurisdiction are adequate.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=128)	8.6%	59.4%	28.9%	3.1%
Prosecutors (N=33)	6.1%	51.5%	30.3%	12.1%
Defense Attys (N=37)	2.7%	48.6%	35.1%	13.1%

CBCF Eligibility. Community-Based Correctional Facilities (CBCFs) are an extremely popular sentencing option for felons. That CBCFs receive state funds for construction and operating costs is only part of the reason. CBCFs take offenders who are otherwise bound for prison—typically drug offenders and other low-level felons—and place them in secure settings complete with rehabilitative programming. While the daily costs per inmate exceed the costs of prison confinement, CBCFs save money because of shorter periods of confinement and reduced recidivism rates.

When practitioners were asked about eligibility for CBCF placements, there was next to no interest in restricting eligibility. Most judges would expand eligibility (57%) or keep it the same (40%). Most defense attorneys would expand it (85%). Most prosecutors would keep eligibility the same (70%).

Community-based correctional facility (CBCF) eligibility should be:			
Respondent	**Expand**	**Keep the Same**	**Restrict**
Judges (N=129)	57.4%	40.3%	2.3%
Prosecutors (N=37)	29.7%	70.3%	0.0%
Defense Attorneys (N=40)	85.0%	15.0%	0.0%

There are facilities serving every Ohio county except Cuyahoga, yet that county has the State's highest number of felony cases. As always, there are plans to open a CBCF in Cuyahoga County. This time, it may actually happen.

MIXED FEELINGS ABOUT MANDATORY SENTENCES

The list of offenses and circumstances that carried a mandatory prison sentence before S.B. 2 was largely unchanged by that measure. In some cases, judges were given greater flexibility to set the precise mandatory period (*e.g.*, drug offenses). And nuance was added to the firearm specifications (three years if used, brandished, or indicated; one year if incidental). But, generally, the mandatories remained intact.

Since 1996, the lists of crimes and circumstances carrying mandatory prison terms has grown. Thus, the Commission asked practitioners for their thoughts on mandatory sentences.

There was significant agreement in their responses. Most favor or can live with the current mandatory sentences, but do not favor adding any. Tellingly, a majority of the respondents in each group does not believe that Ohioans are safer as a result of post-S.B. 2 penalty increases.

Specifically, when asked if "not enough" crimes carry mandatory terms, sizable majorities of judges (89%), defense attorneys (100%), and prosecutors (77%) *disagreed* with the statement.

Not enough **crimes carry mandatory prison sentences.**				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=132)	2.3%	8.3%	61.4%	28.0%
Prosecutors (N=37)	2.6%	21.1%	71.1%	5.4%
Defense Attys (N=41)	0.0%	0.0%	17.1%	82.9%

Among the small group that agreed with the statement, there wasn't any consensus on which offenses should be made mandatory.

When asked whether "too many" crimes carry mandatory terms, 95% of the defense bar agreed, but only 39% of the judges and 29% of the prosecutors concurred. Of those wanting to eliminate mandatories, aside from those who are philosophically opposed to any mandatory sentences (believing the judge should have great latitude), drug offenses were singled out by the largest plurality of critics.

Too many **crimes carry mandatory prison sentences.**				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=128)	14.8%	24.2%	53.1%	7.8%
Prosecutors (N=38)	7.9%	21.1%	68.4%	2.6%
Defense Attys (N=41)	63.4%	31.7%	4.9%	0.0%

And a majority of judges (73%), defense attorneys (96%), and prosecutors (60%) disagree that Ohioans are safer as a result of post-S.B. 2 sentencing changes, including the mandatory sentences for sexual predators and impaired drivers.

Since 1996, the General Assembly has enacted new laws for sexual predators, felony impaired drivers, and others that do not use the standard sentencing tables. These laws have made Ohioans safer.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=125)	1.6%	25.6%	49.6%	23.2%
Prosecutors (N=37)	2.7%	37.8%	51.4%	8.1%
Defense Attys (N=41)	0.0%	3.7%	24.4%	72.0%

PROVOCATIVE THOUGHTS ON DRUG SENTENCING

Drug offenders account for roughly 30% of the people who enter Ohio's prisons each year. That is separate from those who may have a drug problem or who commit other crimes to support a drug habit. Given increased—often mandatory—sentences for violent felons and the need to assure adequate prison space to house them, many practitioners believe the time is right for revisiting the drug sentencing statutes.

Treat Drug Sentencing Like Non-Drug Sentencing. Many mandatory sentences target violent crimes or those committed with weapons. Generally, these offenses are murders, rapes, or first or second degree felonies. However, there are two categories in which lower-level felons can face mandatory prison terms. Both relate to substance abuse: drug offenses and chronically operating a vehicle while impaired.

While mandatory terms grab our attention, there also are many non-mandatory drug offenses that are more likely to result in prison terms than for non-drug offenses of the same degree. For instance, there are F-3 and F-4 drug offenses that carry a presumption of a prison term similar to the presumption in favor of prison for F-1 and F-2 offenses such as aggravated robbery and kidnapping. Does that make sense?

A rough consensus emerged from the survey that the distinctions between drug and non-drug sentencing at the same felony levels may be obsolete. 95% of the defense lawyers, 68% of the judges, and 50% of the prosecutors agree that the distinctions should be eliminated. Only the prosecutors as a group have significant mixed feelings on the topic, reflected in their 50-50 split.

Sentencing for drug offenses differs from other offenses at the same felony level. Some F-3 & F-4 drug offenses carry a presumption in favor of prison. Some F-4 & F-5 drug offenses do not apply the guidance against a prison term. The differences between drug and non-drug offenses at the *same felony level* should be eliminated.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=125)	17.6%	50.4%	28.8%	3.2%
Prosecutors (N=36)	0.0%	50.0%	41.7%	8.3%
Defense Attys (N=41)	46.3%	48.8%	4.9%	0.0%

Drug Penalties Generally. Aside from equalizing drug and non-drug offenses at the same felony levels, many respondents favored the status quo on drug penalties. Relatively few would increase them.

Not surprisingly, respondents were more flexible about possession penalties than they were about trafficking. 97% of the defense bar would decrease the penalties for possession. About a third of the judges agree, which, while less than a groundswell, indicates tacit concern about drug possession penalties, given the political sensitivity of the response. 78% of the prosecutors and 63% of the judges would keep the same possession penalties. Slightly higher percentages would retain current trafficking penalties. Of course, independent of the actual terms, many judges and defense attorneys would like drug penalties to be non-mandatory as seen in other responses.

