

# Sentencing in the Heartland: A Perspective from Ohio



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The American Midwest (also known as the Heartland) is both a geographical group of states and an ideology of hard work, community, rural heritage, simplicity, and honesty. The characteristics that often embody the Heartland include tradition, work ethic, and perseverance, which are guided by a culture rich in history and leadership that spans across generations.

Sentencing in the Heartland, specifically Ohio (or, if you are or know a Buckeye . . . OH! - IO!) conjures similar themes. The tenets of sentencing in Ohio also have a strong foundation in history, tradition, and perseverance with the Ohio Criminal Sentencing Commission. Sentencing in the Heartland is the intersection of a long and winding country road and a six-lane commuter expressway. The Ohio Criminal Sentencing Commission (Commission) provides the signage, mile markers, and guardrails. Beyond the metaphor, the fundamental purpose of the Commission is to champion justice.

### I. How Did We Get Here?

In 1974, the 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. Then in 1983, the Ohio legislature enacted Senate Bill 199, creating three new “aggravated felony” ranges, along with three separate ranges for “repeat aggravated felonies.” In a deviation from the indeterminate sentencing precedent in place since 1913, these new ranges included mandatory minimum prison terms. The legislation also included two non-mandatory determinate prison sentence ranges for low-level nonviolent felons, and a three-year mandatory sentence for using or possessing a gun while committing a felony. The result was eight new sentencing ranges added to the original four ranges from the 1974 criminal code.<sup>1</sup>

When considering legislation on drug policy in 1989, the Ohio General Assembly scrapped dramatic increases in drug offense penalties and created the Sentencing Commission as a permanent body in August 1990.<sup>2</sup> Today, the Commission is a 31-member group chaired by the Chief Justice of the Supreme Court of Ohio. Ten members of the Commission are judges appointed by the Chief Justice, twelve members are appointed by the Governor, two are cabinet directors, two are state agency leaders, and four are members of the General Assembly.<sup>3</sup> Those Commission Members are assisted by a statutorily created Advisory

Committee.<sup>4</sup> Since its inception, the Commission has provided impartial and consensus-driven analysis and development of policies and practices that maximize public safety, reduce recidivism, and equalize justice. In fact, the Commission is the only long-standing agency that routinely brings together judges, prosecuting and defense attorneys, behavioral health professionals, academics, corrections officials, law enforcement officers, victims’ advocates, community corrections experts, and others with a direct interest in criminal sentencing to bridge the information gap among criminal justice partners.

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. As to population and cost, Ohio’s eight prisons held 10,707 inmates in July 1974. By July 1983, the population had risen to 18,030. Ten years later, in November 1993, the prison population stood at 40,274. The state had spent \$850 million on prison construction between 1982 and 1993, and the annual operating cost of the Ohio Department of Rehabilitation and Correction (ODRC) was \$750 million.<sup>5</sup> For context, as of July 2017, the ODRC operates 27 institutions, its FY2018 budget is \$1,823,007,660, and the number of people incarcerated is 50,301.<sup>6</sup>

### II. Truth in Sentencing

The Commission was charged with developing sentencing policy and a comprehensive sentencing structure that was proportionate, mindful of public safety, promoted uniformity across the state (Ohio has 88 counties and a tradition of home rule), 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.”<sup>7</sup> “Truth in sentencing” is a 1980s neologism derived from the federal “truth-in-lending” laws of the 1970s. Those laws mandated that consumer lenders and merchants disclose interest rates and certain other financing terms. The implication for sentencing was that there was something untruthful—or at least not completely transparent—about parole and

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discretionary decisions on prison release dates.<sup>8</sup> In other words, the average person might not be able to determine, based upon the charge or sentence imposed, how long an offender would be in prison. The truth-in-sentencing scheme in Ohio later became known as Senate Bill 2,<sup>9</sup> which became effective July 1, 1996. The legislation established a type of determinate sentencing scheme called a “presumptive system,” which required minimum sentences with judicial discretion from a range of possible punishments.

