



65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3431 • TELEPHONE: 614.387.9305 • FAX: 614.387.9309

MEETING AGENDA – FULL SENTENCING COMMISSION

May 18, 2023 10:00 a.m.

Ohio Judicial Center, Room 101 or Zoom

Join Zoom Meeting

<https://us06web.zoom.us/j/9892379718?pwd=L3pjNGxURklWWGQ4R2VHQ0xJWjhIdz09>

Meeting ID: 989 237 9718

Passcode: 43215

- I. Call to order, approval of meeting notes from March 16, 2023
Chief Justice Kennedy, Vice-Chair Selvaggio
- II. Member Survey and Future Meeting Schedule* (*vote)
Chief Justice Kennedy, Niki Hotchkiss, All
- III. Committees of the Commission* (*vote)
Chief Justice Kennedy, All
- IV. Felony Sentencing Roundtable Report & Recommendations*(*vote)
Reggie Wilkinson, Will Davies, All
- V. Ohio Sentencing Data Platform Governance* (*vote)
Sara Andrews, All
- VI. R.C. 2953.32 definition of “expunge” and “official records”* (*vote)
Alex Jones, All
- VII. Executive Session
- VIII. Adjourn

Meeting Materials:

March 16, 2023 meeting notes

Member Meeting Survey Summary

Felony Sentencing Report & Recommendations May 18 Summary

Ohio Sentencing Data Platform governance

Memo regarding R.C. 2953.32

Ohio Criminal Sentencing Commission Executive Director position descriptions

2023 Full Commission Meeting Dates - TBD



THE SUPREME COURT *of* OHIO

POSITION DESCRIPTION

POSITION TITLE: Director, Criminal Sentencing Commission

Classification: Senior Director

Position Control Number: 1200-20003024

Pay Grade: 21

FLSA Status: Exempt

Office/Section: Criminal Sentencing
Commission

EEO Status: Officials And Managers

Division: Criminal Sentencing

Date Created: April 2006

Reports to: Chief Justice & Commission

Date Revised: January 2009, July 2014

JOB PURPOSE

Directs the operation of the Criminal Sentencing Commission and the staff. This position serves as the primary contact for the Commission with the General Assembly and others.

ESSENTIAL DUTIES AND RESPONSIBILITIES OF THE POSITION

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

Plans, direct and administers the Sentencing Commission in conjunction with Chairman, assures compliance with enabling laws, develops meeting agendas, and develops Commission's budget.

Develops staff policies and goals. Supervises staff, oversees legal and non-legal research as well as conducts some additional research as needed.

Writes and edits Commission documents, including legislative drafting.

Serves as the Commission's primary liaison to the General Assembly, Administration and other interest groups.

Testifies before the General Assembly; prepares and conducts speeches to interest groups.

QUALIFICATIONS & EXPERIENCE

Bachelor's degree required. Master's degree or Juris Doctor preferred.

Extensive familiarity with state and local government practices, including how the General Assembly interacts with the Judicial Branch.

Minimum of eight years of relevant experience and familiarity with the Executive and Legislative branches of state and local government required.

PHYSICAL REQUIREMENTS – See Attached Physical Requirements Checklist.

COURT EXPECTATIONS OF EMPLOYEE

In completing the duties and responsibilities of the position, the Court expects the incumbent will adhere to all Court policies, guidelines, practices and procedures; act as a role model both inside and outside the Court; exhibit a professional manner in dealing with others; and work to maintain constructive working relationships. In addition, the Court expects the incumbent to maintain a positive and respectful approach with superiors, colleagues, and individuals inside and outside the Court. Further, the Court expects the incumbent to demonstrate flexible and efficient time management, the ability to prioritize workload, the ability to perform duties in a timely, accurate and thorough manner, and to communicate regularly with the incumbent's supervisors about work-related issues.

AT-WILL EMPLOYMENT

The Supreme Court of Ohio is an at-will employer that seeks to attract, employ, and retain highly skilled and motivated individuals, attempts to maintain staff continuity for the efficiency of its operation, and desires to foster and maintain an ethical, professional, and impartial work environment. Pursuant to Adm. P. 4 (At-Will Employment), no person shall be offered or denied a position of employment with the Court, and no employee shall have the employee's employment terminated based solely upon political party affiliation, political activity permitted under Adm. P. 17 (Employee Code of Ethics), or other partisan considerations. Further, no employee shall have the employee's employment terminated with or without cause unless upon the concurrence of a majority of the Court.

Employee Signature

Date

Supervisor Signature

Date

Position Title:

Incumbent(s):

Essential Activities

Please check those activities that are essential functions of the position (the core purpose of the position):

Body Movements

Occasional: two hours/day; frequently: up to four hours; constantly: more than four hours

Lifting weight	<input checked="" type="checkbox"/> 0-10 lbs	<input type="checkbox"/> 11-20 lbs	<input type="checkbox"/> 21-50 lbs	<input type="checkbox"/> 51-100 lbs
Lifting frequency	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Standing	<input type="checkbox"/> None	<input checked="" type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Walking	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Sitting	<input type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Constantly
Bending/pushing	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Reaching	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Pulling	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Pushing	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Kneeling/Squatting	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Crawling	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Turn/Twist (body)	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Climbing ladders	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Climbing stairs	<input type="checkbox"/> None	<input checked="" type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Fingering (pinch/pick)	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Wrist torquing	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Gripping	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Driving Hours per day	at a time: None	Total hours: None		

Repetitive Hand Motion

Occasional: two hours/day; frequently: up to four hours; constantly: more than four hours

Keyboarding/typing	<input type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Constantly
Gripping/clicking mouse	<input type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Constantly
Collating	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly
Stapling	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Occasional	<input type="checkbox"/> Frequently	<input type="checkbox"/> Constantly

Visual and Auditory

<input type="checkbox"/> Accurate color perception	<input type="checkbox"/> Accurate depth perception
<input checked="" type="checkbox"/> Ability to see near	<input type="checkbox"/> Ability to see far
<input type="checkbox"/> Ability to hear emergency communications	
<input type="checkbox"/> Subject to noise	

Physical Hazards

<input type="checkbox"/> Ladder <four ft	<input type="checkbox"/> Ladder >10 ft	<input type="checkbox"/> Elevated work surfaces
<input type="checkbox"/> Confined spaces		
<input type="checkbox"/> Electrical <120 V	<input type="checkbox"/> Electrical 120–600 V	<input type="checkbox"/> Electrical >600 V
<input type="checkbox"/> Pressure and vacuum	<input type="checkbox"/> Paint/lacquer	<input type="checkbox"/> Radiation work
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Machine Operations

- | | | |
|---------------------------------------|---|--|
| <input type="checkbox"/> Automobile | <input type="checkbox"/> Forklift | |
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Writes and edits Commission documents, including legislative drafting.