Generally, penalties for drug *possession* should:			
Respondent	**Increase**	**Stay the Same**	**Decrease**
Judges (N=132)	4.5%	62.9%	32.6%
Prosecutors (N=37)	8.1%	78.4%	13.5%
Defense Attorneys (N=41)	0.0%	2.5%	97.5%

Generally, penalties for drug *trafficking* should:			
Respondent	**Increase**	**Stay the Same**	**Decrease**
Judges (N=131)	19.1%	75.6%	5.3%
Prosecutors (N=38)	28.9%	68.4%	2.6%
Defense Attorneys (N=40)	0.0%	40.0%	60.0%

Misdemeanor Levels of Street Drugs. Of the common street drugs leading to arrest and prosecution (marijuana, crack cocaine, powder cocaine, methamphetamines, heroin, LSD, *etc.*), only marijuana can be prosecuted as a misdemeanor. The vast majority of felony drug cases involve some form of cocaine. Perhaps surprisingly, 61% of the judges favored enacting misdemeanor levels for possession of street drugs in addition to marijuana. About a quarter of the prosecutors agree, with the remaining 75% dissenting.

There should be misdemeanor levels for possession of street drugs in addition to marijuana.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=130)	13.8%	47.7%	33.1%	5.4%
Prosecutors (N=37)	0.0%	24.3%	45.9%	29.7%
Defense Attys (N=41)	53.7%	41.5%	4.9%	0.0%

Intervention-in-Lieu of Conviction. One tool used to divert drug offenders from the prison system and toward treatment programs is called "intervention-in-lieu" of conviction. Under RC §2951.041, when a defendant appears to have a drug or alcohol problem that contributes to criminal misconduct, the court can take and hold a guilty plea pending the offender's successful participation in programming approved by the court. However, first, second, and third degree felons and those who sell even small amounts of drugs are ineligible for diversion.

A majority of the judges (53%) and all of the responding defense attorneys would expand eligibility for intervention-in-lieu of conviction. But a substantial majority of prosecutors (81%) disagree.

Eligibility for intervention-in-lieu of conviction should be expanded.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=129)	14.7%	38.8%	41.1%	5.4%
Prosecutors (N=37)	2.7%	16.2%	59.5%	21.6%
Defense Attys (N=41)	70.7%	29.3%	0.0%	0.0%

Drugs as a Public Health Matter. When asked if certain drug possession offenses should be treated as public health matters rather than as crimes, generally the elected respondents (judges and prosecutors) favor addressing the problems within the

system, rather than adopt a completely new model for these activities. A clear consensus (84%) among prosecutors and a smaller majority (57%) of the judges favor keeping drug possession within the criminal justice system.

Conversely, it may not be surprising that 83% of the defense attorneys would decriminalize certain possession offenses, but, given the political sensitivity of the issue, it is somewhat surprising that about 43% of the judges also favored shifting at least some possession offenses to the public health system.

Certain drug possession offenses should be treated as public health matters instead of crimes.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=129)	10.9%	31.8%	45.0%	12.4%
Prosecutors (N=38)	0.0%	15.8%	44.7%	39.5%
Defense Attys (N=40)	65.0%	17.5%	17.5%	0.0%

CONCERNS WITH OVI SENTENCING

Operating a vehicle under the influence of alcohol or other drugs (OVI) carries an exceptional series of penalties beyond what is normally imposed for crimes at the same misdemeanor or felony level. While nominally classified as first degree misdemeanors and fourth or third degree felonies, OVI offenders face numerous mandatory penalties, including incarceration, fines, driver's license suspensions, treatment, immobilizing devices, and even forfeiture of the driver's vehicle. Very few other M-1s, F-4s, or F-3s carry these sanctions.

Treat OVI Sentencing Like Non-OVI Sentencing. Over two-thirds of each group believes that OVI sentencing should more closely mirror that for other offenses of the same degree. While some of this reflects a desire to simplify the Code, there also are philosophical concerns at work here. The response does not necessarily mean that the mandatory penalties should disappear—almost no one suggested that—but that the template should be simplified and an effort made to determine which of the myriad penalties are most effective.

OVI sentences should more closely mirror sentencing for other offenses of the same degree.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=125)	16.0%	58.4%	20.8%	4.8%
Prosecutors (N=37)	18.9%	48.6%	29.7%	2.7%
Defense Attys (N=41)	40.0%	52.5%	7.5%	0.0%

Where to Try OVI Cases. With its complicated sentencing and its related administrative license suspensions and evidentiary issues, OVI (§4511.19) might be the most complex criminal statute in the Revised Code. Because of this complexity, many practitioners were wary when the General Assembly made certain chronic OVI into felonies in the late 1990s, particularly since common pleas courts did not have experience with OVI cases and in dealing with routine traffic issues.

Now that the felony OVI law is nearly a decade old, the Commission sought to gauge whether felony practitioners felt that these cases should remain, ideally, in misdemeanor courts. The verdict was split. A solid majority of the prosecutors said no and an equally substantial majority of defenders said yes. But judges were more divided. 46% said that the cases don't belong in felony court; 54% disagreed.

Ideally, all OVI cases should remain in municipal and county courts.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=128)	14.8%	30.9%	44.1%	10.2%
Prosecutors (N=37)	8.1%	16.2%	54.1%	21.6%
Defense Attys (N=41)	36.6%	41.5%	22.0%	0.0%

DISCOMFORT WITH THE FELONY THEFT THRESHOLD

Before S.B. 2, the line between felony and misdemeanor theft offenses was drawn at $300. S.B. 2 made two key changes. It increased the threshold to $500, meaning that the value of goods stolen had to equal or exceed $500 to be prosecuted as a felony. And it eliminated the felony enhancement for repeated petty thefts.

Twelve years on, there is inflationary discontent with the felony theft threshold. Most respondents call for an increase. 85% of defense attorneys and 58% of judges say it's too low. 50% of prosecutors concur. Only a handful of respondents believe the $500 cut off is too high.

The felony theft threshold ($500) is:			
Respondent	**Too High**	**About Right**	**Too Low**
Judges (N=131)	2.3%	39.7%	58.0%
Prosecutors (N=38)	5.3%	44.7%	50.0%
Defense Attorneys (N=41)	0.0%	19.5%	80.5%

SENTENCING GUIDELINES

A key component of S.B. 2 was the guidance it gave to judges in sentencing felons. The bill put in place a system that steers judge based on offense level, criminal history, victim impact, and other factors, subject to a new type of appellate review. While these concepts seem academic, they greatly influence the actual sentences imposed in common pleas courts. The survey asked a series of questions to gauge ongoing sympathy for these concepts.