In general, Senate Bill 2 was carefully designed to achieve a balance among multiple, and sometimes competing, considerations. Senate Bill 2 and its truth-in-sentencing scheme was created to provide credibility in sentences without causing draconian increases in prison population, and at the same time, preserve stiff prison terms for serious offenders alongside a presumption of community supervision for lesser criminals.<sup>10</sup> The sentence presumptions were constructed to provide consistency. Within these presumptions, the guidelines would provide the sentencing judge with some degree of flexibility to avoid disproportionate sentences, prison crowding, and subversion of reform efforts.<sup>11</sup>

The purposes of Senate Bill 2 were to manage prison population levels and to standardize and expand community sanctions. Because the bill diverted some thieves to the misdemeanor system, encouraged non-prison sanctions for lower-level felons, and promoted expanded community sentencing options, Senate Bill 2 is given some credit for the deceleration of prison population growth in the first ten years after it took effect.<sup>12</sup> Other contributing factors include an overall dip in the crime rate and various demographic trends. Although prison crowding increased in the years since 1996, it was not until 2008 that the population began to exceed pre-Senate Bill 2 levels. Ohio’s prison population topped 50,000 for the first time in 2008.<sup>13</sup>

That steady rise in prison population is primarily attributed to the powerful blow dealt to Senate Bill 2 by the Supreme Court of Ohio in 2006. A series of United States Supreme Court decisions<sup>14</sup> led to two 2006 decisions (*State v. Foster*<sup>15</sup> and *State v. Mathis*<sup>16</sup>) by the Supreme Court of Ohio that dramatically changed the guidance given to judges by Senate Bill 2. Although Senate Bill 2 retained fairly broad judicial discretion because judges could choose a sanction from within a statutory range, the statute required judges to make certain factual findings before imposing more than the minimum sanction, imposing the maximum sanction, or imposing consecutive sentences. However,

[I]n *State v. Foster*, the Supreme Court of Ohio followed the U.S. Supreme Court’s lead in *Blakely* and *Booker*, and held that if a defendant’s punishment was increased on the basis of a finding of fact, that finding must be made by a jury, not a judge. Otherwise, the increase violates a defendant’s Sixth Amendment right to a jury trial.<sup>17</sup>

The Supreme Court of Ohio thus held that the guidelines in Senate Bill 2 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. Although

the court acknowledged that critics may conclude that by making the guidelines advisory rather than mandatory, the court took a step back from determinate sentencing. However, the court explained that a number of reforms from Senate Bill 2 remained intact, including the “truth in sentencing” reform that requires that a specific term be given at sentencing so that the defendant and interested parties know what sanction is being imposed. Moreover, in a subsequent case [*Mathis*], the Supreme Court of Ohio made it clear that judicial findings are still required for downward departures.<sup>18</sup>

Although the changes were applauded by prosecutors and judges and generally flew under the radar of the public, the Commission knew there would be significant, long-term impact from the *Foster* decision for crowding and costs of operating the Ohio prison system.<sup>19</sup>

A decade into the implementation of Senate Bill 2, in addition to the swell of prisoners, there was a push toward a broader use of the former indeterminate sentences for high-level felons, there were ideas and suggestions floated about moving away from Senate Bill 2’s truth-in-sentencing model, and there was a 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.”<sup>20</sup>

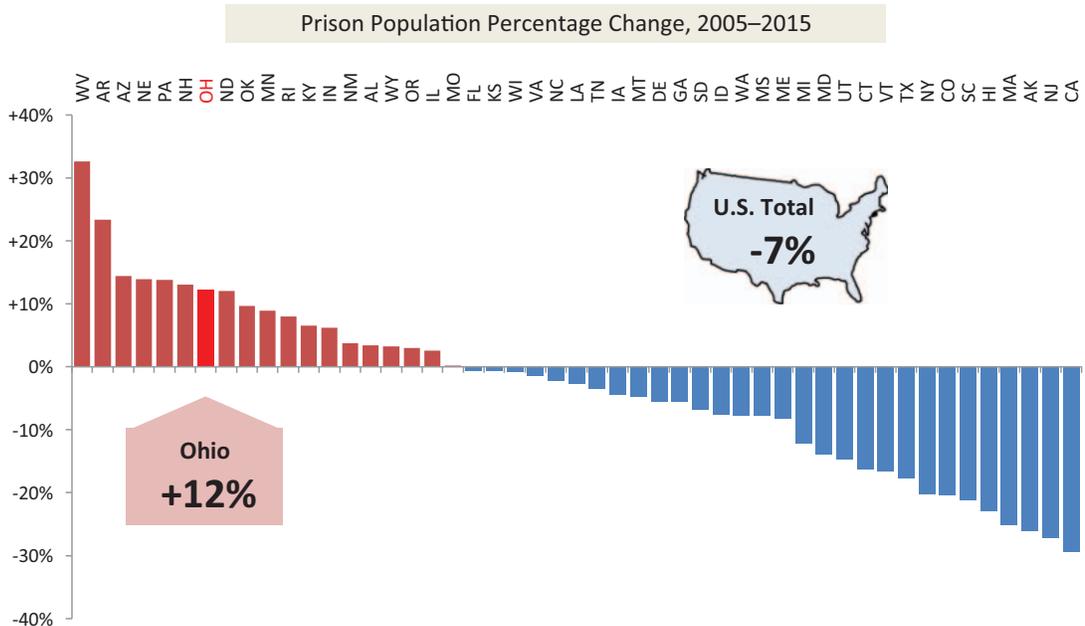
### III. The Next Decade—Justice Reinvestment