Serves as the Commission's primary liaison to the General Assembly, Administration and other interest groups.

Testifies before the General Assembly; prepares and conducts speeches to interest groups.

QUALIFICATIONS & EXPERIENCE

Extensive familiarity with state and local government practices, including how the General Assembly interacts with the Judicial Branch.

Significant experience in the practice of law, admission to the bar and eight years of relevant experience and familiarity with the Executive and Legislative branches of state and local government.

PHYSICAL REQUIREMENTS – See Attached Physical Requirements Checklist.

COURT EXPECTATIONS OF EMPLOYEE

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The scope of our duties are outlined in RC 181.23, to design a fair criminal sentencing structure that protects public safety focusing on proportionality between the offense and the sentence; applying the principles of punishment, deterrence, fairness, rehabilitation, and treatment; establishing deterrence through predictable and consistent certainty in sentencing; and utilizing state and local correctional assets. You are reminded that this statute spawned SB2, and applies to us.

On December 15th, our Drafting Committee reported to the Workgroup and the Ohio Sentencing Commission that we had reached a consensus that we could repurpose those same legislative mandates and best promote the objectives of the purposes and principles of sentencing within a modified and modernized rehabilitative model, utilizing indefinite sentences, and adopting evidence based modalities of rehabilitation in both probation and parole would.

Comments on our proposals ran the gamut and that was reflected in the positions of state prosecutors, with emphasis on punishment, and the defense bar, with emphasis on rehabilitation. Woven throughout the responses was a complaint that our document lacked specificity. And as one of our members recently reminded us, the devil is in the details.

We are twenty seven years from SB2, and armed with enhanced understanding of rehabilitation. We have arrived at a penological inflection point where we need to reassess criminal sentencing the the context of contemporary best practices guided by evidence based scholarship.

A retrospective of penological history presents a context in which to balance these issues of social order and matters of liberty.

From 1894 to 1984, the Rehabilitative Model of criminal sentencing governed both state and federal penological practices. It was predicated upon the erroneous belief that crime was pathological and that indefinite penitentiary sentences were necessary to accomplish treatment. Because judges were given unfettered sentencing discretion, symmetry in sentencing was lost with unconscionable variations in sentences for similarly situated offenders.

Parole boards also were given broad latitude in release decisions resulting in idiosyncratic judgments, disparities, and unpredictability.

In 1984, faced with a 354% violent crime increase since 1960, Congress found that asymmetrical sentences, uncertainty in time served and the abject failure

of prisons to rehabilitate represented systemic failure. The mantra became: “Nothing worked.” I’ll return to this in a minute. Congress jettisoned the Rehabilitative Model for the Retributive Justice employing determinate sentences. It not only rejected the Rehabilitative Model, it rejected rehabilitation as a principle of sentencing. Punishment thereafter was guided by retributive, educational, deterrent and incapacitative modalities and practices.

Ohio addressed the same sentencing issues, inconsistencies and rising crime rate as the federal government. It established a Sentencing Commission in 1990, and out of that came SB 2, wherein Ohio replaced its rehabilitative model of sentencing with “truth in sentencing” intended to promote certainty and proportionality in felony sentencing by embracing determinate sentences with the overriding purpose to protect the public and punish the offender considering incapacitation, deterrence, rehabilitation and restitution.

Judges were given discretion to determine the most effective way to comply with the purposes and principles of sentencing. That required judges to consider seriousness and recidivism factors together with victim’s impact. There is a suggestion that these factors should be quantified and ranked to interpret how a sentence was arrived at. But the factors do not lend themselves to that kind of analysis. Comparing serious physical harm to an offender’s elected office is apples to oranges.

Under SB2, discretion was circumscribed by judicial fact-finding when a trial court imposed maximum sentences, consecutive sentences or enhanced penalties for repeat-violent or major –drug offenders. In 2006, *State v. Foster* removed those guardrails and held that trial courts have full discretion to impose a prison sentence within a particular statutory range and were no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences.

The impact of *Foster* is clearly shown in the numbers: in 1996, the year SB2 became effective, the prison census was 46,174; in 2006, the year *Foster* was decided, the prison census was 45,843. SB 2, “Truth in Sentencing,” did what was intended, it stabilized the prison census. By 2010, the census had soared to 51,145, and it remained at that level until 2019. SB 2 did not drive up Ohio’s prison population, rather *Foster* did. To minimize asymmetrical sentences, we need to reinstate thoughtful guardrails within a range of sentences and in the imposition of consecutive sentences.

Within the same time frame, two other consequential movements impacted the criminal sentencing paradigm: the Court Futures Movement and evidence-based sentencing.

Beginning around 2000, the Ohio Supreme Court encouraged creation of specialty dockets to address the drug crisis that was impacting the courts. The process awoken the judiciary to restorative modalities of holistic, therapeutic justice in the form of diversion through drug, mental health and veterans courts in which criminal due process is relaxed and treatment is coerced by threat of punishment. We have not yet statistically determined efficacy, but as an alternative to jailing or imprisonment these dockets present a valuable service of diversion within the penological toolbox.

Secondly, in 2005 Dr. Wilkinson introduced us to evidence based-practices at a Community Correction Act Symposium. Prison rehabilitation programs and community correction grant programs did not work. Some of the ODRC rehab programs actually increased recidivism.