Guiding Criminal Sentencing. A majority of each group felt that some statutory guidance is needed in sentencing, beyond the basic ranges of prison terms and lists of non-prison options. But the majorities were small among judges (52%) and prosecutors (60%).

Which best reflects your philosophy (check one)? A. Statutes should provide no guidance to judges beyond setting sentence ranges for each felony level. B. Statutes should provide some guidance to judges in selecting terms within each felony level.		
Respondent	**No Guidance**	**Some Guidance**
Judges (N=134)	48.5%	51.5%
Prosecutors (N=37)	40.5%	59.5%
Defense Attorneys (N=40)	22.5%	77.5%

The overwhelming majority of judges and prosecutors who favor guidance prefer voluntary guidelines over the S.B. 2's reviewable approach. Conversely, a majority of defense attorneys favored guidelines with appellate review, although more than a third chose voluntary guidelines.

If you selected some guidance*, the statutes should (check one): A. Indirectly steer judicial discretion through voluntary guidelines; B. Directly steer judicial discretion through guidelines subject to specific appellate review; C. Steer judicial discretion in another way.			
Respondent	**Voluntary Guidelines**	**Guidelines w App. Review**	**Steer Another Way**
Judges (N=69)	91.3%	8.7%	0.0%
Prosecutors (N=23)	78.3%	17.4%	4.3%
Defense Attorneys (N=33)	36.4%	54.5%	9.1%

*Some who answered A. to the prior question also responded to this question.

Seriousness & Recidivism Factors. S.B. 2 compiled lists of factors that indicate an offense is more or less serious or that an offender's recidivism is more or less likely (§2929.12). Judges must review these factors before imposing any felony sentence.

Generally, the practitioners supported the statutory lists of seriousness and recidivism factors. Regarding seriousness factors, a majority in each group said they should remain. The majorities were large among judges (79%) and prosecutors (76%), but smaller among defense attorneys (54%).

The current factors indicating whether an offense is more or less serious (§2929.12) should remain largely intact.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=132)	3.0%	75.8%	17.4%	3.8%
Prosecutors (N=38)	0.0%	76.3%	18.4%	5.3%
Defense Attys (N=41)	2.4%	51.2%	34.1%	12.2%

Similarly, the recidivism factors were popular with judges and prosecutors. However, defense attorneys were nearly split on their value, with 46% favoring them and 54% opposing them. The survey did not get at whether particular factors were the problem, or if it was the notion itself.

The current factors indicating that recidivism is more or less likely (§2929.12) should remain largely intact.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=133)	4.5%	69.9%	19.5%	6.0%
Prosecutors (N=38)	0.0%	76.3%	15.8%	7.9%
Defense Attys (N=41)	2.4%	43.9%	43.9%	9.8%

Guidelines on Whether to Impose a Prison Sentence. Under S.B. 2, any offense not calling for a mandatory prison term must be sentenced in accordance with certain guidelines. The statutes were developed to assure adequate prison space for the worst felons while steering less-menacing offenders toward community sanctions.

If an offender commits a first or second degree felony (the highest tiers), S.B. 2 instructed judges to presume that a prison term is appropriate. The presumption may be rebutted, but the judge's findings are subject to appeal by the prosecution. A majority in each group supports guidance in favor of a prison sentence.

There should be statutory guidance in favor of imposing a prison term for some felons.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=133)	14.3%	53.4%	27.1%	5.3%
Prosecutors (N=38)	28.9%	47.4%	18.4%	5.3%
Defense Attys (N=41)	7.3%	46.3%	34.1%	12.2%

The groups divided more sharply on guidance against prison terms for certain offenders. The judges split almost evenly, with a slight majority favoring such guidelines. Prosecutors opposed the notion 58%-42%. Defense attorneys supported it 80%-20%.

There should be statutory guidance against imposing a prison term for certain felons.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=133)	8.3%	42.1%	37.6%	12.0%
Prosecutors (N=38)	13.2%	28.9%	36.8%	21.1%
Defense Attys (N=41)	46.3%	34.1%	12.2%	7.3%

Maximum, Minimum, and Consecutive Terms. Once the decision is made to sentence a felon to prison, S.B. 2 further guided judges in various ways:

- Judges were to reserve the maximum prison term in the range for the worst offenders;
- If a defendant had not been sentenced to prison before, judges were to look to the minimum term in the range; and
- If consecutive prison terms were contemplated, judges were to make certain findings.

These provisions did not mandate less-than-maximum, minimum, or non-consecutive terms. But they encouraged them by making the judge's findings subject to appeal by the defendant.

Following a line of United States Supreme Court cases, in 2006, the Ohio Supreme Court declared these statutes unconstitutional in *State v. Foster* (109 Ohio St. 3d 1). Ostensibly, these findings should be made by juries, not judges.

Except for the consecutive sentencing aspects (discussed later in this report), the *Foster* case tends to affect individual cases in relatively small increments. An extra month or year might be added to a sentence. However, because the prison system receives over 20,000 new inmates each year, the subtle changes have an aggregate impact. The Department of Rehabilitation and Correction detects a significant increase in the prison population as a result of *Foster*. DRC anticipates a demand for 2,000 additional beds over the next decade. The case was discussed in greater detail in *A Decade of Sentencing Reform*, the Sentencing Commission's 2007 monitoring report.

Practitioners were asked, in effect, whether they would revive the statutes struck by *Foster*, if the revival were constitutional. Three in four defense attorneys favored revisiting the notion of reserving the maximum sentence for the worst offenders, which was struck by *Foster*. But only about a third of the judges (31%) and prosecutors (34%) agreed.

***State v. Foster* struck statutory guidance that suggested reserving the maximum sentence in a range for the worst forms of the offense and the worst offenders. The concept should be revived in some form, provided it can be done in a constitutional manner.**				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=131)	0.8%	29.8%	39.7%	29.8%
Prosecutors (N=38)	7.9%	26.3%	34.2%	31.6%
Defense Attys (N=41)	41.5%	34.1%	14.6%	9.8%

The groups were similarly divided on whether to resuscitate the guidance in favor of the minimum term on first commitment to prison. Only 27% of the judges and 37% of the prosecutors agreed, while about 80% of the defense bar wants to revisit the issue.