It was obvious that *Foster* would compound other pressures on the Ohio prison system. By 2007, “The 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,”<sup>21</sup> as well as a surprising increase in female offenders and offenders from rural Ohio counties. It was projected that the prison population would push toward 70,000 inmates by July 2016, far surpassing both expectations and the system’s design capacity.<sup>22</sup>

Circling back to the theory of the Commission as the guardrail on the sentencing highway, conversation within the Commission and among other Ohio criminal justice policy makers and practitioners at that time, as in many other states across the country, turned to efforts to reform the criminal justice system. What sparked the flurry of activity for many states, including some of those in the Heartland, was the fiscal strain of burgeoning prisons and costs. Between 1990 and 2010, corrections expenditures

**Figure 1**  
**Prison population trends, 2005–2015<sup>23</sup>**

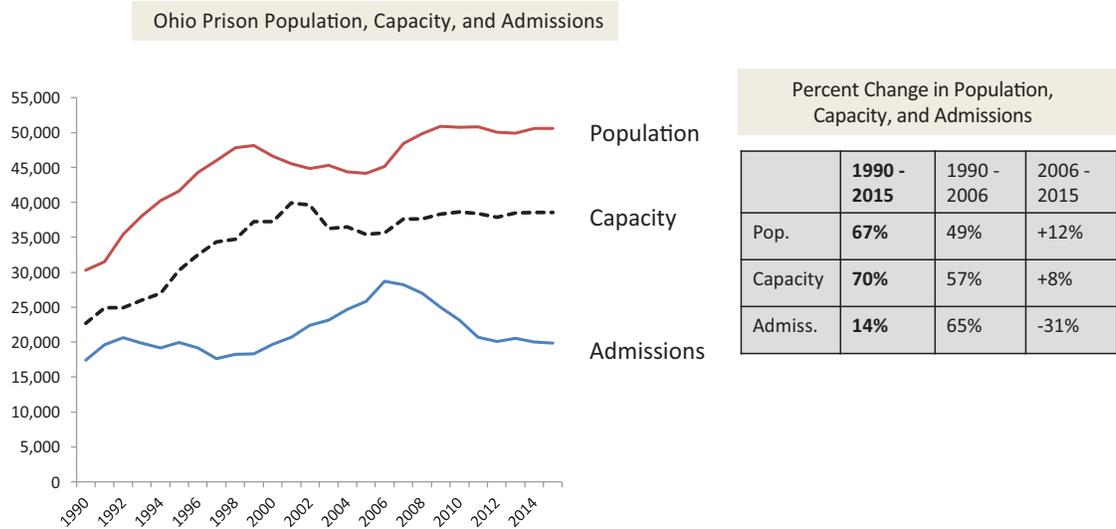
Ohio had the 7<sup>th</sup>-fastest-growing prison population in the nation between 2005 and 2015



SOURCE: US Census Bureau; Bureau of Justice Statistics, *Prisoners in 2005* and *Prisoners in 2015*.

**Figure 2**  
**Ohio prison population and admissions, 1990–2015<sup>24</sup>**

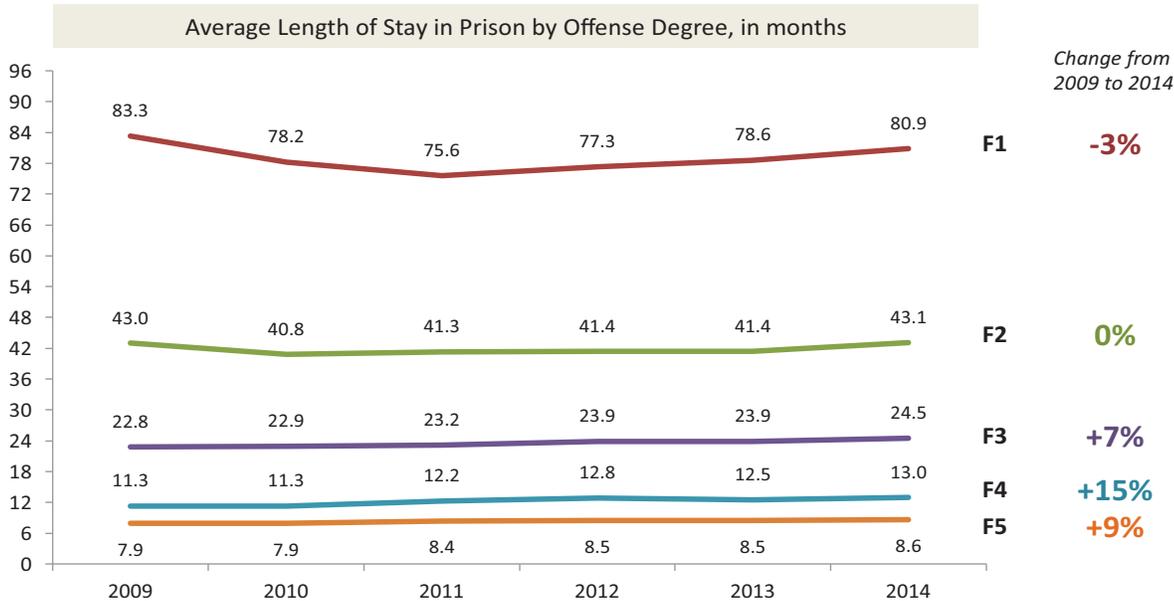
Ohio’s prison population is growing while admissions decline, especially since 2006, pointing to longer lengths of stay.



