

OHIO CRIMINAL SENTENCING COMMISSION

65 South Front Street · Fifth Floor · Columbus · 43215 · Telephone: (614) 387-9305 · Fax: (614) 387-9309

Chief Justice Maureen O'Connor
Chair

Sara Andrews
Director

Priorities for the Commission as voted March 19, 2015 meeting

General:

1. Clarify what is the precise role and function of the Criminal Sentencing Commission
2. Consider death penalty task force recommendations
- ~~3. Need to find an easier, cheaper, and more efficient way to make court hearing transcripts available to the parties involved in a case.~~
4. Increase options for non-violent drug offenders to be placed in community based programs – **Category created for recommendations specific to non-violent drug offenders.**
5. Appellate Review
- ~~6. Prosecutor and defense counsel access to presentence investigations, recommendations and the ORAS score.~~
- ~~7. Consider reducing the length of probation terms for low level felons. Consider the length of probation term close to the length of an actual sentence.~~
8. Review how probation violations for fines and restitution are dealt with, consider decriminalizing nonpayment of fines and costs.
9. Remove Halfway Houses from ORC 1.05 D (2). The only place in the ORC that defines Halfway Houses as sentencing serving facilities is ORC 1.05. The reference to the halfway houses in this section should be deleted, as it is in conflict with the other multiple definitions.

Data Collection, reports and informational resources:

10. Data Driven Oversight of sentencing & corrections reform:
 - ~~a. Require greater accountability from state agencies, and provide ongoing data driven oversight of sentencing and corrections reform~~
 - b. Sentencing Commission as clearing house for proposed criminal justice legislation
 - ~~c. Provide better behavioral health data among Criminal Justice partners~~
11. Marijuana penalty review and data collection
- ~~12. Review application/prosecution of ORC 2923.32 engaging in pattern of corrupt activity – is it being overextended?~~
13. Review Transitional Control Program to determine if there are any policy or law changes needed to increase participation by inmates in the Transitional Control Program.

Sentencing and Recodification:

Penalties:

14. Consider making it mandatory for individuals with mental health issues to be placed in community based programs, especially if they committed low level and non-violent offenses. How do we provide services for individuals with drug dependencies? **Moved to non-violent offender category.**
15. Non-Violent Offenders - Ensure fairness and certainty in sentencing; Require supervision for offenders leaving prison; Focus corrections resources on high-risk offenders; High rates of incarceration, growing correctional populations, and over-extended judicial caseloads; Offenders on parole or probation being sent back to prison for breaking rules of their release, not for committing new crimes. **Moved to non-violent offender category.**
16. Drug penalties – possession v. trafficking – restructure controlled substance offenses - **Moved to non-violent offender category.**

17. Drug penalties – mandatory sentences *note: 2011 monitoring report recommendations, October 2013 meeting discussion; November 2013 meeting discussion and memo ‘prison crowding’ dated 11-18-13:

“Drug Penalty Sentencing Guidance: During the so-called “War on Drugs” era (mid-‘80s to mid-‘90s), we saw significant violence associated with the drug trade. S.B. 2 was enacted at the tail end of that era. Reflecting the times, the bill retained mandatory sentences already in place, although it gave the judge discretion to set the actual terms. It also created sentencing rules for drug offenses that are more punitive than that for other offenses at the same felony levels.

§2929.13 generally creates a rebuttable presumption in favor of prison for F-1s and F-2s (div. (D), no particular guidance on F-3s (div. (C)), and guidance against a prison term for many F-4s and F-5s (div. (B)). Drug offenses differ. Former law often pushed offenders away from div. (B) toward prison and into mandatory penalties at lower levels than non-drug offenses.

At the Commission’s suggestion, H.B. 86 partially equalized the guidance by offense degree for many F-4 and F-5 drug offenses and removed many of the mandatories that existed at the F-3 level for drugs. The sky didn’t fall. However, the Code still treats drug and non-drug differently in these categories:

*Mandatory Instead of Presumption in Favor: Almost every F-1 & F-2 drug offense.
Presumption in Favor instead of Neutrality under Div. (C): Most F-3 drug offenses.*

Drug offenders routinely constitute anywhere from a fifth to a third of prison intake in Ohio, so any additional equalization of drug and non-drug penalties could be significant. Remember: eliminating the distinctions between drug and non-drug cases would not entail reducing the degree or penalty range of any drug offense. The same prison terms would still be available, albeit not necessarily mandated.

Should any of these offenses shift to a higher degree of felony?

If not, should the guidance be the same for these drug offenses as for non-drug offenses at the same felony levels?”

18. Trace Cocaine Levels - time to address the misdemeanor-like "dumbing down" of our felony drug offenses *note – 2011 sentencing commission recommendation:

"The two most commonly abused street drugs in Ohio are marijuana and cocaine. Many low level marijuana offenders fall into misdemeanor categories and don't come to prison. But even the most microscopic amount of cocaine can be prosecuted as a felony.

Some courts already fudge on the topic, discouraging felony charges in trace amount cases, but most don't. One thought is to set a misdemeanor penalty or limit the F-5 felony sanctions for very small amounts of cocaine. Admittedly, it's a hot-button issue. But it would ease prison crowding and partially address statistical racial imbalance (more blacks than whites come to prison for both crack and powder cocaine in Ohio). We can't be naïve to the likelihood that the offender possessed a larger amount and was nabbed late in the possession cycle. But our penalties are based on the amount found. The "gateway" drug argument—which may or may not be valid (tobacco and alcohol being more likely gateway drugs)—must be discussed. If misdemeanor penalties were considered, we can't ignore that felony courts have a broader range of drug treatment options available. And we must be vigilant not to exacerbate local jail crowding in the process.