***State v. Foster* struck statutory guidance that suggested imposing the minimum sentence in a range for offenders who have not been to prison before. The concept should be revived in some form, provided it can be done in a constitutional manner.**				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=131)	0.8%	26.0%	42.0%	31.3%
Prosecutors (N=38)	7.9%	28.9%	28.9%	34.2%
Defense Attys (N=41)	51.2%	29.3%	9.8%	9.8%

Rough Consensus on Sentencing Goals. S.B. 2 made punishing the offender and protecting the public as the overriding principles of felony sentencing (§2929.11). Respondents were asked to rank their philosophical priorities from a list of seven.

Punishment was a high priority for prosecutors (#1) and judges (#2). Defense attorneys did not share that zeal, ranking punishment #4. Conversely, defenders made rehabilitation #1, while judges only ranked it #4 and prosecutors placed it still lower at #5.

But there was more consensus in the responses to the question on sentencing goals than one might note at a quick glance. Clearly, public safety is a universally high priority, placing #1 with the judges, #2 with prosecutors, and #3 with defense attorneys. Reducing recidivism also is a mutually high priority (#3 for judges and prosecutors; #2 for the defense bar). There also was a fair amount of agreement at the bottom end of the priority scale. While valued, cost effectiveness, sentencing consistency, and general deterrence are not paramount sentencing concerns for any group.

Sentencing statutes foster various purposes. Rank these from 1 to 7 with 1 being the most important and 7 being the least important. A. Punishing the offender; B. Fostering public safety; C. Reducing recidivism/deterring *the offender* from future crime; D. Rehabilitating the offender; E. Deterring the general public from crime; F. Assuring similar sentences for offenses committed under similar circumstances by similar offenders; G. Imposing the most cost-effective sentence that keeps the public safe, deters crime, etc.

	Judges (N=131)		**Prosecutors** (N=38)		**Defense Attys** (N=35)	
Purpose	Average	Rank	Average	Rank	Average	Rank
Punish	2.37	2	1.89	1	4.05	4
Public Safety	1.95	1	2.28	2	3.57	3
Reduce Recidivism	3.55	3	3.33	3	3.20	2
Rehabilitation	4.40	4	4.68	5	2.31	1
General Deterrence	4.79	5	4.00	4	6.19	7
Consistency	5.34	6	5.61	6	4.13	5
Cost-Effectiveness	5.36	7	5.97	7	4.26	6

Although punishment ranks high with them, neither the judges (39%) nor the prosecutors (16%) want to craft sentencing statutes that are sensitive to prison population levels. This is dramatically different from the defense bar, where 90% believe sentencing statutes should be attuned to prison crowding.

Any revision of the sentencing statutes should be sensitive to prison population levels.

Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=130)	6.2%	33.1%	45.4%	15.4%
Prosecutors (N=37)	0.0%	16.2%	51.4%	32.4%
Defense Attys (N=41)	43.9%	46.3%	9.8%	0.0%

DEALING WITH RECIDIVISM

We saw that reducing recidivism is a significant concern for respondents. What should be done? The survey asked judges, prosecutors, and defense attorneys to select among four options: (1) the prior offense should be one factor in deciding the appropriate term; (2) the prior should increase the penalty within the sentencing range available for the offense; (3) the previous offense should increase the degree of

the current crime; or (4) the new offense of someone with a prior conviction should carry a mandatory prison sentence.

A rough consensus emerged. To varying extents, each group favored treating recidivism as either one factor in deciding the sentence or as a factor that increases the penalty within the same felony level. Only a minority in each group favored having recidivism increase the degree of the offense or result in mandatory prison terms.

In general, which do you prefer regarding recidivism (choose one)? A. The prior offense should simply be one factor in deciding an appropriate sentence; B. The prior offense should be a factor that increases the penalty within the same offense level; C. The prior offense should increase the degree of the offense; D. The new offense should carry a mandatory prison term.				
Respondent	**It's One Factor**	**Up Penalty @ Same Level**	**Increase Degree**	**Mandatory Prison**
Judges (N=130)	63.8%	20.4%	12.7%	3.1%
Prosecutors (N=37)	45.9%	16.2%	32.4%	5.4%
Defense Attys (N=41)	87.8%	12.2%	0.0%	0.0%

ACTUAL FELONY SENTENCES

As noted earlier, S.B. 2 set determinate sentence ranges for each level of felony. The ranges of prison terms have remained intact and, generally, most practitioners are comfortable with them, although some tinkering was suggested. Most significantly, judges and prosecutors called for increasing the 10 year maximum prison term at the F-1 level.

The current ranges for a single offense are (§2929.14):

- First degree felony: 3, 4, 5, 6, 7, 8, 9, or 10 years;
- Second degree felony: 2, 3, 4, 5, 6, 7, or 8 years;
- Third degree felony: 1, 2, 3, 4, or 5 years;
- Fourth degree felony: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months;
- Fifth degree felony: 6, 7, 8, 9, 10, 11, or 12 months.

Here is what we learned from the survey:

- **F-1 Penalties:** A significant majority of prosecutors (71%) and a majority of judges (55%) believe the determinate 10 year maximum should increase. Only 2.4% of defense attorneys agreed.
    - Half the prosecutors would also increase the 3 year minimum, while judges would keep it the same and defense attorneys were split between keeping it and reducing it.

- **F-2 Penalties:** Two-thirds of the judges and defense attorneys would keep the 8 year maximum the same. Another 30% of the defenders would reduce it. A slight majority of the prosecutors would increase it.

- Nearly 3 of 4 judges would keep the 2 year minimum. A slight majority (54%) of prosecutors agree (the rest favor an increase). The defense was split between decreasing the term (51%) and keeping it the same (46%).

- **F-3 Penalties:** Judges (89%), prosecutors (66%), and almost half (48%) of the defense would keep the current 5 year maximum. 53% of the defense would reduce it.
  - The pattern is almost identical regarding the 1 year F-3 minimum.

- **F-4 Penalties:** Two-thirds of the judges and defense bar agreed that the 18 month maximum should remain the same. However, 61% of the prosecutors would increase it.
  - A majority of all three groups would leave the 6 month minimum intact, although 44% of the prosecutors would increase it.

- **F-5 Penalties:** Three-fourths of the judges and defense would keep the current 12 month maximum. Half of the prosecutors agree, with 44% pushing an increase.
  - A majority of each group would leave the 6 month minimum alone, although 46% of the defense would decrease it.