The University of Cincinnati informed us that criminogenic factors had been identified that, when married to individual offender profiles and interpreted by algorithms, quantified with probability what methods of rehabilitation would probably succeed. This was a paradigm shift. We are informed that Ohio's risk assessment tool is both valid and reliable. It is now legislatively mandated for use in every aspect of sentencing and rehabilitation in the administration of criminal justice.

That has opened the door for foreseeable and predictable rehabilitation for inmates who are eligible. It comes with a warning, however, that the risk assessment should not be used in determining what sentence should be imposed.

[The] use of risk assessments to determine sentences erodes certainty in sentencing, thus diminishing the deterrent value of a strong, consistent sentencing system that is seen by the community as fair and tough...Swift, certain and fair sanctions are what work to deter crime, both individually and across society. We know that certainty in sentencing - certainty in the imposition of a particular sentence for a particular crime, and certainty in the time to be served for a sentence imposed - simultaneously improves public safety and reduces unwarranted sentencing disparities...

Armed with proven methods of rehabilitation and diversion while faced with the rise of violent crime and overwhelmed with opiate deaths, it is the time to rethink best practices in how to protect the public, punish offenders and rehabilitate those that can and should be rehabilitated.

As I speak, 75% of inmates in Ohio are imprisoned for violent offenses. The % will increase as more and more low level non-violent offenders are shunted into alternative sentencing. At the same time we are recommending earned incentivized early release or parole eligibility based on objective standards of performance. We should scrutinize other early release exit ramps and scrutinize their continued need.

Violent offenders should serve a stated minimum term before their rehabilitation programming counts toward accelerating their release. A minimum term establishes certainty in sentencing in the eyes of the prisoner, the victim and the public. It also serves as a deterrent by withholding incentivized release until a stated time is served. Certainty, deterrence and incapacitation are foundational under our enabling statute, RC181.23.

We have heavily focused our attention on rehabilitation because we understand that most felony prisoners will be reintegrated into society whether on parole or release. And rehabilitation assures some degree of public safety. I suggest that some form of consequential punishment should remain in place for non-violent property crimes, whether at the F4&5 or M1 levels. Many of these offenses also have victims. And within police powers that address public health, safety and welfare, such offenses are those that touch the public the most. Public confidence should be protected.

With evidence based rehabilitation, we have the tools to change the paradigm of recidivism for those felons who are willing to engage in good faith and effective participation. But we can not forget that incapacitation, and deterrence precede rehabilitation in their respective placement in RC 2929.11(A). I can assure you that no criminal has ever been deterred from crime when the most significant punishments risked were rehabilitation and treatment.

Our system of criminal justice is adversarial, fault based, precedent bound and common law in a jury model. Neither our constitution nor bill of rights embrace sociological jurisprudence.

Judge Selvaggio, we need to know whether we are on the right track. Will Davies and Alex Jones will flesh out the 12 recommendations found in our most recent iteration.



CRIMINAL SENTENCING COMMISSION

65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3431 • TELEPHONE: 614.387.9305 • FAX: 614.387.9309

Sentencing Commission Member Meeting Schedule Survey, 2023

Updated May 1, 2023

Respondents

The survey was emailed to the 29 current members of the Commission,¹ as well as two agency designees and the Executive Assistant of the Chief Justice.

Commission members were asked to reply by 12pm on April 18, 2023. As of that time, there were 21 respondents, a response rate of 72%. *Update: As of May 1, 2023, there was an additional response. This brings the total response rate to 75.8% (22 of 29). The results below are updated and based on all 22 responses.*

Summary of Results

Based on the 22 responses, the existing quarterly Thursday morning meeting is the best overall time. An alternative time could be quarterly meetings on Friday morning or early afternoon.

The months of the quarterly meetings could be adjusted to February, May, September, and November to meet the preferences and availability of larger numbers of members. The third Thursday of the month is recommended (except when conflicting with holidays), as it seems most members are used to the current meeting schedule.

¹ Currently, there are two vacancies on the Commission: one from the House of Representatives and a Mayor.