2012 to 2015 population and capacity statistics are as reported in the January Monthly Fact Sheet of each year, intake statistics are as reported in the December Monthly Fact Sheet of each year.  
 SOURCE: Ohio Department of Rehabilitation and Corrections *Monthly Fact Sheets*; Ohio Criminal Sentencing Commission, *Prison Crowding: The Long View, With Suggestions* (2011)

**Figure 3**  
**Length of stay, by felony level<sup>25</sup>**

Although lengths of stay for people with the highest felony levels were stable, lengths increased for F3s, F4s, and F5s.



SOURCE: Ohio Department of Rehabilitation and Corrections *Time Served Reports* by calendar year. A report for 2015 was not posted as of March 2017. Reports prior to 2009 did not contain a breakout of length of stay by offense degree.

grew by 400 percent, with only Medicaid outpacing their growth in state budgets.<sup>26</sup>

Ohio joined a group of more than 28 states on the journey of the Justice Reinvestment Initiative (JRI). The JRI is

a public-private partnership that includes the U.S. Justice Department’s Bureau of Justice Assistance, The Pew Charitable Trusts, the Council of State Governments Justice Center, the Crime and Justice Institute at Community Resources for Justice, the Vera Institute of Justice, and other organizations. Although specific reforms vary from state to state, all aim to improve public safety and control costs for taxpayers by prioritizing prison space for serious and repeat offenders and investing some of the savings in alternatives to incarceration that are effective at reducing recidivism among low-level offenders.<sup>27</sup>

In 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.<sup>28</sup> 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—that intake, or admitting new prisoners to

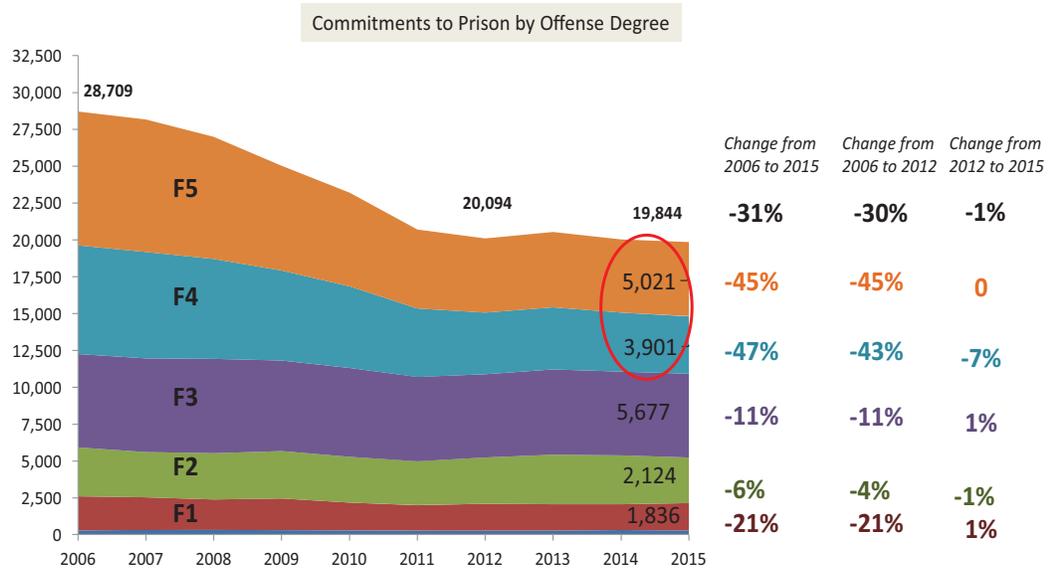
prison, is not the primary driver (although it is a factor). Instead, the increasing prison population was and is largely fueled by increases in inmates’ average length of stay,<sup>29</sup> or the same prisoners staying in prison longer.