If determinate sentences were retained for some felons, should the current *maximum* prison term increase, decrease, or stay the same for:			
Respondent	**Increase**	**Decrease**	**Stay the Same**
First Degree Felonies (10 years)			
Judges (N=132)	55.3%	0.0%	44.7%
Prosecutors (N=38)	71.1%	0.0%	28.9%
Defense Attorneys (N=41)	2.4%	22.0%	75.6%
Second Degree Felonies (8 years)			
Judges (N=131)	32.8%	1.5%	65.6%
Prosecutors (N=37)	54.1%	0.0%	45.9%
Defense Attorneys (N=41)	2.4%	29.3%	68.3%
Third Degree Felonies (5 years)			
Judges (N=130)	11.5%	0.0%	88.5%
Prosecutors (N=38)	34.2%	0.0%	65.8%
Defense Attorneys (N=40)	0.0%	52.5%	47.5%
Fourth Degree Felons (18 months)			
Judges (N=133)	33.8%	0.0%	66.2%
Prosecutors (N=38)	60.5%	0.0%	39.5%
Defense Attorneys (N=40)	5.0%	27.5%	67.5%
Fifth Degree Felons (12 months)			
Judges (N=127)	23.6%	1.6%	74.8%
Prosecutors (N=36)	44.4%	5.6%	50.0%
Defense Attorneys (N=40)	0.0%	25.0%	75.0%

If determinate sentences were retained for some felons, should the current *minimum* prison term increase, decrease, or stay the same for:			
Respondent	**Increase**	**Decrease**	**Stay the Same**
First Degree Felonies (3 years)			
Judges (N=132)	20.5%	3.0%	76.5%
Prosecutors (N=37)	51.4%	0.0%	48.6%
Defense Attorneys (N=41)	2.4%	48.8%	48.8%
Second Degree Felonies (2 years)			
Judges (N=131)	16.0%	5.3%	78.6%
Prosecutors (N=37)	45.9%	0.0%	54.1%
Defense Attorneys (N=41)	2.4%	51.2%	46.3%
Third Degree Felonies (1 year)			
Judges (N=131)	10.7%	2.3%	87.0%
Prosecutors (N=37)	35.1%	0.0%	64.9%
Defense Attorneys (N=41)	0.0%	51.2%	48.8%
Fourth Degree Felons (6 months)			
Judges (N=130)	29.2%	1.5%	69.2%
Prosecutors (N=38)	42.1%	0.0%	57.9%
Defense Attorneys (N=40)	2.5%	30.0%	67.5%
Fifth Degree Felons (6 months)			
Judges (N=128)	14.1%	3.9%	82.0%
Prosecutors (N=38)	23.7%	7.9%	68.4%
Defense Attorneys (N=39)	0.0%	46.2%	53.8%

Overall Felony Minimum. The survey inquired whether practitioners were comfortable with felony sentences of less than one year. Substantial majorities of judges and defense attorneys accept prison terms of less than one year for felons. Prosecutors were split on the issue.

No felony should carry a *minimum* prison term of less than one year.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=132)	14.4%	15.9%	53.8%	15.9%
Prosecutors (N=38)	21.1%	28.9%	47.4%	2.6%
Defense Attys (N=41)	2.4%	0.0%	39.0%	58.6%

Increases or Decreases in Penalties. Respondents were given the opportunity to suggest offenses or situations for which existing penalties should be increased or reduced. Many did not suggest any changes.

Of the respondents who specifically called for increasing penalties for certain crimes, sexual offenses received the most attention. Some judges and prosecutors respondents singled out particular offenses, some targeted child victims, and others were more generic.

Of those who would decrease penalties for certain crimes, drug offenses were frequently mentioned, especially by judges and defense attorneys. Several judges also expressed concerns about SORN reporting and the penalties for failing to register or notify authorities of changes in the offender's personal data.

CONSECUTIVE AND CONCURRENT SENTENCES

Changing Statutory Rules. Until the *Foster* decision, the general rule in Ohio was that prison terms were to be served concurrently with terms imposed for other offenses (see former RC §2929.41(A)). Of course, common pleas courts had discretion to impose consecutive terms when warranted. In some cases, consecutive terms were mandatory (see former §2929.41(B)).

However, irrespective of the cumulative length of consecutive sentences imposed, pre-S.B. 2 law gave the offender a right to a Parole Board review after 15 years, which could be shortened by any reduction earned for good behavior in prison (see former §2929.41(E)(2)). Since this "good time" was routinely granted, most felons sentenced to long, consecutive terms would be eligible for release in 11 years or so.

By way of example, let's say that a woman held up five banks and the judge imposed a "10 to 25 years" sentence for each of the robberies under the pre-S.B. 2 indefinite sentencing system. Let's also say that the woman had a long history of prior robberies and the judge elects to sentence the five crimes consecutively. The woman's prison term would be 50 to 250 years. Of course the 250 years was hyperbole. Outside of some biblical accounts, no one lives that long. Moreover, even the 50 year minimum greatly overstated the likely time to be served. Because of the 15 year cap, she would come before the Parole Board in, say, 11 years. That does not mean she would be released after her first hearing. But the odds were great that she would be released long before the 50 year "minimum" was served.

Under its "truth in sentencing" philosophy, S.B. 2 repealed the caps on consecutive sentences. A person sentenced to five consecutive 10 year terms now serves 50 actual years. At the same time, however, S.B. 2 retained the guidance in favor of concurrent sentences in most cases (§2929.14(A)). And it made many consecutive sentences subject to appellate review designed to assure that judges make certain findings before imposing consecutive terms (see §2929.14(E)(4), §2929.41(A), & §2953.08(C)). As a result, sentences under S.B. 2 generally were stacked for more menacing offenders, while less serious felons tended to benefit from concurrent terms.

Recent Ohio Supreme Court Cases. Several recent Ohio Supreme Court decisions have made it easier for common pleas judges to impose consecutive sentences without meaningful appellate review. As noted earlier, under *State v. Foster*, the judge no longer has to make findings to justify non-mandatory consecutive sentences. Moreover, the case removed the general default to concurrent sentencing.

Foster came on the heels of *State v. Rance* (85 Ohio St. 3^{d} 632), a 1999 decision that made it easier to stack multiple counts against an offender without violating the constitutional protection against placing a defendant in double jeopardy. Read simply, *Rance* says that if similar crimes do not line up with the same elements, they

can be charged as separate offenses. Since the Revised Code has many similar, but not identical crimes, it is difficult to raise a double jeopardy claim after *Rance*.