Alternately, surveys show there is a measure of public support for treating low-level drug violations as health concerns rather than as crimes. That, too, is controversial, but, perhaps, worthy of consideration."

19. Revise or eliminate the sections in the O.R.C. that provide for an operator's license suspension as a sentence for drug convictions.
20. Address felonization of misdemeanors and increasing lengths of sentence for existing felonies since adoption of new criminal sentencing code (SB2) in 1996.

Sentencing and Recodification:

Simplification:

21. OVI law review & simplification
22. ~~ORC 2911.02(A)2 and 3 robbery: The definition of "force" and inclusion of the language "fleeing immediately after" allows a simple shoplifting into a robbery by aggressive apprehension techniques.~~
23. ~~ORC 2903.11 felonious assault, felony 2 and ORC 2903.12(A) aggravated assault F4: problem typically arises in mutual combat (or clearly provoked but maybe not self defense) that results in the "loser of fight" with "serious physical harm"(usually facial injuries from punch). The "loser" becomes the "victim" and the "winner" becomes the defendant with felonious assault charges.~~

~~There is no self defense for mutual combat and one cannot consent to an assault in Ohio. Even if mitigating circumstances, the original charge is a F2, so often reluctant to reduce to F4 due to perception F2 down to F4. Also a close reading of aggravated assault requires “deadly force” so arguably the punch that causes serious physical harm (broken nose) even if provoked by the victim as described in ORC 2903.12 would not neatly fall into the reduced charge unless “deadly force” is used.~~

24. ORC 2951.041(F) Intervention in lieu of conviction – allow the courts discretion to continue this diversion program if the case warrants another chance. The statute seems to say otherwise.
25. Clarify sentences for ORC 2907.02 Rape....especially under ORC 2907.02(A)1(b)....section ORC 2907.02(B) and/or perhaps sentencing commission can work on a chart as we have with other statutes (ie drugs and DUI).
26. Consider revision to ORC 2950.04 and 2950.99 Failure to Register due to inequities that can result with the “strict liability” standard applied **and include review of all residency requirements.**

Juvenile Justice:

- ~~27. Review juvenile representation procedure/practice, especially for kids who can't afford an attorney. Better management process for the time a public defender spends with a child, avoid meeting with these kids for brief periods of time right before a hearing and ensure that private space is available for public defenders to meet with kids.~~
28. Clarify jurisdiction of the juvenile court.
29. Juvenile extended sentence review
- ~~30. Further reform juvenile sentencing to enhance a behavioral health treatment approach and data collection on behavioral health needs~~
31. Reduce use of mandatory shackling
32. Eliminate or limit mandatory bind-over by giving judges the discretion to determine when a child should be transferred to adult court.
33. Eliminate or limit mandatory sentences in the juvenile justice system.
34. Address Juvenile Court Costs
35. ~~Remove~~ **Amended to Review and combine with #37** the mandatory minimum firearm 1-5 year specifications and replace them with discretionary specifications.
36. Clarify Juvenile Confinement Credit
37. Review and revise RECLAIM public safety beds i.e.) firearm specifications

Recommendations from the floor:

- ~~1. Consider attorney representation for juvenile offenders.~~
2. Review offenses mandating limited or no driving privileges.
3. Review expungement eligibility, filing times and general collateral consequences – consider an automatic removal of non-violent offenses after a period of time, ie. 25 years

DRC handout at the meeting: Ideas for Sentencing Commission consideration:

1. Find a way to restore ORC presumption and appellate language from before the Foster decision.
2. Review DRC's Probation Improvement and Incentive Grant Program and the SMART program as a way to move toward a RECLAIM structure for all non-violent F3's, F4's and F5's.
3. Review all offenses made felonies or modified for much more extensive use over the past 25 years and review all felonies that have been upgraded to higher levels to see if lower penalties are more appropriate. **Combine with approved recommendation #20 and include review of penalties that have been reduced.**
4. Consider mandating Transitional Control exit for all Definite Sentence inmates; this would include a new penalty for those who fail to cooperate while on TC status. **Combine with approved recommendation #13.**
5. Change the sentencing statutes so that commitments are to DRC, with DRC allowed to sort those committed to DRC among appropriate alternatives, ranging from intensive community supervision/ monitoring, CTC's, CBCF & HWH, and prisons of different sorts.

One of these that could easily be estimated would be # 4, with a bed savings of about 750 at present levels on persons committed to prison. Number 1 could also be estimated, with a reduction of up to 6,000 achievable over a decade. The other three proposals are potentially very fundamental shifts in the CJ structure, and change in impact could be at least 5,000 with moderate changes in the code.

Regarding #3, the chart comparing commitments in 1993 and currently, rising from a few hundred to over 4000, has been circulated before. Not circulated is a recent observation as to how many offenses have been shifted to the felony 3 level, from 5.5 % in 1993 (pre-SB 2 equivalent) to about 30 % in most recent commitment years. We intend to explore in more detail on how this shift took place.