The JRI momentum and suggestions from the Commission culminated into a legislative reform package resulting in the most significant amendments to criminal and prison law since 1996, when Senate Bill 2 took effect. Although the subject of length of stay and remedies to “fix *Foster*” were thoroughly discussed and even drafted, that language—which was intended to restore checks on consecutive sentencing and provide some form of (constitutional) guidance that favored the shortest prison term in the felony range for a person’s first commitment to prison and reserved the longest term in the range for the most dangerous offenders<sup>30</sup>—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,<sup>31</sup> effective September 30, 2011, and then later supplemented by revisions made in House Bill 487,<sup>32</sup> effective September 10, 2012, and by Senate Bill 337,<sup>33</sup> effective September 28, 2012. A sampling of the provisions included are:

- Raising felony theft thresholds;
- Eliminating the disparity in criminal penalties between crack and powder cocaine offenses;

**Figure 4**  
**Prison commitments, by felony level<sup>34</sup>**

After a steep decline in prison commitments, they have remained flat since 2012 — with F4 and F5 accounting for 45 percent of commitments.



SOURCE: Ohio Department of Rehabilitation and Corrections *Commitment Reports* by calendar year.

- 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.<sup>35</sup>

#### IV. Political Realities and Unintended Consequences

As noted, with House Bill 86, the General Assembly passed the most significant sentence reform legislation since the mid-1990s. Accordingly, Ohio invested approximately \$22.6 million in grants through those reforms between FY2012 and FY2015 to support programs that reduce probation violations. However, Ohio did not realize the anticipated reduction in prison population. As before, new intakes were not a primary driver in increased prison population, but they were a significant portion of that population. According to the Ohio Department of Rehabilitation and Correction, in 2015, more than 20 percent of all

those entering Ohio’s state prisons—over 4,300 individuals—were sent there with one year or less to serve, and many for non-violent offenses at the lowest felony level.

Notably, based on a recent report done by the Commission, Ohio is one of twenty states whose sentencing structure includes prison eligibility for sentences of twelve months or less. An additional nine states have prison-eligible sentences of twelve months or less for identified factors such as risk, violation, or subsequent offense for the lowest level felony.<sup>36</sup>

Reforming reform became the focus of criminal justice actors in Ohio. Along the Ohio sentencing highway, a detour emerged and the Commission deferred to the Ohio Criminal Justice Recodification Committee (CJRC), created by the 130th Ohio General Assembly in 2014 to study the state’s existing criminal statutes, with the goal of enhancing public safety and the administration of criminal justice throughout the state of Ohio. The CJRC charge was to recommend a plan for a simplified criminal code, making efficient use of resources through flexible yet consistent statewide policies.<sup>37</sup> The creation of the CJRC and the existence of the Commission made things a little murky. The CJRC was somewhat overlapping but separate from the Commission, focusing on drafting principles and clarity of *mens rea* requirements, with fairly narrow statutory authority to streamline the Ohio Revised Code.

As the CJRC developed and began working, the Commission maintained its Midwest moxie and proved to be a valuable and collaborative resource for the CJRC’s

work. In the meantime, the American Civil Liberties Union of Ohio, the Office of the Ohio Public Defender, the Ohio Association of Criminal Defense Attorneys, and the Buckeye Institute for Public Policy Solutions asked Ohio lawmakers, while the CJRC was “re-codifying” Ohio law, to refrain from introducing any bills that would place additional criminal penalties into state law, and to freeze consideration of any related bills already introduced. The aforementioned advocates pointed to an ACLU of Ohio study, “Ohio’s Statehouse-to-Prison Pipeline,” that showed in just the first seven months of the 2015–16 legislative session, one in eleven bills introduced in the Ohio Senate would enhance, create, or expand criminal penalties.<sup>38</sup> The introduction and passage of criminal sentencing legislation was not abandoned as a result of the request or the report. In fact, in a subsequent report issued just this year, the ACLU of Ohio asserted that “laws often use incarceration to address public health issues like addiction, mental health, and poverty, which only serves to exacerbate those problems.”<sup>39</sup> The ACLU had reviewed “all 1,004 bills introduced during the 2015–2016 legislative session and found nearly one in 10 included language to lock more people up longer.”<sup>40</sup>

The CJRC submitted its final report and recommendations on June 15, 2017; they have been submitted to the legislature and, at the time of this writing, await its further action. The monumental effort and work of the group is commendable and will serve in the development of future criminal justice policy and legislation. And in this edition of the *Federal Sentencing Reporter*, you will see an article highlighting lessons learned from the CJRC from Ohio’s State Public Defender, Tim Young, who is a member of the Ohio Criminal Sentencing Commission and served as Vice-Chair of the CJRC.