In a 2008 case, *State v. Hairston* (118 Ohio St. 3d 289), the Ohio Supreme Court refused to set aside a 134 year sentence imposed for a burglary spree involving other offenses. The defendant argued that the lengthy sentence constituted cruel and unusual punishment under the Ohio and U.S. constitutions. The Court found that since none of the *individual* sentences violates the Cruel and Unusual Clause—that is, none were grossly disproportionate to their respective offenses—the cumulative sentence does not constitute unconstitutional punishment.

The Upshot. Consecutive prison terms are much more likely today than at any point in recent Ohio history as a result of removing the statutory cap on consecutive sentences, making stacking offenses easier without placing an offender in double jeopardy, eliminating the presumption of concurrent terms and the findings previously required to support consecutive terms, and reducing likelihood that lengthy cumulative terms could be found to violate the 8th Amendment.

This isn't to argue that consecutive sentences are not warranted in most situations where they are imposed. However, the relative ease in imposing them invariably has consequences for individual offenders and the Ohio budget.

In the survey, the Commission asked practitioners a series of questions on consecutive sentencing in light of the significant changes just described.

Course of Conduct Matters More Than Crime Charged. There was agreement among judges (84%), defense attorneys (100%), and prosecutors (58%) that consecutive sentencing should turn more on the overall course of the defendant's conduct than on the particular offenses charged.

The offender's course of conduct should be more important than the number of crimes charged in considering consecutive terms.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=130)	12.3%	71.9%	14.2%	1.5%
Prosecutors (N=36)	2.8%	55.6%	27.8%	13.9%
Defense Attys (N=40)	37.5%	62.5%	0.0%	0.0%

Limits. Otherwise, the three groups were not in accord regarding how to approach consecutive terms. A substantial majority of judges (76%) and prosecutors (89%) say there should not be a limit on consecutive sentences. Conversely, only 10% of the defense attorneys agreed.

There should be no limit on consecutive sentences.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=132)	15.9%	60.6%	21.2%	2.3%
Prosecutors (N=38)	31.6%	57.9%	10.5%	0.0%
Defense Attys (N=41)	0.0%	9.8%	29.3%	61.0%

Some Guidance. However, when a more nuanced question was asked, many respondents were comfortable with having some statutory guidance on consecutive terms. The defense (85%) and prosecutors (55%) generally favored some guidance. Judges leaned against statutory guidelines, but not by a large majority (55%).

There should be statutory guidance on consecutive sentences.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=131)	4.6%	40.5%	40.5%	14.5%
Prosecutors (N=38)	2.6%	52.6%	28.9%	15.8%
Defense Attys (N=41)	34.1%	51.2%	2.4%	12.2%

Appellate Review. In keeping with the preference for voluntary rather than mandatory guidelines, judges (63%) and prosecutors (68%) generally opposed appellate review of consecutive sentences. The defense bar (93%) dramatically disagreed.

There should be appellate review of consecutive sentences that exceed a certain length, provided it could be done constitutionally.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=132)	1.5%	35.6%	40.9%	22.0%
Prosecutors (N=38)	2.6%	28.9%	44.7%	23.7%
Defense Attys (N=40)	60.0%	32.5%	7.5%	0.0%

Caps on Consecutive Terms. Similarly, prosecutors (92%) and judges (77%) disagreed with reviving the cap on consecutive terms, while defense attorneys favored resuscitating the cap (85%).

There should be a statutory cap on consecutive sentences.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=132)	1.5%	22.0%	52.3%	24.2%
Prosecutors (N=37)	0.0%	8.1%	54.1%	37.8%
Defense Attys (N=41)	58.5%	26.8%	12.2%	2.4%

Revisiting *Rance*. Only defense attorneys (89%) generally favored statutorily addressing the ability to stack multiple counts under *Rance*. 61% of the prosecutors and 59% of the judges disagreed.

The ability to stack multiple counts under *State v. Rance* should be revisited statutorily.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=112)	3.6%	37.5%	48.2%	10.7%
Prosecutors (N=33)	6.1%	33.3%	48.5%	12.1%
Defense Attys (N=37)	35.1%	54.1%	5.4%	5.4%

FINES

While fines are a key sanction in misdemeanor and traffic cases, they are not as typical for felons, where the critical issue often is whether the offender will be sent to

prison. The question about fines in the survey did not draw many strong opinions. The overwhelming majority of prosecutors and judges would keep the current felony fine schedule, while a solid majority of defense attorneys would decrease the fines.

Generally, the range of fines for felonies (§2929.18) should:			
Respondent	**Increase**	**Decrease**	**Stay the Same**
Judges (N=132)	5.3%	9.1%	85.6%
Prosecutors (N=37)	8.1%	5.4%	86.5%
Defense Attorneys (N=39)	0.0%	66.7%	33.3%

PRISON MANAGEMENT TOOLS

S.B. 2 eliminated parole review and releases for most felons. The bill also repealed the administrative sentence reduction available for good behavior ("good time") and most of the reduction for participating in programs. Together these reductions could total one-third of the sentence. S.B. 2 instead allowed for small reductions for meaningful participation in rehabilitative programs—up to one day per month while participating—while authorizing prisons to assess "bad time" for serious misconduct in prison.

While Ohio has not experienced a serious prison uprising since before S.B. 2 took effect, the bill is sometimes criticized for removing tools that helped prisons maintain order. The survey asked about former and current programs as well as prison management tools used in other states.

Release for Aged or Infirm Inmates. Ohio has an emergency release statute (§2967.18), but that never-used law was devised to deal with an overcrowding emergency. Aside from the Governor's powers to grant pardons, commutations, and reprieves, there is no specific mechanism to deal with aged and infirm inmates. While the punishment aspect of their sentences cannot be dismissed, many old and ill prisoners present no credible threat to larger society and cost the prison system millions in medical expenses. The General Assembly took a step to address the issue late in 2008 (H.B. 130).

Each group surveyed seemed comfortable with an administrative release mechanism for aged and infirm inmates, although the prosecutors' concurrence (54%) was smaller than that of defense attorneys (93%) and judges (65%).