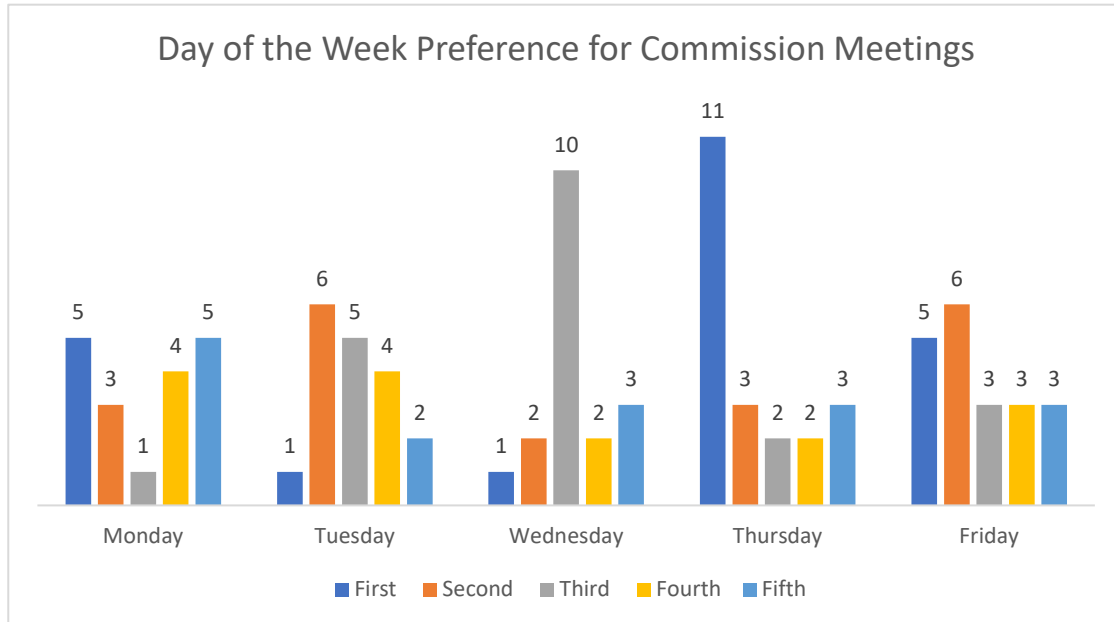


OHIO CRIMINAL SENTENCING COMMISSION

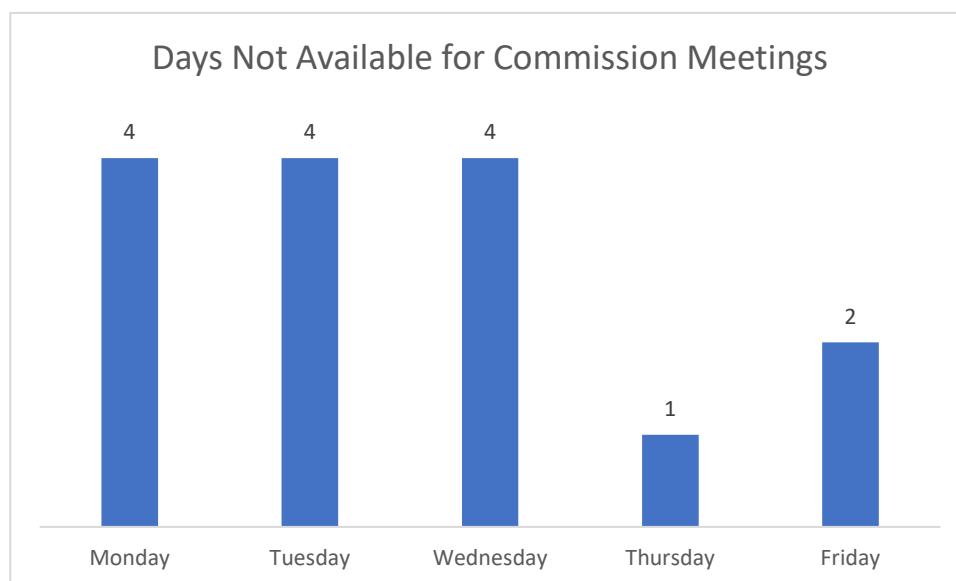
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Result Summary

Which days of the week do you prefer for Sentencing Commission meetings?



The largest number of respondents indicated that Thursday was the preferred day of the week to meet. Combining the first and second choices, Thursday was still the most popular (14), followed by Friday (11) and Monday (8).

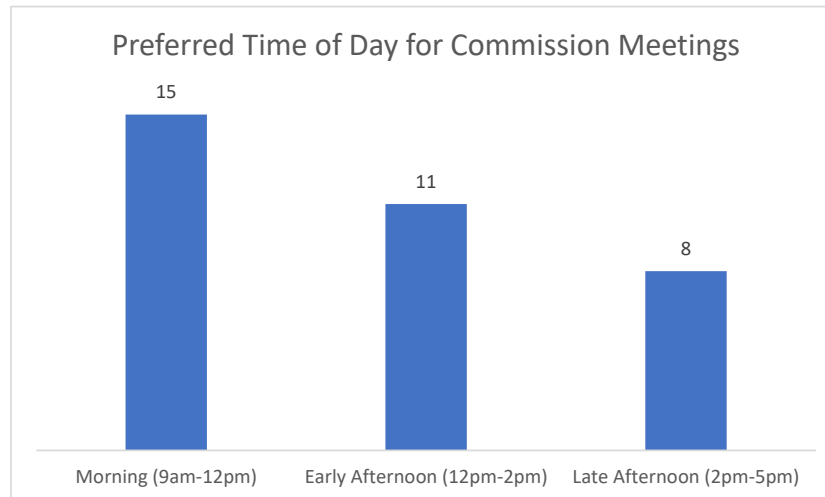


Respondents were asked to rank a day as “0” (zero) if it would generally not work for meetings. There was only one respondent that indicated Thursdays would not work.

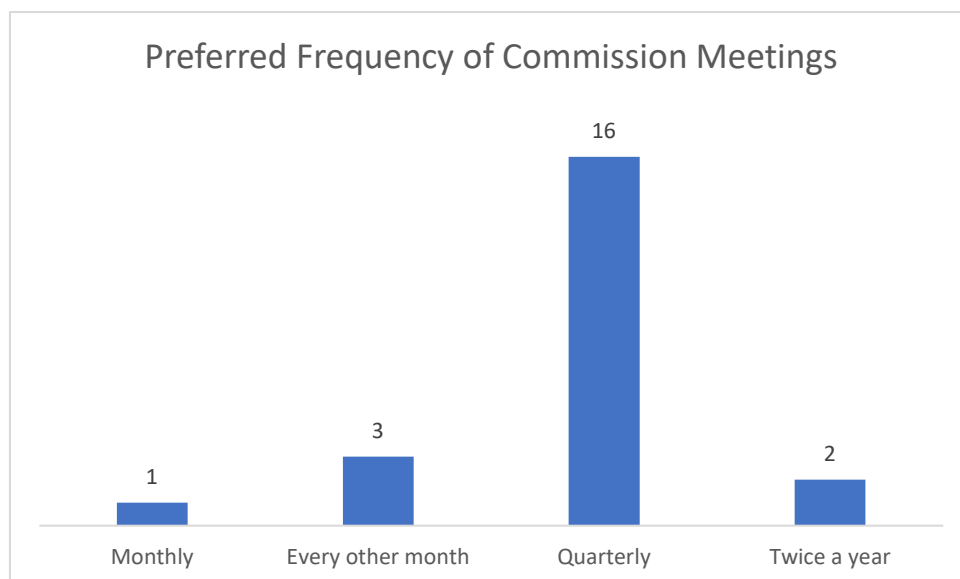


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**What general time of day would you be able to attend a Sentencing Commission meeting?
Select all that apply.**