## V. What Are We Doing Now?

The work of the Commission mirrors the focus on sentencing and criminal justice reform across the country. We pride ourselves on our role, again as the guardrail of the sentencing highway, to navigate the very real, very often contentious conversation of the three branches of government in the pursuit of just and fair sentencing. We’ve recently tackled topics such as bail and pretrial services reform, record sealing and rights restoration, and sex offender registration.<sup>41</sup> We’ve also established a credible presence for the pursuit of juvenile justice issues and have made several legislative proposals on topics like extended sentences and/or de facto life without parole sentences for juveniles.<sup>42</sup>

As an acknowledgement of the dearth of data about the criminal justice world outside of state prisons, much of the upcoming work of the Commission—despite the multifarious challenges—is a collaborative, careful, calculated, and exceptional effort to collect, analyze, and tell the story of case disposition data with explicit focus on what happens before prison, otherwise known as the system’s “front end,” where many decisions are made that impact

both future judicial and corrections practices. That focus includes reported crime, arrest, and criminal history; diversion, including deferred adjudication; assessment of risk and behavioral health at the pretrial stage; setting bond; how sentencing sorts people with convictions across the various sentencing options; capacity of treatment and programs in the community to reduce recidivism; and community control (probation). The outcomes of knowing more about what happens to those people who don’t go to prison will serve as a solid foundation for all of our other work.

The undertaking of seeking robust case disposition data is our best chance to reflect the reality consuming courtrooms across our state and effectively transform eye-popping details into informed public policy decisions—in other words, crafting narratives that do not confuse the dramatic with the important, resisting the temptation to focus only on the one attention-grabbing moment and not on the larger, slower, and perhaps more subtle stories. In the words of Professor David Ball,

There are systemic stories that are less personal but perhaps of greater social impact. What happens to a community where incarceration is prevalent? What happens to the children of the imprisoned over their lifetimes? What happens to a life that has been successfully rehabilitated, where nothing happens to land the ex-offender in the newspaper? Narratives that have a wider context could potentially be useful and tell us more than merely confirm our worst fears.<sup>43</sup>

As part of the work to tell the story of case disposition, the Commission has taken the lead in facilitating and coordinating the State’s effort for a second round of Justice Reinvestment (JRI Ohio 2.0).<sup>44</sup> The comprehensive analysis of the Ohio corrections, community supervision, and justice-involved populations will lead to the development of policy options to enhance public safety while wisely parsing limited resources. This focus comes at a time when, as Bill Seitz, the Majority Floor Leader of the Ohio House of Representatives, has observed to me,

There is an emerging consensus among ideological conservatives and ideological liberals that sentencing practices need to be reformed to conform with evidence-based practices. While the two ideologies agree on the desired result, they tend to arrive at that point from different perspectives. Nonetheless, for the foreseeable future, sentencing practices will be geared towards the scarcity of additional funds with which to continue to build an incarceration society. This harsh fiscal reality is forcing Republicans and Democrats alike to revise their views on whether mass incarceration is truly beneficial to society, or worth the exorbitant cost.

Consistent with the trials (no pun intended) and tribulations of doing anything that requires effort, the

indispensable role for sentencing commissions is to assemble and analyze all the data about the inflows and outflows of the criminal justice system needed to make sensible cost-benefit decisions and population projections.<sup>45</sup> As Professors Marc Miller and Ronald Wright put it,

The commission may then use this data in a number of ways. It may “offer” it to the legislature to guide sentencing legislation. The legislature also could agree that no bill altering a criminal sentence or defining a new crime may be considered unless it contains a data analysis and projection done by the commission.<sup>46</sup>

The obligations of the Commission include a duty to share information, spark conversation, enlighten minds and move ideas to solutions that advance public safety, realize fairness in sentencing, preserve judicial discretion, provide a meaningful array of sentencing options, and distinguish the most efficient and effective use of correctional resources. In short, the work of the Sentencing Commission is dedicated to enhancing justice and ensuring fair sentencing in the State of Ohio. In the words of John Eklund, Ohio State Senator and Member of the Ohio Criminal Sentencing Commission, “Justice reform unites. You can be a fiscal conservative or a social justice activist and support it. But justice reform is greater than fiscal considerations or even big issues like the opioid crisis.”<sup>47</sup>