Limited administrative authority to release aged or infirm inmates.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=130)	2.3%	62.3%	30.0%	5.4%
Prosecutors (N=38)	0.0%	53.9%	30.3%	15.8%
Defense Attys (N=40)	62.5%	30.0%	2.5%	4.9%

Reviving Bad Time. The "bad time" provisions of S.B. 2 (§2967.11) were declared unconstitutional in 2000 by the Ohio Supreme Court in *State ex rel. Bray v. Russell* (89 Ohio St. 3^{d} 132). The statute was found to violate the separation of powers doctrine

because the statute allowed an administrative adjustment to a judicially imposed sentence, even though the statute clearly made bad time part of the offender's sentence. As a result, the statute has not been used since *Bray*.

Surprisingly, when asked if administrative authority should exist to extend sentences to punish misconduct in prison, judges (73%) and prosecutors (82%) favored reviving the "bad time" concept. Only 20% of the defense attorneys agreed.

Increase the time in prison beyond the basic sentence set by the court for serious misbehavior by an inmate, provided it could be done in a constitutional manner.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=133)	9.8%	63.2%	22.6%	4.5%
Prosecutors (N=38)	31.6%	50.0%	15.8%	2.6%
Defense Attys (N=40)	0.0%	20.0%	52.5%	27.5%

Earned Credits. Conversely, only defense lawyers (100%) supported expanding the system of earned credits for participating in prison programs. Judges were fairly split (52% against) while prosecutors overwhelmingly disagreed (81%).

Expanded administrative reductions of the offender's sentence for meaningful participation in certain programs.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=132)	3.8%	43.9%	36.0%	16.3%
Prosecutors (N=37)	5.4%	13.5%	48.6%	32.4%
Defense Attys (N=41)	58.5%	41.5%	0.0%	0.0%

Extended Sentence Review. Under S.B. 2's "truth in sentencing," there is no administrative review for inmates serving long prison terms imposed under the bill. When the survey raised the prospect of granting limited authority to prison officials to review and release inmates who are ineligible for parole but are serving long terms, the idea was rejected by judges (72%) and prosecutors (88%), but embraced by defenders (95%).

Limited administrative authority to release inmates serving lengthy sentences once a statutory threshold is reached.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=130)	1.5%	26.9%	53.1%	18.5%
Prosecutors (N=38)	0.0%	11.8%	48.7%	39.5%
Defense Attys (N=40)	40.0%	45.0%	12.5%	2.5%

Mixed Signals on "Boot Camps". S.B. 2 embraced the concept of using paramilitary boot camps as alternative prisons and expanded the concept to other themes. In exchange for a shorter sentence, a qualified inmate can serve a term in one of the intensive settings (§§5120.031, 5120.032, & 5120.033). Because of the shorter sentence, judges must be apprised of the proposed placement and have an opportunity to veto the placement. If the judge doesn't affirmatively reject the placement, the Department of Rehabilitation and Correction may place the inmate in the program.

When asked whether the process for placing inmates should change, simple majorities of prosecutors (58%) and defense attorneys (53%) agreed. Judges disagreed (57%). The close votes, lack of details in the question about any particular change, and comments jotted by respondents on the survey form indicate that this process could be improved.

The process for placing inmates in intensive program or "boot camp" prisons should change.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=125)	6.4%	36.8%	50.4%	6.4%
Prosecutors (N=35)	25.7%	32.9%	41.4%	0.0%
Defense Attys (N=38)	23.7%	28.9%	44.7%	2.6%

Of those who would change the process, judges tended to favor greater judicial involvement in the process. Many would like placements to occur only after the judge gives formal approval. Some would like more time to make the decisions than the 10 day period in the current statutes.

Many prosecutors would like a formal voice in the process. Many also called for formal court approval, rather than allowing the judge's silence to be read as acquiescence.

Defense attorneys took a different tack. Those commenting often called for expanding the programs and making more inmates eligible for them. Some would make the program purely administrative, removing the judicial approval aspects.

ROLE OF THE SENTENCING COMMISSION

Judges (85%), prosecutors (69%), and defense attorneys (95%) feel that the Sentencing Commission should play a prominent role if sentencing statutes are revised.

If revisions to the sentencing statutes are contemplated, the Ohio Criminal Sentencing Commission should play a prominent role.				
Respondent	**Strongly Agree**	**Agree**	**Disagree**	**Strongly Disagree**
Judges (N=128)	28.1%	57.0%	10.9%	3.9%
Prosecutors (N=36)	13.9%	55.6%	16.7%	13.9%
Defense Attys (N=41)	26.8%	68.3%	2.4%	2.4%

HOW TO SIMPLIFY THE REVISED CODE

As noted earlier, when asked how they would improve Ohio's felony sentencing statutes, a significant number of practitioners called for the General Assembly to simplify the law. This dovetails with a recent Sentencing Commission initiative.

The Commission's May 2008 report suggested simple general rules that could simplify the Revised Code by over one half million words--roughly the size of Tolstoy's *War and Peace*--without changing the Code's scope or meaning.

Let's look at just three of the suggestions.

1. Replace references to "section XXXX.XX of the Revised Code" with references to "RC XXXX.XX".

As of last May, "Revised Code" appeared in 20,026 sections, often multiple times in each, according to the *Lawriter* website. In the `10.5 point Courier New` font used for bills, the proposal would save over two inches for each reference. Conservatively estimating that the phrase appears an average of twice in each of the 20,026 sections, those 40,052 uses are over 80,000 inches (over 6,600 feet). Thus the change would eliminate well over a mile of unnecessary reading.

Put another way, the typical bill contains about 275 words per page. If the entire Revised Code were put in bill form, this painless change would shrink the size of the bill by over 80,000 words—nearly 300 pages—without changing a wisp of meaning. Again, that's a conservative estimate.

2. Remove "of this section" from internal cross-references. Instead of "division (X) of this section" say "division (X)".

In bill font (`10.5 point Courier New`), this would save about 1½ inches each time the phrase appears. The word "division" shows up in 10,797 sections and is frequently repeated within those sections. Of course, the word doesn't always refer to another division. Let's be conservative and estimate that the change would only condense one reference in each of these 10,797 sections. Even by that modest estimate, the three word reduction would still abbreviate the Code (in bill form) by about 120 pages with no difference in meaning.

3. Rework cross-references to divisions in other sections. A reference to "division (X) of section XXXX.XX" simply becomes "XXXX.XX(X)".

The word "section" appears in 19,736 sections, usually multiple times. Again, we know the word isn't only used to refer to another section with a division reference. Let's again conservatively estimate that the change would only affect one reference in these 19,736 sections. In bill form, the three word change would still shrink the Revised Code by about 215 pages.