**Currently, the Sentencing Commission meets quarterly. How often would you like the
Commission to meet during the year? Select one.**



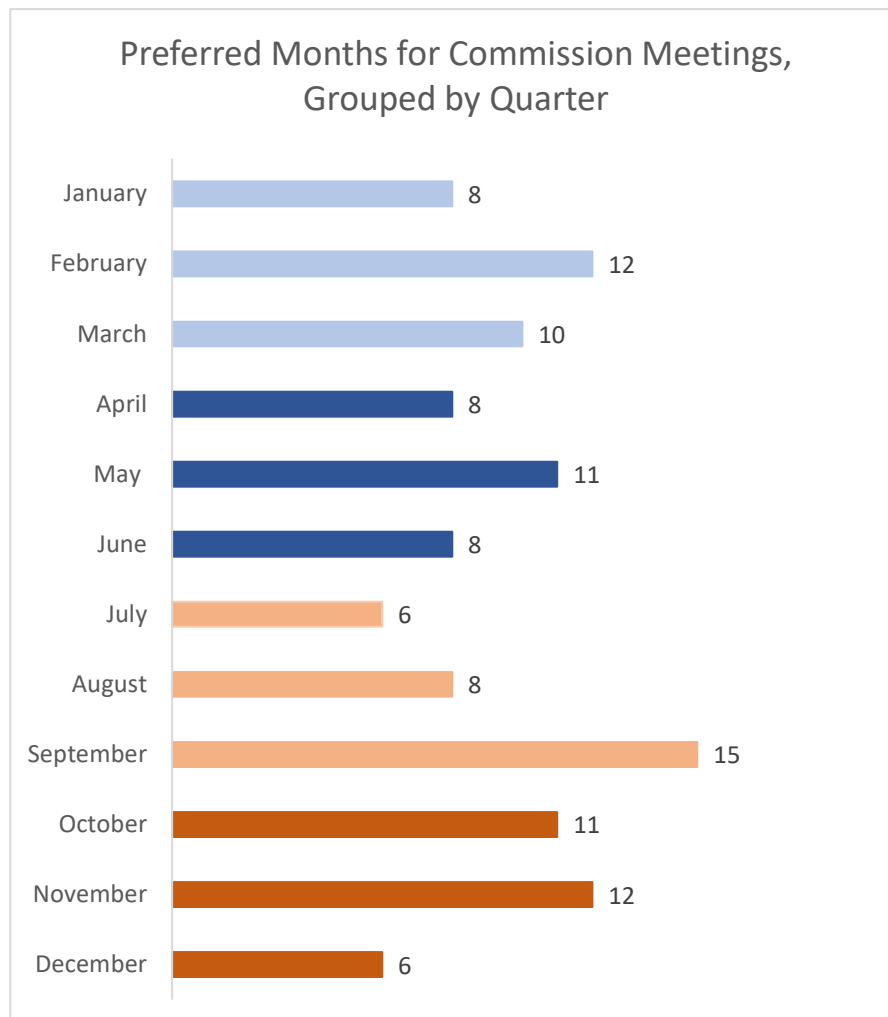


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As previously mentioned, the Commission has traditionally met quarterly. Below, the months of the years have been separated by quarters.

Please select the month(s) in each quarter you would most likely be available to attend a Commission meeting. Select all that apply.





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SENTENCING ROUNDTABLE WORKGROUP

Felony Sentencing in Ohio: Then, Now, and Now What?

Timeline and Synopsis



TIMELINE OF REPORT DEVELOPMENT

September 16, 2021: Commission Meeting.

25TH Anniversary of Senate Bill 2 (the “Truth in Sentencing” bill) roundtable discussion led by Reginald Wilkinson, EdD. Creation of the ad hoc group, Sentencing Roundtable Workgroup (Workgroup).

October 2021 through August 2022: Sentencing Roundtable Workgroup Meetings.

The Workgroup met once per month during this time period. At the August meeting the Crafting Committee was created.

September 2022 and October 2022: Crafting Committee Meetings.

Two meetings were held in September and one meeting in October to draft a report and recommendations that would be presented to the Commission at its December meeting.

November 2022: Sentencing Roundtable Workgroup Meeting.

Discussed the Draft report prior to presentation at Commission’s December meeting.

December 15, 2022: Commission Meeting.

Sentencing Roundtable Workgroup DRAFT Report & Recommendations.

[Felony Sentencing Report](#)

March 6, 2023: Sentencing Roundtable Workgroup Meeting.

Discussed public comment received as well as Commission feedback. Discussed revisions to the Felony Sentencing Report ([Revised Portions of Report](#) (This link also includes the Public Comments))

March 16, 2023: Commission Meeting

Revised portions of the report presented to the Commission. The revisions were made based on the Commission’s feedback from the December meeting as well as the public comment period.

[Revised Portions of Report](#) (This link also includes the Public Comments)

April 25, 2023: Sentencing Roundtable Workgroup Meeting

Discussion of synopsis version of report and next steps.

I. INTRODUCTION

After more than a year of meetings and research, the Sentencing Roundtable Workgroup convened a smaller group to begin the crafting of what ultimately became the draft report, *Felony Sentencing in Ohio: Then, Now, and Now What*, which was presented to the Full Commission in December 2022. The report and recommendations were posted for public comment through February 1, 2023. The Commission reviewed those comments and revisions to the report at its meeting March 16, 2023.

Criminal Justice policy should be based on facts and evidence that make the most effective use of resources, not rhetoric and emotion. With the endorsement of the Commission, the Workgroup will further explore and study an indeterminate sentencing structure that incentivizes release, ties rehabilitation with the purposes and principles of sentencing and incorporates parole and probation.

As noted in the report, the recommendations are consistent with the overriding purposes and principles of felony sentencing and should be read in that context.