The sentencing highway of Ohio is a long (and sometimes treacherous) one, and the role of the Commission—to manage the flow of traffic, bridge the gap, narrow the differences, and champion justice—continues to evolve, just as expected considering its concoction of dynamic politics and people. A strong commission can assist a state in navigating the bumpy constitutional road of sentencing in a way that makes sense for a particular locality.<sup>48</sup> As the 2012 National Research Council report observes,

Some mixture of politics, values, and science will be present in any but the most trivial of policy choices. It follows that use of science as evidence can never be a purely “scientific” matter . . . a dependable and defensible reason will not necessarily be used just because it is available. Re-election concerns, interest group pressure, and political or moral values may be given more weight and may draw on reasons outside the sphere of what science has to say about likely consequences.<sup>49</sup>

What that means, essentially, is that problems will never simply be solved by an algorithm generated from a computer; smart leaders and commissions know that discussion, debate, negotiation, and compromise can be informed by such data and then solutions can be developed and implemented.

## VI. The Road Ahead

Sentencing commissions, including Ohio’s, provide a forum for experts who can be responsive to the distinct

needs of their jurisdictions while pursuing a level of fairness and rationality that can be particularly elusive in the legislative heat of the moment.<sup>50</sup> In the true spirit of the Heartland, the Commission is the consensus-driven platform for the development of policies, practices, and legislative criminal justice reforms that maximize public safety, reduce recidivism, and wisely spend tax resources. Having a state sentencing commission is not a luxury; it is a necessity. As such, it must be credible, purposeful, useful, and relied upon for its wisdom. The Commission must be responsive to current social and criminal justice issues, and perpetually evaluate, analyze, prioritize, and re-prioritize those issues.

Our work in the immediate future, in addition to the quest to tell the story of case disposition data, certainly includes a close, hard look at the report of the CJRC (whether or not a bill is formally introduced based on those recommendations), examining mandatory minimum sentences, addressing the length-of-stay dilemma, and reviewing probation terms and revocation, among other important topics.

However, the most pressing, profound, and perplexing issue the Commission is faced with is drug-related sentencing recommendations in the wake of the opiate epidemic. This is not just a sentencing issue, it is an all-of-us issue—something that surrounds us, speaks to us, and keeps us up at night. It impacts strangers, friends, and our families. It is also an example of the struggle of justice reform: justice-involved individuals can be diverted to the treatment they need for rehabilitation, or they can be incarcerated without treatment and end up re-offending or dying of an overdose. Effective sentencing policy can ensure the former and prevent the latter.

The struggle is real:

At least 4,149 Ohioans died from unintentional drug overdoses in 2016, a 36 percent leap from just the previous year, when Ohio had by far the most overdose deaths in the nation, according to figures compiled by *The Dispatch* from county coroners. And the grim toll is getting worse: Many coroners said that 2017’s overdose fatalities are outpacing 2016’s. Last year’s total smashed the record of 3,050 set in 2015. An average of 11 people died each day in 2016 from heroin, fentanyl, carfentanil or other drugs.<sup>51</sup>

The last several budget cycles<sup>52</sup> in our State have made narrowly focused reforms geared toward restricting prison eligibility or adding to an already astonishing number of options for shortening imposed prison sentences for offenders who are low-level, nonviolent, and presumably suffering from a substance abuse disorder. Realistically speaking, these are not long-term solutions, and at this point, as noted in a recent issue of this publication, the punitive treatment of drug offenders is still a topic of discussion, and disagreement remains about the effectiveness of alternative methods of holding drug offenders accountable for their actions.<sup>53</sup>

Two disagreements garner the most passionate debate. First, there is Crime versus Relapse. Drug use is a crime that can result in a felony conviction, but relapse—which is the same behavior—can be treated like a crime or like part of rehabilitation. But even those who agree that relapse is part of rehabilitation cannot reach consensus on how many times is too many times. Second, there is Traffickers versus Users. “Drug traffickers” are increasingly being separated from “drug users” (or drug possessors) by legislators who make laws about sentencing, but identifying a tangible, bright line between a “user” and a “trafficker” often means finding a difference without a distinction.

Many firmly believe that by the time a drug addict is justice-involved and in the courtroom, we are too late because

prevention of drug abuse is the only mechanism through which we can end the scourge of abuse and addiction. That requires a community-wide strategy that brings our schools, religious institutions, social and charitable organizations, and governmental assets together to educate, insulate, and prevent our young people from ever having to face drug addiction. While we cannot incarcerate our way out of the Drug War, we cannot treat our way out either. There must be a consistently applied balance between consequential punishment and meaningful treatment for drug offenders.<sup>54</sup>

Sentencing in the Heartland state of Ohio is complex. Continuing to advance criminal justice policy and legislation on limited circumstances and data will not solve the “drug problem” or further the administration of justice. The Commission is comprised of passionate, ordinary people considering extraordinary circumstances and situations; their only vested interest in the outcome is their collective will to equalize and preserve justice. We seek bipartisan, relevant, current, informed processes and outcomes through creative solutions, beyond simplifying and modernizing the Revised Code. At the end of the day, our work is about people and sentencing.