Applying the Three Rules. Here's a tangible example of how these points would work in bill form:

"pursuant to division (A)(4) of section 2907.05 of the Revised Code"

becomes

"under RC 2907.05(A)(4)"

The cumulative effect of applying these three painless rules throughout the Revised Code would, in bill form, conservatively make the Code at least 635 pages shorter. And that is before we work to clear out myriad other redundancies and surplus words.

Suggested Approach. Rather than craft a monumental bill to make these changes, the proposals could be implemented gradually, each time a section is being amended for other purposes. LSC staff could deal with the issue piecemeal, as it does with gender neutrality.

Other editorial changes designed to streamline the language will take more time. We propose that the LSC consider doing the work during recesses. The Commission could do preliminary drafting—at least throughout the Criminal Code—to ease the process.

The May report used the felony sentencing statutes to illustrate the changes. In December, the Commission finished work on its recommendations to shorten entire Chapter 2929—the basic Criminal Sentencing Law—so that it will say the same things in about half as many words. The draft could serve as a template for gradually making the entire Code more readable, without substantive changes.

Before-and-After Example. Rather than reprint those documents here, we instead provide a before-and-after illustration of what the changes would do to a short, recently-enacted statute.

§2929.23 deals with misdemeanants who commit sexually oriented offenses. Here is how the statute currently reads in bill form, minus the double spacing:

> **§2929.23. Sexually Oriented Misdemeanors—Current Law**
>
> (A) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to the offense or the offense is any offense listed in division (D)(1) to (3) of section 2901.07 of the Revised Code, the judge shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, shall comply with the requirements of section

2950.03 of the Revised Code, and shall require the offender to submit to a DNA specimen collection procedure pursuant to section 2901.07 of the Revised Code.

(B) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under division (A)(2) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that section or, if required under division (A)(6) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that division.

Here is how the section could be streamlined and made easier to read.

§2929.23. Sexually Oriented Misdemeanors—Showing Amendments

~~(A) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, and the offender is~~ When sentencing an offender who is a tier III sex offender/child-victim offender ~~relative to the offense~~ for a misdemeanor, or ~~the~~ for an offense ~~is any offense~~ listed in ~~division (D)(1) to (3) of section~~ RC 2901.07(D)(1) to (3) ~~of the Revised Code~~, the judge shall do all of the following:

- ~~include in the offender's sentence~~ Include a statement that the offender is a tier III ~~sex offender/child-victim~~ offender~~,~~;
- ~~shall comply~~ Comply with the requirements of ~~section~~ RC 2950.03 ~~of the Revised Code,~~;
- ~~and shall require~~ Require the offender to submit to a DNA specimen collection procedure ~~pursuant to section~~ under RC 2901.07; ~~of the Revised Code.~~
- ~~(B) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, the judge shall include~~ Include ~~in the sentence~~ a summary of the offender's duties ~~imposed~~ under ~~sections~~ RC 2950.04, 2950.041, 2950.05, and 2950.06 ~~of the Revised Code~~ and the duration of the duties~~. The judge shall inform the offender, at the time of sentencing~~, and inform the offender of ~~those~~ the duties and ~~of their~~ duration. ~~If required under division (A)(2) of section 2950.03 of the Revised Code, the~~

The judge shall perform the duties specified in ~~that section or~~ RC 2950.03(A)(2) or (6), if required ~~under division (A)(6) of section 2950.03 of the Revised Code, the judge shall~~

~~perform the duties specified in that division~~ by those divisions.

This is how the section would read if the amendments were adopted.

§2929.23. Sexually Oriented Misdemeanors—As Amended

When sentencing an offender who is a tier III sex offender/child-victim offender for a misdemeanor or for an offense listed in RC 2901.07(D)(1) to (3), the judge shall do all of the following:

- Include a statement that the offender is a tier III offender;
- Comply with the requirements of RC 2950.03;
- Require the offender to submit to a DNA specimen collection procedure under RC 2901.07;
- Include a summary of the offender's duties under RC 2950.04, 2950.041, 2950.05, and 2950.06 and the duration of the duties, and inform the offender of the duties and duration.

The judge shall perform the duties specified in RC 2950.03(A)(2) or (6), if required by those divisions.

In short (literally), the amended section says the same thing in half as many words. Tastes great; less filling.

Shrinking the Sentencing Code. If the non-substantive changes proposed by the Commission for all of Chapter 2929 were made, the sentencing code would be 47%--over 24,000 words--shorter. If the revised chapter were put in bill form, it would be nearly 90 pages shorter than current law, while covering the same substance.

As noted, the Commission has a detailed document (in bill form) showing how current Chapter 2929 could be amended to achieve this shrinkage. It is more complete than the May 2008 report. The Commission will gladly share the draft with anyone who is interested.

The table on the next page shows how much the Commission's draft would shrink each section.

SHRINKAGE TABLE			
Statute	**Current Words**	**Proposed Words**	**Shrinkage**
§2929.01	3,504	2,164	38%
§2929.02	521	316	39%
§2929.021	369	248	33%
§2929.022	945	501	47%
§2929.023	131	82	35%
§2929.024	154	101	34%
§2929.03	3,327	1,627	51%
§2929.04	1,076	925	14%
§2929.05	682	407	40%
§2929.06	1,097	632	42%
§2929.11	170	141	17%
§2929.12	888	551	38%
§2929.13	3,915	843	78%
§2929.14	5,993	2,752	54%
§2929.141	357	195	45%
§2929.142	342	313	8%
§2929.15	1,800	855	52%
§2929.16	838	309	63%
§2929.17	543	239	56%
§2929.18	3,133	1,802	42%
§2929.19	2,457	1,343	45%
§2929.191	1,186	388	62%
§2929.192	1,409	976	31%
§2929.20	1,919	1,294	33%
§2929.21	345	208	40%
§2929.22	598	393	34%
§2929.23	236	116	51%
§2929.24	590	372	37%
§2929.25	994	607	39%
§2929.26	528	275	48%
§2929.27	506	348	31%
§2929.28	1,981	1,231	38%
§2929.31	393	282	28%
§2929.32	837	345	59%
§2929.34	328	224	32%
§2929.36	227	169	25%
§2929.37	950	618	35%
§2929.38	564	365	35%
§2929.41	429	222	48%
§2929.42	177	110	38%
§2929.43	965	467	52%
§2929.61	527	445	16%
§2929.71	961	668	30%
§2953.08	2,737	1,157	58%
All	**52,336**	**27,950**	**47%**