II. STRUCTURAL CHANGES

The first six recommendations outline a modified and modern rehabilitative system of criminal sentencing that builds on the Reagan Tokes Law and meets **all of** the purposes and principles of sentencing. The “modified” aspect of this recommended model comes from the understanding that retribution is an important part of every criminal sentence (punish the offender). Once the offender has been appropriately punished, the offender would then have a robust and meaningful *opportunity* to meet objective rehabilitation standards. The “modernized” aspect centers on using objective, evidence-based practices to structure the criminal sentence.

The six recommendations are:

- 1. Establish a modified and modernized rehabilitative model of criminal sentencing.**
- 2. Seriousness and recidivism factors, contained in R.C. 2929.12¹, to be weighted to provide context and distinction to sentences.**
- 3. Expand indeterminate sentencing to apply to felonies of the third degree and eliminate the bifurcated structure of felonies of the third degree.**
- 4. Implement a definite minimum time that a prisoner must serve before release options become available.**
- 5. Modify consecutive sentence statutes to provide proportionality more effectively between similarly situated offenders.**
- 6. Expand responsibility of parole system to implement the proposed indeterminate model of sentencing while statutorily limiting its discretion with oversight and accountability.**

¹ [R.C. 2929.12](#)

III. ADDITIONAL RECOMMENDATIONS

Regardless of the changes outlined in recommendations 1 through 6, these changes will help in promoting the process of sentencing and assessing sentencing policy.

- 7. Support the Commission's efforts to promote the adoption of uniform entry templates.**
- 8. Standardize Presentence Investigation Reports.²**
- 9. Reorganize and simplify criminal statutes.**
- 10. Authorize an existing agency or create one to act as a clearing house for professional notifications.**
- 11. Expand the use of, and resources for, prosecutor diversion programs and specialized dockets.³**

IV. DRUG OFFENSES – (Recommendation 12)

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

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

V. MOVING FORWARD

The Commission will be asked for its endorsement for the Workgroup to continue the work and refine recommendations and transition to the Criminal Justice Committee of the Commission. The Committee will meet monthly with the proposed schedule of topics as outlined below:

- Meeting 1 – Indeterminate Sentencing – Reagan Tokes formulas
 - Best practices for rehabilitative models
- Meeting 2 – Indeterminate Sentencing – F3s
 - Analyze presumptions for and against prison.
- Meeting 3 – Consecutive Sentencing
 - Meaningfully guided discretion
- Meeting 4 – General Rules for simplification of Criminal Code

² With adequate resources, it would be ideal for a PSI to be prepared for all defendants, but those PSIs that are prepared should be uniform in appearance and the information they contain.

³ With a judge's increased participation in treatment options canonical issues may arise and judges should be mindful of those potential issues.



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- How to analyze pending changes to the code
- Meeting 5 – Redundancy of the Code
- Meeting 6 – Parole Board
 - How to incorporate and what statutory guidance is needed.
- Meeting 7 – Professional Notifications
- Meeting 8 – Diversion and Specialized Dockets
- Meeting 9 – Standardization of Pre-Sentence Report
 - Gather samples and create draft Pre-Sentence Report
- Meeting 10 – National Perspective

VI. CONCLUSION

With the endorsement of the Full Commission, the Sentencing Roundtable Workgroup will transition to the Criminal Justice Committee defined by guiding principles consistent with the statutory authority of the Commission and its vision and mission:

Vision: To enhance justice

Mission: To ensure fair sentencing in the state of Ohio

To fulfill its vision, the Ohio Criminal Sentencing Commission will develop and recommend sentencing policy to the General Assembly that is designed to:

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

The Ohio Criminal Sentencing Commission will achieve its mission by:

- Analyzing current adult and juvenile criminal statutes and law in Ohio and other states.
- Studying sentencing patterns and outcomes and balancing the needs of criminal sentencing and available correctional resources.
- Researching and recommending evidence-based approaches to reducing recidivism.
- Recommending reasonable and specific criminal justice reforms.



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ADDITIONAL INFORMATION FOR REPORT

As part of the recommendation that the Commission review and analyze proposed legislation (Recommendation 9), the following template is an example of the structure of how that analysis will occur:

TO:

DATE:

SUBJECT:

The Ohio Criminal Sentencing Commission review and analysis on potential impact of XXXXX.

TOPIC:

BILL NUMBER:

SUMMARY OF PROPOSED LEGISLATION:

IS THERE EXISTING STATUTE OR LANGUAGE TO ADDRESS THE ISSUE?

ANALYSIS:

FISCAL:

GENERAL IMPACT:

IMPACT TO LOCAL GOVERNMENT:

IMPACT TO VICTIM COMMUNITY:

POTENTIAL CONFLICT WITH CURRENT LAW, RULE, ETC., IF APPLICABLE:

RELEVANT SUPREME COURT OF OHIO DECISION(S), IF APPLICABLE:

HISTORICAL RESOURCES, IF AVAILABLE:

NOTES:



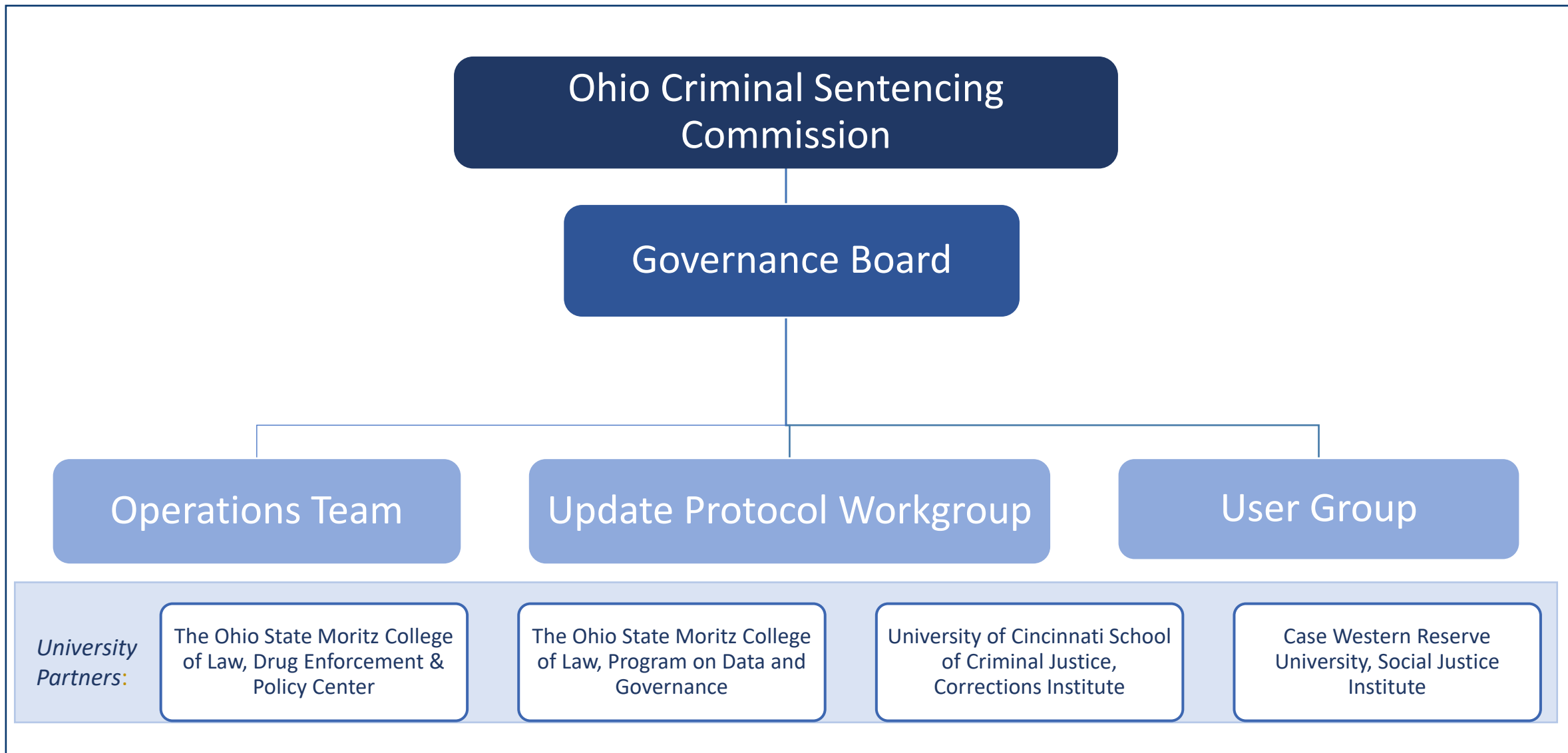
OHIO

CRIMINAL SENTENCING COMMISSION

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ENGAGE PHASE GOVERNANCE STRUCTURE
JUNE 2022-JUNE 2023

Ohio Sentencing Data Platform* Table of Organization



Ohio Sentencing Data Platform Table of Organization

Ohio Criminal Sentencing Commission

Authorized under Sections [181.21 – 181.25](#) and [181.27](#) of the Ohio Revised Code, the Ohio Criminal Sentencing Commission is an affiliated office of the Supreme Court of Ohio. The recent work of the Commission has been focused on strategies to achieve clarity and reduce the complexity of felony sentencing while preserving judicial discretion and public safety consistent with the Commission's Vision: To enhance justice and its Mission: To ensure fair sentencing in the state of Ohio. The Honorable Judge Nick Selvaggio, Champaign County Court of Common Pleas is the Vice-Chair and staff liaison is Sara Andrews, Director.

Governance Board

The Governance Board is comprised of the Chief Justice, judges, and other key state government leaders; representatives from partners at the University of Cincinnati, Ohio State University, and Case Western Reserve University. The primary responsibilities of the board are to determine data content in the system, use and access to the data and to make policy recommendations to the Commission, the Chief Justice, the Ohio Supreme Court and the Ohio General Assembly as it determines necessary to achieve its goals. The Governance Board has no independent policy-setting authority. The Chair is the Honorable Judge Gene Zmuda, Sixth District Court of Appeals and the staff liaison is Sara Andrews, Director.

Operations Team

Operations Team members include judges, clerks of court, legislators, prosecutors, defense lawyers and attorneys from the Supreme Court of Ohio and the Ohio Attorney General and others with direct connection to sentencing, court operations and data analysis. Mark Bergstrom, Executive Director of the Pennsylvania Commission on Sentencing provides technical assistance to the group. The Operations Team guides administration of the Ohio Sentencing Data Platform by proposing policy and web application development recommendations to the Governance Board. The team may also escalate proposals or questions to the Governance Board, when necessary. The Operations Team chair is the Honorable Judge Jaiza Page, Franklin County Court of Common Pleas and staff liaisons are Niki Hotchkiss, Assistant Director and Todd Ives, Researcher.

Update Protocol Workgroup

The Update Protocol Workgroup is co-chaired by the Honorable Judge Sean Gallagher, Eighth District Court of Appeals and the Honorable Judge Andrew Ballard, Lawrence County Court of Common Pleas. The members are judges, and the Workgroup meets regularly to determine what, if any, changes to the uniform entries and forms are necessary based on case law, statutory enactments or revisions, user feedback, and Ohio Sentencing Data Platform development and testing. Staff liaisons are Will Davies, Criminal Justice Counsel and Alex Jones, Criminal Justice Counsel.

User Group

The User Group is made up of judges and court staff that are currently participating in the pilot project and provide ongoing feedback to validate ideas and prioritization of changes or new features of the system. The User Group is designed to connect people, share strategies, experiences and best practices. The User Group Chair is the Honorable Jonathan Starn, Hancock County Court of Common Pleas and staff liaisons are Niki Hotchkiss, Assistant Director and Todd Ives, Researcher.

For more information on the Ohio Sentencing Data Platform, visit ohiosentencingdata.info.