Thus, the Commission is adamant to tell the story behind the data and illustrate the deep intricacies of sentencing patterns and trends (see Part V, above)—realizing we are talking about case- and people-specific fact patterns, and weaving them together to inform and engage others in development of sound public policy. We embrace the ideal that “[a]s criminal justice actors gain the power to compile and organize the mountains of data collected in unconnected paper files over the years, a pivotal moment presents itself.”<sup>55</sup>

Although I could have written this myself based upon the reality in Ohio, it was validating to see the sentiment so precisely crafted and published by others:

The available sentencing data focus on a few outcomes, such as the percentage of felons sentenced to a prison term. They do not, however, tell a national

audience about punishments other than prison or about the process of sentencing, such as the factors that influence the sentence. The destination is important, but to understand the true dynamics of sentencing systems, so is the road.<sup>56</sup>

## VII. Closing Thoughts

One of the intrinsic values of the Commission is that, whereas ultimate decisions about Ohio’s budgetary priorities fall on the Governor and the General Assembly, judges, prosecutors, and defenders have an intuitive understanding of which sanctions are effective for felons.<sup>57</sup> As a Commission, we should be held accountable for proposing, vetting, and advancing the best and most impactful interests for sound public policy. The expectation is, simply stated, proactive recommendations that change lives *and* deliver on the fundamental purposes and principles of sentencing (i.e., 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).<sup>58</sup> The Commission must not only understand and embrace its role as a guardrail along the sentencing highway, it must also personify the ticks of mile markers along the road and know when the time is right for caution flags and the orange barrels or to wave traffic forward with vigor—anything less is just not acceptable.

The reality for the Commission and what ultimately may be described as its road warrior role is that the infrastructure of criminal justice reform needs us. At the same time, we know that relevance is risky, and it takes courage to be persistent. Refusing marginalization requires determination, endurance, true ingenuity, resolve, and understanding deep tradition and values—all of which characterize Sentencing in the Heartland and the Great State of Ohio.

## Notes

- <sup>1</sup> Fritz Rauschenberg, *Sentencing Reform Proposals in Ohio*, 6 Fed. Sent’g Rep. 166 (1993). The original ranges are F1–F4, with F1 being the most serious felony.
- <sup>2</sup> *Id.*
- <sup>3</sup> Ohio Crim. Sent’g Comm’n, 2017 Roster (2017), available at <http://www.supremecourt.ohio.gov/Boards/Sentencing/roster.pdf>.
- <sup>4</sup> Ohio Rev. Code Ann. § 181.22 (West 2016).
- <sup>5</sup> Rauschenberg, *supra* note 1.
- <sup>6</sup> Ohio Dep’t of Rehab. and Corr., Monthly Fact Sheet (July 2017), available at <http://www.drc.ohio.gov/Portals/0/Reentry/Reports/Monthly/2017/July%202017%20Fact%20Sheet.pdf?ver=2017-07-17-095457-560>.
- <sup>7</sup> Rauschenberg, *supra* note 1.
- <sup>8</sup> Comm. on Law and Justice, Nat’l Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 79 (2014).
- <sup>9</sup> Am. Sub. S.B. No. 2, 146 Ohio Laws, Part IV, 7163–7814.
- <sup>10</sup> Timothy Griffin & John Wooldredge, *Judges’ Reactions to Sentencing Reform in Ohio*, 47 Crime & Delinq. 491 (2001).
- <sup>11</sup> *Id.*
- <sup>12</sup> David J. Diroll, Ohio Crim. Sent’g Comm’n, *Monitoring Sentencing Reform: Survey of Judges, Prosecutors, & Defense*

- Attorneys and Code Simplification 11 (2009), available at <http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/monitorRpts/MonitoringRpt2009.pdf>.
- <sup>13</sup> *Id.*
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- <sup>50</sup> Douglas A. Berman & Steven L. Chanenson, *The Real (Sentencing) World: State Sentencing in the Post-Blakely Era*, 4 Ohio St. J. Crim. L. 27 (2006).
- <sup>51</sup> Alan Johnson & Catherine Candisky, *Overdose Deaths Continue to Soar in Ohio*, Columbus Dispatch, May 28, 2017, available at <http://www.dispatch.com/news/20170528/overdose-deaths-continue-to-soar-in-ohio>.
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