PROPOSED GOVERNANCE STRUCTURE
JUNE 2023 - JUNE 2025

Ohio Sentencing Data Platform* Table of Organization

Ohio Criminal Sentencing Commission

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graph TD; OCSC[Ohio Criminal Sentencing Commission] --> UPW[Update Protocol Workgroup]; OCSC --> UG[User Group];
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Update Protocol Workgroup

User Group

*Project development funded by the Ohio General Assembly general revenue fund and contract between the Ohio Criminal Sentencing Commission (OCSC) and the University of Cincinnati, School of Information and Technology Solutions Center (ITSC). Staff from OCSC and ITSC comprise the Implementation Team to implement the project statement of work at the technical level.

Ohio Sentencing Data Platform Table of Organization

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TO: Ohio Criminal Sentencing Commission

FROM: Alex Jones, Criminal Justice Counsel

DATE: May 18, 2023

RE: R.C. 2953.32 definition of “expunge” and what happens to the “official records” that are ordered to be expunged under this section

Introduction

With the passage and enactment of SB 288, the General Assembly expanded expungement to now allow all offenders whose convictions are eligible for expungement the opportunity to petition the court for an order to expunge the official records of their case. This change in the law came with a nuanced modification of the definition of expunge. There are now two different statutory definitions for the word “expunge”.

- There is a “delete, destroy, and erase” definition of “expunge”, meaning that when a court orders a record expunged there should be action taken to delete, destroy, and erase the record so it is permanently irretrievable.¹
- There is an ineffectual definition of “expunge”, meaning that when the court orders the official records of a case “expunged” no action should be taken and the official records should remain intact.²

Many public and private entities throughout Ohio have updated their literature in response to the enactment of SB 288. However, many are not making the distinction between the two types of expungement orders. For example, one county clerk of courts website plainly indicates that “when a criminal case is expunged, the records are permanently deleted so that the record is permanently irretrievable.” One law school law library states that SB 288 “created a true expungement where the records are destroyed.” A legal aid brochure says, without distinction, that “expungement is like putting the record in a paper shredder.”

This memo is being presented to the Commission members for edification, discussion, and/or legislative recommendation.³ Should the legislature make the distinction clearer? Should the official records ordered expunged under R.C. 2953.32 be deleted, destroyed, and erased? Have courts and the public been properly informed of the distinction? If not, what are the potential complications with implementing the new law?

¹ See R.C. 2953.32(B)(2)(b).

² See R.C. 2953.32(B)(1).

³ Any action on this topic is consistent with R.C. 181.27(B)(1), which tasks the Commission with studying the impacts of changes made to R.C. 2953.32.



Memorandum

Prior to the enactment of [SB 288](#), expungement was only available in limited circumstances and for limited offenses. SB 288 added expungement as an option under [R.C. 2953.32](#), allowing all offenders whose convictions are eligible for expungement and for whom the applicable waiting period has elapsed an opportunity to petition the court for an order to expunge. This memo will highlight that, as defined by statute, expungement for the purposes of R.C. 2953.32 does *not* mean that the official records of the case should be destroyed, deleted, and erased. The only records that should be deleted when an expungement is granted under this section are the index records.

By nature of its broad applicability, R.C. 2953.32 (“Sealing or Expungement of Record of Conviction or Bail Forfeiture; Exceptions”) is the section that the majority of offenders will utilize to expunge their convictions. Pursuant to R.C. 2953.32(D)(2)(a), when granting an expungement of a conviction, a court shall “...order all official records of the case...expunged...and...all index records...deleted...”⁴ The other expungement options are:

- [R.C. 2953.35](#) (“Expungement of Certain Convictions Relating to Firearms”)
- [R.C. 2953.36](#) (“Expungement of Certain Convictions for Victims of Human Trafficking”)
- [R.C. 2953.39](#) (“Low-level Controlled Substance Offense Conviction Record Sealing or Expungement, on Prosecutor’s Motion”)
- [R.C. 2953.521](#) (“Expungement of Record of Not Guilty Finding or Dismissed Charges When Defendant Victim of Human Trafficking”)

Before the enactment of SB 288, “expunge” was defined in each of the relevant code sections as “to destroy, delete, and erase a record as appropriate for the record’s physical or electronic form or characteristic so that the record is permanently irretrievable.”⁵ This definition was left unchanged by SB 288, but it was moved from each individual section and placed into R.C. 2953.31(B)(2)(b).

⁴ Pursuant to R.C. 2953.31(A)(3), “official records” are all records that are possessed by any public office or agency that relate to a criminal case, including, but not limited to:

- The notation in the criminal docket; all subpoenas issued;
- All papers and documents filed by the defendant or the prosecutor;
- All records of all testimony and evidence presented;
- All court files, papers, documents, folders, entries, affidavits, or writs that pertain to the case;
- All computer, microfilm, microfiche, or microdot records, indices, or references to the case;
- All index references to the case;
- All fingerprints and photographs;
- All DNA and DNA records; and
- All records that are possessed by any public office or agency that relate to a CQE.

⁵ See former R.C. 2953.37(A)(1), former R.C. 2953.38(A)(1), and former R.C. 2953.521(A).



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In my review, for convictions being expunged under R.C. 2953.32, expunge does not mean to “delete, destroy, and erase” the official records. This opinion is based on the plain language of [R.C. 2953.31\(B\)](#):

(1) As used in section 2953.32 of the Revised Code, “expunge” means the expungement process described in section 2953.32 of the Revised Code.

(2) As used in sections 2953.33 to 2953.521 of the Revised Code, “expunge” means both of the following:

- (a) The expungement process described in sections 2953.35, 2953.36, 2953.39, and 2953.521 of the Revised Code;
- (b) To destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.

Thus, when R.C. 2953.32(D)(2)(a) states that a court shall “order all official records of the case...expunged...”, the term expunge merely “means the expungement process described in section 2953.32 of the Revised Code.” The “destroy, delete, and erase” language is not included in the definition of expunge for purposes of R.C. 2953.32, and the court’s R.C. 2953.32(D)(2)(a) order that “all official records of the case” be “expunged” is ineffectual.⁶ Accordingly, for expungements granted under R.C. 2932.32, only index records should be deleted.

⁶ The “destroy, delete, and erase...” language also does not appear anywhere in the text of R.C.2953.32.